ELLEN SCHUTT
STATE REPRESENTATIVE • 31ST ASSEMBLY DISTRICT

November 29, 2023

Testimony on Assembly Bill 480

Thank you Chairman Macco and committee members for hearing Assembly Bill 480 today. I began working on this bill after being contacted by numerous constituents who were concerned with large solar energy facilities being built on precious farmland. This bill addresses a loophole in current law that allows for someone to receive the farmland preservation tax credit despite completely changing the land to build solar energy facilities on it. This bill prohibits a person from claiming the farmland preservation tax credit if a person has commercial use solar on the land.

After discussions with state and local officials, it was determined that a loophole exists in current law that allows for someone to claim the farmland preservation tax credit even after building a solar facility on part of their land. For example, if someone owns 1,000 acres in the farmland preservation program, and builds a solar energy facility on 500 acres of that, the person will still receive 100% of the farmland preservation tax credit. This is wrong.

The farmland preservation program was created in the 1977 budget act to provide property tax relief to farmers and encourage local governments to develop farmland preservation policies. The land use requirement provisions of the program are to ensure that these tax credits are being paid only for farmland that local governments believe is important to preserve for agricultural use.

In recent years, we have seen a substantial increase in the installation of solar panels on agricultural land in the state of Wisconsin. Installation of large solar panel systems permanently damage the land by removing invaluable top soil that may never be returned in our lifetime. In many cases, the topsoil is removed, to even out the soil to install solar panels, and in other cases, gravel is brought in to build the energy generating facility. All of this harms the land and can be detrimental to the future viability of growing anything on it.

Because renewable energy generating facilities are often sited under permitted or conditionally permitted uses within farmland preservation zoning districts, it is possible that a landowner could site a portion of their farm with solar panels and still be eligible to claim the farmland preservation tax credit. As long as 50% of the land remains devoted to agriculture, a landowner can still qualify for the tax credit for 100% of the land.

As solar energy facilities are taking some of the best farmland, many are concerned about the future of agriculture, and where our food will be grown. My district, Rock and Walworth Counties, has some of the most fertile farmland in Wisconsin. In fact, both are among the top 10 counties in Wisconsin for corn grain production. In soybean production, Rock County is 2nd and Walworth County is 13th. Sadly however, when combined, they make up 11% of the total agricultural land in Wisconsin being diverted to non-agricultural uses.

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STATE REPRESENTATIVE • 31ST ASSEMBLY DISTRICT

Between 1950 and 2000, agricultural acreage in Wisconsin declined by about one-third, from approximately 24 million acres to 16 million acres. As of 2021, the U.S. Department of Agriculture's National Agricultural Statistics Service estimates that number has further dropped to 14.2 million farmland acres in Wisconsin.

This bill will ensure that those who are receiving the farmland preservation tax credit, are truly farming the land and preserving its soil and quality for generations to come.

Thank you for your consideration of Assembly Bill 480. I am happy to answer any questions you may have.

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CORY TOMCZYK
STATE SENATOR • 29TH SENATE DISTRICT

Testimony – AB 480

Assembly Committee on Ways and Means
Wednesday, November 29, 2023

Chairman Macco and Members of the Committee on Ways and Means,

Thank you for hearing AB 480 today.

As all of you know, it is impossible to drive from one end of our state to the other without seeing what only ten years ago was pristine farmland, now is dominated by large scale industrial use renewable facilities.

Landowners might make the choice to lease or sell this land because they are looking to reduce the total area they have to farm, want to diversify their income streams, or want to ensure that their property is generating revenue for their children who may not have an interest in carrying on their family's farming heritage. That is their right to do so. However, many of these same plots of land currently receive Farmland Preservation tax credits, a program meant to preserve our state's proud agricultural heritage, for their entire acreage, not just the portion used for agricultural usage.

If you told any resident of the 29th Senate District that Farmland Preservation tax credits were being awarded for land used for utility generation, they'd say you were out of your mind.

However, state agencies have interpreted the Farmland Preservation tax credit to do exactly that; awarding tax credits to all land zoned under a Farmland Preservation agreement as long as the agricultural use exceeds 50% of the acreage. That means that if 74 acres of a 150 acre plot is used for renewable generation with the other 76 dedicated to agricultural use, then all 150 acres can still qualify for farmland preservation tax credits.

AB 480 corrects this issue, clarifying state statute to provide that credits are paid for land used for agricultural use not large scale utility generation. This legislation still retains the ability for an individual to have a solar facility on their property for accessory use law and still allows for them to lease out land for utility generation.

It is critical that Wisconsin protect its proud farming heritage and responsibly monitor its tax credit programs by ensuring that farmland preservation credits are being paid out for their intended purpose, preserving farmland for future generations.

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I am Scott Fleming, a Certified Crop Advisor and Technical Service Provider from Johnstown, Wisconsin. I am testifying in support of Assembly Bill 480, relating to eligibility for Farmland Preservation Tax Credits.

Simply stated, I have the credentials necessary to write Nutrient Management Plans (NMPs) on a state and federal level. I have been writing plans since 2005. At this time, I write about 50 nutrient management plans covering approximately 7000 acres of land. As part of the planning process, a list of landowners and their corresponding farmland acreage is submitted to the county or counties. This submission along with a small fee and additional form makes each of these landowners eligible for the Farmland Preservation tax credit.

As stated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) the goals of Farmland Preservation are to promote agricultural growth, restrict non-agricultural uses, and limit potential land use conflicts. By converting land from agricultural crop production into a solar power generation facility, all of the main tenets of Farmland Preservation are broken.

By now, we have all seen solar power facilities being built. The very first steps of creating a solar facility are hauling in heavy earth moving equipment and installing silt fence. Hills are then cut down and valleys are filled to ensure a flatter surface. The goal of this land forming is to reduce the amount of shading taking place within the solar field. While this may increase the productivity of a solar field, the soil's agricultural productivity is no longer present. All of this earth moving activity leads to disturbed soil that is no longer the fertile soil it once was. Most sources state that it can take up to 500 years to form one inch of topsoil. We can't expect the soil to recover in several lifetimes.

The next concern when it comes to calling a solar powerplant farmland lies in its ability for resuming agricultural production. It is often argued that these facilities are only semi-permanent. They reach the end of their useful lifespan and are then deconstructed for normal crop farming to resume. While possible, it does not seem very probable that all of this copper, steel, and glass will be removed for land to go back into production. While it is not my area of expertise, the challenges of removing a solar facility and reverting back to agricultural

production seem daunting to say the least. I am, however, an expert in soils and agronomy. Any natural healing of the soil that took place during solar production will be negated by the heavy traffic of the deconstruction activity.

The facilities in the 31st and 33rd district that I am most familiar with also have some wet areas. As a farmer, drainage in excess of what was present prior to December 23rd, 1983 may not take place. This is commonly known as the "Swampbuster" Act. An interesting component of this act is that if you have ANY Swampbusted land, the grower is no longer eligible for ANY United States Department of Agriculture (USDA) program. However, solar power plants are allowed to install drainage systems in excess of what a farmer may install. The federal government has deemed solar production as a "greater good" for the environment in relation to additional tile and surface drainage. It is still up for legal debate on if this land would be eligible to go back into agricultural production if the solar power facility is removed.

Finally, all farmers participating in an NMP must meet soil loss target numbers. Each soil type in the state has a tolerable soil loss number. Farmers must modify crop rotations and tillage to ensure they do not exceed these tolerable soil loss numbers. When solar panels are installed, what was once a permeable soil surface is now covered with impervious photovoltaic panels. Each panel concentrates the rainfall hitting its surface into a sheet of water flowing off the downslope edge of the panel. A great analogy would be a house without gutters. When the roof concentrates all the rainwater and it flows off in sheets you are left with a strip of mud on the ground. Now imagine a former farm field covered with thousands of solar panels. Each of these panels concentrates rainfall as it slowly makes thousands of mud strips below the panels. An emerging area of study is the accelerated runoff and erosion caused by this concentration of rainfall.

I will be the first to agree that reducing our dependance on fossil fuels is not a bad thing. But placing a solar facility on farmland is not preserving farmland for the future. It is repurposing rural lands from agricultural use to power generation. Nothing more, nothing less. Therefore; these lands should not be eligible for Farmland PRESERVATION tax credits.

State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: November 29, 2023

FROM: Division of Agricultural Resource Management, DATCP

SUBJECT: Assembly Bill 480 Relating to: eligibility for farmland preservation tax credits.

Chairman Macco and members of the Assembly Committee on Ways and Means,

Thank you for the opportunity to provide information about Assembly Bill 480 related to eligibility for farmland preservation tax credits. My name is Katy Smith, and I am the Land and Resource Management Section Manager of the Land and Water Resources Bureau at the Department of Agriculture, Trade and Consumer Protection (DATCP). I will describe the potential process and resources required to implement AB 480.

The legislative analysis for AB 480 indicates that the intent of AB 480 is to disallow a person from claiming the farmland preservation tax credit for any part of the claimant's qualifying acres on which a photovoltaic solar energy system that is not integral or incidental to an agricultural use. The bill would create a limitation on which acres the farmland preservation tax credit could be claimed on, however, the draft text has not identified the mechanism by which the total acres sited with a photovoltaic solar energy system that is not integral or incidental to an agricultural use will be identified. The definitions of "farm" under s. 71.613(1)(d) and "qualifying acres" under s. 71.613(1)(h), Stats. have not been proposed for revision. Draft bill text has not excluded lands sited with photovoltaic solar energy systems from "qualifying acres" nor has it changed the definition of "farm" to exclude lands sited with commercial photovoltaic solar energy systems.

Qualifying acres are historically identified on a farm's certificate of compliance to include all of the land subject to an effective farmland preservation agreement, located in a certified farmland preservation zoning district or both. As drafted, the proposed bill may create confusion amongst program stakeholders including agencies, local government officials, farmers, non-operating landowners, tax preparers and other program partners. Extensive outreach will be required for all program stakeholders, but especially to the 52 county land conservation departments that issue certificates of compliance to demonstrate compliance with soil and water conservation standards on all farms/qualifying acres and landowners who claim the tax credit. It is unclear how many existing participants this would impact. Certificates of compliance are the mechanism by which to report to the Department of Revenue the total number of eligible qualifying acres. Significant time would be needed to afford outreach and will be needed to review and update existing certificates of compliance.

Thank you for the opportunity to provide information on AB 480. I would be happy to answer any questions committee members may have.

Public Hearing for: AB480
Assembly Ways and Means Committee
November 29, 2023

Thank you Representative Macco for holding a hearing on AB480 today, and thank you to the members of this committee in attendance to hear the public comment. I would also like to thank Representative Schutt and Senator Tomczyk for authoring this bill as well as all of the other coauthors and cosponsors.

My name is Denise Brusveen, and I am in strong support of this bill. It is one tiny step in the right direction toward fixing our grossly lacking state laws regarding solar. I am currently serving my second term on the Columbia County Board of Supervisors. Specifically, I am the First Vice Chair of the Board, and I am also the Chair of our Planning and Zoning Committee. While I am here representing myself and not the County today, I would like to share my experience and knowledge gained from working on this issue in my county board role.

The topic of solar has been on over half of our committee agendas for the past year and three of our full county board agendas. I have listened to over 30 hours of public comment and have spent over 20 hours discussing and debating our county's approach to solar in meetings. The sad reality is that our hands are incredibly tied at the county level due to the current state laws. Yet we are trying to do what we can within those parameters.

I have specifically been troubled about this portion of the law for a variety of reasons.

First, solar is NOT farming and should not qualify for Farmland Preservation tax credits. I have heard the argument that solar is simply "farming the sun," but this is an insult to the very definition of farming, which, according to the Merriam-Webster Dictionary, is the practice of agriculture or aquaculture. And according to Wis. Stat. 91.01(2)(a), "agricultural use" means any of the following: crop or forage production, keeping livestock, beekeeping; nursery, sod, or Christmas tree production; floriculture, aquaculture, fur farming, forest management, enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program. Solar isn't listed there. And that is why I will not refer to these projects as "solar farms." And based on this fact alone, this land should not qualify for Farmland Preservation tax credits.

There are currently 106 proposed solar and battery storage projects in our state and an additional 32 that have already received approval. The total megawatts of the proposed projects is 15,352 and approved projects is 3830. With a CONSERVATIVE estimate of 7 acres per megawatt, the total acres in our state that could be affected is at least 134,000.

When you look at how much of that land is in Farmland Preservation zoning districts or Ag Enterprise Areas, I would venture to guess that it's almost all of it because the designation isn't limited to the best of the best farmland. Mediocre and even poor land, at least in Columbia County, is still designated as "prime farmland" according to the USDA and thus qualifies for Farmland Preservation tax credits.

As the current state law stands, most of this land will continue to qualify for FARMLAND PRESERVATION tax credits while actually being used for commercial utility energy production.

This is because if less than half of any landowner's land is placed into solar agreements, then they will continue to collect Farmland Preservation tax credits on 100% of their land. What constitutes half of their land? Contrary to what I and many others originally thought, it is NOT half of that particular parcel or even half of the land owned by a farmer in that county. It is half of their total land owned in the state. Thus, a farmer could buy some cheap marsh land up north and then sign all of their land up for solar in Columbia County and still collect tax credits on all of it as long as it is 1 acre less than the land up north. This is a loophole that needs to be quickly closed, and AB480 would do just that.

Residents of Wisconsin are already paying taxes that fund the subsidies that are as high as $50,000 per acre to install these solar projects, then we are paying increased rates on our electric bills on top of that in the name of "green energy" that utility companies claim is cheaper than natural gas or coal. One has even stated that it will be FREE after the panels are all installed. When asked if residents can expect their rates to go down after the initial capital investment...the response was a puzzled look, followed by a "no." On top of that, as coal or natural gas plants close before the end of their useful life, the public utilities are allowed to add ANOTHER fee onto residents' energy bills to help them recoup that cost. And just when you think that's enough fees, there is one more...utility aid payments will still go to counties and towns in which coal or natural gas facilities exist that are no longer being operated until they are COMPLETELY shut down, which could take several years. This means that, you guessed it, taxpayers will be footing the bill for those payments too (while also paying the increased rate for the solar energy). Please don't make Wisconsinites ALSO pay for Farmland Preservation tax credits when the land is CLEARLY not being used for agricultural purposes. It's really the least you could do when it comes to the solar already being forced upon us in our back yards.

I urge you to bring this bill to an executive session and vote YES to pass it. I also implore you to work toward closing many of the other loopholes that exist in our state statutes regarding solar projects, and I am happy to speak with any of you should you have additional questions. Thank you.

Wisconsin Farm Bureau FEDERATION

Testimony on 2023 Assembly Bill 480

Assembly Committee on Ways and Means
November 29th, 2023

Thank you Chair Macco and Committee Members for the opportunity to testify on 2023 Assembly Bill 480. This legislation is relatively straightforward in its function. The bill disallows individuals from claiming a Farmland Preservation tax credit for any part of their qualifying acres on which a solar energy generation facility is located and is not an integral part of or incidental to an agricultural use. The Wisconsin Farm Bureau strongly supports policies which keeps Wisconsin farmland in agricultural production. While we support development of alternative and distributed energy sources, we applaud the authors of this legislation for identifying this loophole within the Farmland Preservation tax credit program and acting swiftly to bring Assembly Bill 480 forward.

As clarified by Legislative Council in an August 2023 informational memo, several circumstances that exist under Wisconsin Law in which a landowner can claim a farmland preservation tax credit for land that has been converted into a solar energy generation facility. In short, someone would be claiming a tax credit from the state for preserving farmland, that is not being farmed.

The eligibility of a solar energy generation facility for agricultural tax credits depends on a handful of factors. For members who may not be as familiar with Farmland Preservation qualification, there are a couple of different pathways enter into the program. If the land in question is subject to a Farmland Preservation agreement between the landowner and the Department of Agriculture, Trade and Consumer Protection (DATCP), solar energy development would require early termination of the agreement and make the owner generally ineligible for tax credits on that acreage. However, if solar development occurs on land covered by Farmland Preservation zoning, eligibility for tax credits then depends on the percentage of qualifying acres that have been used for solar development as part of the larger farm.

Because of the construction of state law, if a solar energy facility covers less than 50 percent of an agricultural landowner's acreage within an FP zoning district, they may still be eligible for tax credits. However, if more than 50 percent of the acreage is developed for solar energy, only the remaining agricultural acres would qualify for tax credits.

Assembly Bill 480 rightly closes this loophole, maintaining the original intent of the Farmland Preservation program to preserve working farmland in Wisconsin.

This is only one element of the challenges farmers face regarding solar development on agricultural land. I feel it is worth noting that despite a municipality's best effort to preserve farmland through this program, state law prohibits political subdivisions from restricting the installation or use of solar energy systems unless the restriction serves public health or safety, does not significantly increase system cost or decrease efficiency, or allows for a comparable alternative system. Furthermore, the Public Service Commission's issuance of a Certificate of Public Convenience and Necessity (CPCN) for a large electric generating facility takes precedence over any local ordinance that may impede the project. The result of which is that even if a municipality, town, or county, wanted to preserve critical farmland through this program, they do not have legal authority to do so.