Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 19, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 623: Treatment of Pending Applications for Farmland Preservation Agreements

Senate Bill 623 would require the Department of Agriculture, Trade and Consumer Protection (DATCP) to process certain applications for farmland preservation agreements under Chapter 91 as it existed prior to its repeal and recreation under 2009 Act 28. The bill was introduced March 15 and referred to the Senate Committee on Agriculture and Higher Education. On April 1, the Committee adopted Senate Substitute Amendment 1 and recommended passage of the bill, as amended, by votes of 5 to 0. The bill was referred to the Joint Committee on Finance on April 8.

CURRENT LAW

DATCP administers the farmland preservation program under Chapter 91 of the statutes. The program includes various instruments intended to keep active agricultural lands in agricultural use. Under the program, counties will be required to have farmland preservation plans in effect generally no later than January 1, 2016. For those lands designated for long-term agricultural use in the county plan, zoning authorities may create certified farmland preservation zoning districts, which were formerly known as exclusive agricultural zones, or individual landowners may also enter into farmland preservation agreements with DATCP. The Department reports there are approximately 4,700 farmland preservation agreements currently in effect, covering about 642,600 acres, for an average of about 137 acres per agreement. Both farmland preservation zoning and agreements require any structures and activities on the land to be dedicated to agricultural or other related purposes as allowed in the statutes. Persons owning land under farmland preservation zoning or agreements and complying with state soil and water conservation standards may claim farmland preservation tax credits, which are claimable against income taxes required of individual or corporate filers.

2009 Act 28 made multiple changes to the program, including changes to both the administration of farmland preservation agreements and the claims allowed for tax credits. Under Act 28, landowners may claim one of the following credits: (a) $5 for each acre subject to a farmland preservation agreement but not in a farmland preservation zoning district; (b) $7.50 for each acre in a farmland preservation zoning district but not subject to a farmland preservation agreement; or (c) $10 for each acre subject to both a farmland preservation agreement and in a farmland preservation zoning district. The credits are refundable, which allows for a refund even if the credit exceeds the claimant's tax liability, except that the Department of Revenue (DOR) must certify to the Department of Administration any amounts beyond the liability of a claimant. The per-acre tax credit will generally take effect with the 2010 tax year, for which the standard filing deadline will be April 15, 2011. Act 28 allocates $27,007,200 in 2010-11 for the new credit. However, farmland preservation agreements entered into prior to Act 28 remain in effect, and holders of these agreements remain eligible for the previous credit unless they modify their agreement to become eligible for the new per-acre credit.

The previous credit is calculated in part on a landowner's income factor, which can be interpreted as the amount of income that a household can afford to contribute to the payment of property taxes. The income factor is then deducted from eligible property taxes ($6,000 maximum) to determine what portion of the tax is "excessive" for a claimant with a particular income level. The "excessive" property tax is then prorated to determine the potential credit, which guarantees that claimants of all income levels continue to pay part of their property tax, with larger farms paying a higher percentage. The potential credit amount is then adjusted to provide larger credits for more restrictive conditions on the land's use. Specifically, actual credits relative to potential credits are: (a) 70%, for farmland covered by an exclusive agricultural zoning but without a county preservation plan; (b) 80%, for farmland covered by a farmland preservation agreement and a county preservation plan; or (c) 100%, for farmland covered by exclusive agricultural zoning and a county preservation plan. Regardless of income, claimants may receive 10% of their eligible property taxes if that amount is larger than the tax credit formula amount. Claimants receiving the 10% minimum are generally those with a high income level compared to their property taxes, and whose credit eligibility would otherwise be minimal. Act 28 allocates $400,000 in 2010-11 for payments that would continue under these guidelines. For the 2008 tax year, the most recent year for which statistics are available, DOR reports the average farmland preservation tax credit was $687, covering approximately 18% of an average claimant's property tax liability. The maximum credit under the previous guidelines is $4,200.

2009 Act 28 also changed the procedure for landowners applying for farmland preservation agreements. Under previous law, applications were submitted to county clerks, who then forwarded the application to the governing city, village or town, if applicable. Notification was also provided to (a) DATCP; (b) the county planning and zoning agency; (c) the regional planning commission; and (d) the county land conservation committee. These notified entities were allowed a review period, and were allowed to submit comments to the local governing body. The local governing body was required to approve or reject the application within 120 days of receipt, and forward its decision to DATCP. DATCP was authorized to reject agreements only if they would cover ineligible farmland. Rejected applications could be appealed to the Land and Water

Conservation Board. Chapter 91 as recreated contains fewer notifications and reviews by local agents. Instead, current law specifies that applications are submitted to county clerks, and that counties review applications for the land's eligibility and provide findings to DATCP. The Department may deny applications that are incomplete or that would cover ineligible land.

The statutes previously set the duration of farmland preservation agreements at a minimum of 10 years and a maximum of 25 years. Act 28 established only minimum terms of 15 years for farmland preservation agreements. Further, Act 28 requires any new farmland preservation agreements to be for lands located in agricultural enterprise areas. Enterprise areas were created under Act 28 with the intent of establishing areas in which farms and agricultural businesses could continue to operate. The intent of enterprise areas is also to reward those areas with the most interest in farmland preservation with the highest tax credits, as farmers in enterprise areas who are also under farmland preservation zoning would be able to claim the $10 per-acre tax credit if they enter into farmland preservation agreements. Enterprise areas are created by petition to DATCP of both: (a) political subdivisions (towns, villages, cities and counties) in which the area would be located; and (b) owners of farms meeting certain income requirements. DATCP has authority to designate enterprise areas by emergency rule, but may only designate 1,000,000 acres overall and not more than 200,000 acres in 15 areas before January 1, 2012. The first call for petitions closed February 26, 2010, and DATCP received 12 petitions that would cover 222,000 acres. The Department expects to announce selected areas in June, 2010, and issue an emergency rule to designate them by December, 2010.

SUMMARY OF SUBSTITUTE AMENDMENT

Senate Substitute Amendment 1, hereafter referred to as "the bill," would require DATCP to process applications for farmland preservation agreements under Chapter 91 as it existed prior to 2009 Act 28, provided that the application was: (a) submitted to the appropriate county clerk by June 30, 2009, but no earlier than January 1, 2008; and (b) was not completed before July 1, 2009. Further, for applications completed under these provisions, the resulting agreements would be considered as being in effect prior to July 1, 2009, the effective date of Act 28. Agreements completed under the bill's provisions would expire 10 years from the date the application was submitted to the county clerk. These applications would follow the review process under the previous Chapter 91, and any lands subject to an agreement would not be required to be in agricultural enterprise areas.

To determine whether prospective agreement holders wish to continue with their applications, DATCP would be required to send a letter by certified mail to each person who submitted an application between the dates specified in the bill. If the person wishes to continue, he or she would be required to notify DATCP within 90 days. If the person does not respond within 90 days, DATCP would not be authorized to enter into an agreement.

FISCAL EFFECT

DATCP reports it is aware of approximately 75 applications outstanding that were submitted to county clerks within the dates specified in the bill. DATCP indicates in its fiscal estimate that most applications have been reviewed but were unsigned by the landowner prior to July 1, 2009. However, there may be additional applications of which the Department is not aware, as applications are submitted first to county clerks. Although DATCP has not been significantly involved with all applications the bill would affect, Department officials indicate the applications it has reviewed in general are consistent with the average size for farms under existing agreements. DATCP indicates that the costs of processing outstanding applications, including confirmation of the landowner's intent, drafting agreements, obtaining signatures and delivering copies of agreements to owners of record, could be absorbed by existing resources. Further, DATCP estimates that counties would be able to absorb any costs, to the degree that any counties would still have responsibilities to fulfill for these applications.

Agreements completed under the bill's provisions would be eligible for either the previous credit or the per-acre credit created by Act 28, as the act allows for existing agreements to be modified in order to claim the per-acre credit. Therefore, by adding to the number of agreement holders, the bill could have some impact on the amount spent on farmland preservation tax credits in 2010, and beyond, if these agreement holders claim the previous credit, or some impact on the size of the credits if they claim the new credit.

Those applicants under the bill that would elect to claim the previous credit would have their credit paid from a GPR sum-sufficient appropriation, which is estimated at $400,000 for 2010-11. If most of the additional agreement holders allowed under the bill claim the previous credit, it could cause the cost of the previous credit to exceed the $400,000 estimated for that credit, and GPR expenditures would increase in 2010-11. Conversely, if these additional agreement holders mostly claim the per-acre credit, the overall cost of the credit to the state would not increase. This is because the per-acre credit is paid from a $27 million sum-certain, annual appropriation, meaning only $27 million is available to pay those credits, regardless of the number of claimants for the credit. DOR is required to prorate the per-acre credits if the current per-acre amounts and the number of claimants cause total credits to exceed available funding. Therefore, making these estimated 75 additional applicants eligible for the per-acre credit could eventually reduce the size of future per-acre credits for currently eligible claimants. Any reductions attributable to new claimants allowed under the bill, however, would likely be small when spread among all claimants.

DATCP indicates that it is difficult to determine which credit will be more widely claimed, and that it will depend on the circumstances of each agreement holder. Claimants of the previous tax credit received an average credit of $687 for the 2008 tax year. Comparatively, an agreement holder that would switch to the per-acre credit will mostly claim $5 per acre, as DATCP reports farmland preservation agreements historically have not coincided with areas under farmland preservation zoning. For an average agreement covering 137 acres, this credit would be $685, which is similar to the average claimant's credit for the 2008 tax year.

According to DATCP estimates, the average annual cost of credits for agreements that would be completed under the bill would be $45,000. If these agreement holders claim the previous tax credit, it could increase the cost of that credit by $45,000 in 2010-11. This estimate assumes 75 outstanding applications, if completed, would have average claims of $600 in tax credits. (DATCP estimates a $600 average credit for new claimants under the bill based on the $687 overall average credit for the 2008 tax year, but adjusted lower to reflect that agreement holders generally receive either 80% of their potential credit, or the 10% minimum.) Alternatively, assuming all new agreements under the bill would qualify for a credit of $5 per acre, and would be an average of 137 acres, the annual cost would be approximately $51,400. This could potentially cause DOR to prorate the per-acre credit amounts paid to future credit claimants to accommodate these additional expenditures within the per-acre credit's current $27 million appropriation. It should be noted that agreements entered into under the bill provisions would expire between January 1, 2018, and June 30, 2019, given the bill's 10-year limit from the date of application. Any original claims for tax credits under these agreements would therefore have to be completed by 2020 for the 2019 tax year, at the latest.

Prepared by: Paul Ferguson and Al Runde