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October 31, 2023

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 133: Farmland Preservation Program and Tax Credits

Assembly Bill 133 would enact changes to the farmland preservation program administered by the Department of Agriculture, Trade and Consumer Protection (DATCP). Assembly Bill 133 was introduced on March 31, 2023, and referred to the Assembly Committee on Agriculture. On April 11, 2023, a public hearing was held. On October 5, 2023, Assembly Amendment 1 was offered. On October 11, 2023, the Assembly Committee on Agriculture adopted Assembly Amendment 1 by a vote of 7 to 4, and recommended the bill for passage, as amended, by a vote of 11 to 0. The bill was referred to the Joint Committee on Finance on October 26.

BACKGROUND AND CURRENT LAW

Farmland Preservation Tax Credit. Beginning with tax year 2010, the per-acre farmland preservation tax credit may be claimed for acreage under one or both of: (a) a farmland preservation agreement, which is a restrictive covenant between the landowner and the state; or (b) a local ordinance zoning the land only for agricultural and closely related uses. The per-acre credit is designed to have escalating award amounts based on land being further restricted to agricultural or related uses. The credit awards per acre are as follows: (a) $10, if the qualifying acres are located in a farmland preservation zoning district and under a farmland preservation agreement; (b) $7.50, if the qualifying acres are located in a farmland preservation zoning district but not under a farmland preservation agreement; or (c) $5, if the qualifying acres are subject to a farmland preservation agreement, but not located in a farmland preservation zoning district.

To be eligible for enrollment in a farmland preservation agreement, lands must be in an agricultural enterprise area (AEA), which are areas created through a petition to DATCP by constituent landowners and political subdivisions. AEAs are intended to be designated for agricultural preservation and development, namely for preserving, expanding and developing farms and other agribusiness. Under current law, DATCP may designate up to 2,000,000 acres as AEAs. As of January 1, 2023, approximately 1.58 million acres had been designated as AEAs.

2009 Wisconsin Act 28, the 2009-11 biennial budget act, sunset the pre-2010 farmland preservation tax credit, except for those claimants under farmland preservation agreements existing at that time, and replaced it with the per-acre farmland preservation tax credit. Holders of farmland preservation agreements entered into under the previous regime may still claim tax credits as long as their agreement is in effect. The pre-2010 farmland preservation credit is calculated based on household income, property taxes paid, and level of land use restriction. Pre-2010 credits averaged $3.57 per acre for tax year 2021 claimants.

Under farmland preservation agreements available currently, landowners agree to restrict land under the agreement to agricultural uses, accessory uses, or undeveloped natural resource or open-space uses for a minimum period of 15 years. In order to be eligible for farmland preservation tax credits, landowners must certify compliance with state soil and water conservation standards and practices. In general, these requirements include completing and following a nutrient management plan for application of fertilizer and manure to fields, adopting practices to prevent soil erosion on cropland and pasture, and preventing any discharges of animal waste to state waters.

DATCP, in cooperation with the Department of Revenue (DOR), must report to DATCP's Board and the Department of Administration (DOA) on farmland preservation no later than December 31 of each odd-numbered year. The biennial reports generally must contain information on farmland availability, trends in farmland uses, participation in the program by municipalities and landowners, including tax credits claimed, soil and water conservation practices in use by tax credit claimants, and program costs and trends. The report also must include recommendations for program modifications.

Purchase of Agricultural Conservation Easements (PACE). The PACE program, created under 2009 Act 28, allowed DATCP to purchase the rights to future nonagricultural development from willing landowners. The program was effectively discontinued when its primary funding was repealed under 2011 Wisconsin Act 32, the 2011-13 biennial budget act. Purchases closed on 17 easements during the program's operation, with DATCP payments totaling $4,704,300 over 5,124 acres, averaging $276,700 per easement and $918 per acre. While the farmland preservation tax credit is intended to conserve land for agricultural use by providing annual payments, it does not ensure permanent restriction to agricultural use as under a PACE agreement. PACE agreements provided a larger upfront payment, with the higher payment reflecting the permanent nature of the land use restriction. PACE agreement holders also must comply with state soil and water conservation standards.

Credit Expenditures. Table 1 shows expenditures of the pre-2010 and per-acre farmland preservation tax credits since the per-acre credit's enactment beginning in fiscal year 2010-11. Pre-2010 credit claims have declined since enactment of the per-acre credit, as new program participants enroll in the per-acre credit, and existing pre-2010 farmland preservation agreements expire. Both credits are refundable, meaning if the landowner has no tax liability in a given year, they will receive a payment for the credit owed. By convention, refundable tax credits are budgeted as expenditures. Both the pre-2010 and per-acre credit are budgeted in sum-sufficient appropriations, meaning valid credit claims are paid as necessary. Thus, budgeted amounts for sum-sufficient appropriations represent an estimated cost in each fiscal year, rather than a program cap.

TABLE 1

Farmland Preservation Tax Credit Expenditures

Fiscal Year	Pre-2010	Per-Acre	Total
2010-11	$6,125,900	$12,432,200	$18,558,100
2011-12	3,518,100	16,074,400	19,592,500
2012-13	2,060,000	17,144,800	19,204,800
2013-14	1,669,400	17,610,900	19,280,300
2014-15	1,365,300	17,760,800	19,126,100
2015-16	1,074,000	18,411,000	19,485,000
2016-17	-	17,701,100*	17,701,100
2017-18	-	17,204,000*	17,204,000
2018-19	-	17,275,100*	17,275,100
2019-20	-	17,104,700*	17,104,700
2020-21	-	16,713,400*	16,713,400
2021-22	-	16,441,700*	16,441,700
2022-23	-	16,162,800*	16,162,800

*Reflects both old and per-acre credit expenditures. Beginning in 2016-17, DOR ceased tracking expenditures of the pre-2010 credit separately.

Source: Wisconsin Annual Fiscal Report Appendix

It should be noted that final fiscal year expenditures related to the farmland preservation tax credit do not directly reflect the tax-year estimates provided in the following paragraphs. Due to the timing of tax credit filing and processing, credit expenditures attributable to one tax year commonly cross fiscal years. Further, in 2017, DOR reported it no longer tracks pre-2010 farmland preservation tax credit expenditures separately for state fiscal reporting purposes, meaning data for the per-acre credit for 2016-17 onward reflect both old and per-acre credit claims. (In tax year 2021, DOR estimated that pre-2010 farmland preservation credit claims accounted for approximately 5.7% of all claims, although this proportion is expected to decline over time.)

SUMMARY OF BILL

Assembly Bill 133 as introduced would include: (a) an increase in the per-acre credit amount to $10 for acreage under a farmland preservation agreement or in a farmland preservation zoning district, and $12.50 under both an agreement and zoning, effective with tax year 2023; (b) a decrease in the minimum length of a farmland preservation agreement from 15 years to 10 years; (c) expansion of eligibility for farmland preservation tax credits to those holding agricultural conservation easements, with credits payable at $10 per acre; and (d) a requirement to index credit levels for inflation each tax year beginning in 2024. In addition, the bill includes a requirement for DATCP to review tax credit amounts for qualifying acres and recommend tax credit levels in its biennial report to the DATCP Board, the Joint Committee on Finance, DOR, DOA, and standing committees of the Legislature with jurisdiction over agriculture.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 removes the requirement to index credit levels for inflation each tax year. The credits for tax year 2024 and subsequent years would remain set to $10 for each acre under a farmland preservation agreement, in a farmland preservation zoning district or under a PACE easement, and $12.50 for each acre under both an agreement and zoning.

FISCAL EFFECT

In tax year 2021, DOR data report approximately 9,900 individual claimants of the per-acre tax credit for a total cost of approximately $15.1 million on 2.0 million acres. Due to the complexity and timing of corporate filing, final data can be delayed multiple years for corporate claimants. Further, individual filers make up approximately 95% to 97% of the total credit amount claimed in any given year. This analysis excludes corporate claimants and is based on individual filers.

Table 2 summarizes the bill's changes to each type of claim under the per-acre farmland preservation tax credit. Table 2 shows the proposed credit amounts that would begin in tax year 2023, and the most recently reported acreage claims in tax year 2021. Amounts shown assume the acreage basis for credit claims in tax year 2023 would approximate the acreage claimed in tax year 2021. While credits have mostly declined in recent years, as shown in Table 1, it is expected that farmland preservation tax credits may begin to increase over time. Farmland preservation-zoned acreage has increased from 5.8 million acres as of July 1, 2018, to 7 million acres as of July 1, 2022, or from 41% to 49% of the estimated 14.3 million farmland acres in Wisconsin. Further, more farmland preservation agreements are expected to be signed as additional acres are designated as AEAs. More farmers may also pursue agreements under the bill's minimum term of 10 years, which would be shortened from 15 years under current law. Of approximately 800 responding landowners surveyed by DATCP in 2018, approximately 30% of those who have not signed an agreement reported that a 15-year farmland preservation agreement term was too long.

TABLE 2

Current and Proposed Credit Levels

	Tax Year	Current Law		AB 133		
	2021 Acreage	Price/Acre	Cost	Price/Acre	Cost	% Change
Zoning and Agreement	118,800	$10.00	$1,188,500	$12.50	$1,485,000	25%
Zoning Only	1,807,600	7.50	13,559,400	10.00	18,076,000	33
Agreement Only	72,800	5.00	363,800	10.00	728,000	100
Total	1,999,200		$15,111,700		$20,289,000	34%

It should be noted that the expansion of eligibility to PACE land is expected to have a minimal fiscal effect, as these claims are likely accounted for under existing farmland preservation tax credit qualifying acres. Specifically, each existing PACE agreement is at least partially subject to farmland preservation zoning, and an estimated 71% of PACE acreage is within AEAs, making them eligible for farmland preservation agreements. Therefore, it is expected that acreage under PACE agreements is already eligible to receive farmland preservation tax credits due to current land use.

As both the total eligible acreage and credit amount per acre increase, it is likely claims would also increase, although it is not determinable to what extent, if at all. Thus, amounts shown in Table 2 represent a static estimate, and may be considered a minimum expected cost that does not take into account changes in program participation over time. Table 3 provides a range of possible cost estimates based on participating acres in the event program participation changes as a result of the bill. Amounts in Table 3 assume the proportion of acres in each increment would remain the same as in tax year 2021. Under these assumptions, Tables 2 and 3 show the bill would be expected to increase credit expenditures for individual claimants by $5.18 million each year, with each additional 250,000 acres further increasing credits by approximately $650,000. (Table 3 does not include any adjustments for inflation to annual per-acre credits, as discussed in a subsequent section.)

TABLE 3

Total Cost by Acres Participating (Millions)

Acres	Current Law	AB 133	Difference
1.75	$13.21	$17.76	$4.55
2.00*	15.11	20.29	5.18
2.25	16.99	22.84	5.85
2.50	18.88	25.38	6.50
2.75	20.76	27.91	7.15
3.00	22.65	30.45	7.80

*Most recently reported acreage, from 2021 tax returns.

Indexing Provisions

As introduced, the bill also would create a mechanism to adjust credit amounts annually for inflation of prices over time. Inflation is typically defined by the Consumer Price Index (CPI) reported by the U.S. Bureau of Labor Statistics. However, CPI measures inflation as the change over time in prices paid by urban consumers for a basket of goods and services. While the urban consumers measured by the CPI represent 93% of the U.S. population, CPI does not include measurement of farm households. For this reason, CPI may not be reflective of prices faced by typical recipients of the farmland preservation tax credit, or the change in prices paid for inputs related to agricultural production.

The bill instead would measure inflation with an index of prices paid by farmers, as reported by the U.S. Department of Agriculture's National Agricultural Statistics Service (NASS). The primary index used by NASS to measure prices paid by farmers is the Prices Paid Index for Commodities and Services, Interest, Taxes, and Farm Wage Rates (PPITW). The PPITW is intended to reflect the change in prices paid by farmers for both agricultural production and family living. It consists of the following components: (a) prices of farm production inputs; (b) interest paid on farm-related debt; (c) taxes paid on farm real estate; (d) wage rates for farm labor; and (e) a CPI adjustment for prices related to family living. Table 4 provides the change in PPITW and CPI since 2013. Table 4 reports values as of January each year.

Over the 10-year period from January 2013 to January 2023, PPITW increased an average of 2.83% per year, while CPI increased an average of 2.65% per year. Under the bill as introduced, any negative adjustment in credit amounts due to a decline in an index would not occur, and adjustments would resume once the index had recovered.

TABLE 4

Change in Price Indices

	PPITW		CPI	
Year	Index	% Change	Index	% Change
2013	106.1	4.15	230.280	1.70
2014	109.0	2.73	233.916	1.58
2015	112.2	2.94	233.707	-0.09
2016	107.3	-4.37	236.916	1.37
2017	105.9	-1.30	242.839	2.50
2018	108.6	2.55	247.867	2.07
2019	110.7	1.93	251.712	1.55
2020	110.9	0.18	257.971	2.49
2021	113.9	2.71	261.582	1.40
2022	131.0	15.01	281.148	7.48
2023	140.3	7.10	299.170	6.41

While inflation is subject to economic factors that are not readily able to be estimated, Table 5 provides credit amounts per acre under the bill for tax year 2023 through 2028, if PPITW and CPI were to increase by the average annual change over the past 10 years. In the event that the PPITW or another agricultural price index prepared by NASS were not available, the bill would direct DOR to adjust credit amounts by CPI, also included in Table 5.

TABLE 5

Inflation-Adjusted Credit Amounts

	PPITW		CPI	
Tax Year	Zoning and Agreement	Zoning Only or Agreement Only	Zoning and Agreement	Zoning Only or Agreement Only
2023	$12.50	$10.00	$12.50	$10.00
2024	12.85	10.28	12.83	10.27
2025	13.22	10.57	13.17	10.54
2026	13.59	10.87	13.52	10.82
2027	13.98	11.18	13.88	11.10
2028	14.37	11.50	14.25	11.40

It is estimated that indexing beginning in the 2024 tax year would increase individual claims of farmland preservation tax credits by perhaps $530,000 to $580,000 annually, or by approximately $5.74 million in the 2024 tax year, under the bill as introduced. This estimated amount reflects the

10-year average annual increase in the CPI or PPITW applied to a base of $20.29 million that incorporates the proposed flat increases, as shown in Table 2. Under Assembly Amendment 1, which removes the indexing provision, the flat increase and indexing would be estimated to increase farmland preservation tax credit expenditures by $5.18 million annually.

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