



## Legislative Fiscal Bureau

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

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Joint Committee on Finance

Paper #148

### **Land and Water Conservation Board Restructuring (Agriculture, Trade and Consumer Protection)**

[LFB 2009-11 Budget Summary: Page 100, #21]

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#### **CURRENT LAW**

The Land and Water Conservation Board (LWCB) consists of the following members: (1) the Secretaries of the Departments of Administration (DOA), Natural Resources (DNR), and Agriculture, Trade and Consumer Protection (DATCP), or their designees; (2) three county land conservation committee members, who are designated at a statewide meeting of land conservation committees and appointed for two-year terms; and (3) five members appointed by the Governor, one at-large member for a two-year term and four for staggered four-year terms. The four gubernatorial appointees are to include one farmer, one member of an environmental group, one person from a city with a population greater than 50,000 people, and one person from a governmental unit involved in river management.

In addition, advisory members to the LWCB include representatives from: (1) the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS); (2) the USDA Farm Service Agency (FSA); (3) the College of Agriculture and Life Sciences of the University of Wisconsin–Madison; (4) the University of Wisconsin–Extension; (5) the Wisconsin Land and Water Conservation Association; and (6) Wisconsin Association of Land Conservation Employees. DATCP provides administrative support to the Board, and both DNR and DATCP staff provide technical support to the Board.

The LWCB has various duties related to the farmland preservation program and the soil and water resource management (SWRM) program in DATCP, as well as the nonpoint source pollution abatement program under DNR. The LWCB reviews and makes recommendations on an annual DATCP/DNR joint allocation plan describing how funds will be allocated to counties and local units of government each calendar year. Other responsibilities include: (a) approval of various policy documents submitted by counties, including county land and water conservation

plans, agricultural preservation plans and exclusive agricultural zoning ordinances; (b) reviewing and commenting on DNR administrative rules; (c) making recommendations to the Governor and DNR concerning the budget, efficiency and effectiveness of the program; and (d) assisting in the resolution of program concerns. The LWCB also approves and releases farmland preservation agreements in the farmland preservation program under current law.

## **GOVERNOR**

Delete the statutory creation of the LWCB and statutory references to the LWCB. Instead, create a Land and Water Resource Council (LWRC) within DATCP to consist of the following members: (a) a representative of an agricultural organization, appointed for a four-year term; (b) a representative of an environmental organization, appointed for a four-year term; (c) a representative of county government, appointed for a four-year term; (d) the secretary of Agriculture, Trade and Consumer Protection, or the secretary's designee; (e) the secretary of Natural Resources, or the secretary's designee; (f) the dean of the College of Agriculture and Life Sciences at the University of Wisconsin–Madison, or the dean's designee; and (g) the chancellor of the University of Wisconsin–Extension, or the chancellor's designee. The three appointed members would be selected by the Governor. Further, create the following non-voting members: (a) the state conservationist of the Natural Resource Conservation Service (NRCS) in the United States Department of Agriculture (USDA); and (b) the state executive director of the USDA Farm Service Agency (FSA).

Require the LWRC to advise DATCP on the following: (a) the implementation of soil and water conservation programs under Chapter 92 of the statutes and the implementation of water quality programs under Chapter 281, including the annual joint allocation plan between DATCP and DNR for county conservation staffing grants and landowner cost-sharing grants for nonpoint source water pollution abatement; (b) research, information and education needs for the implementation of the SWRM and nonpoint source water pollution abatement programs; (c) coordination of federal, state and local programs for land and water resources; and (d) at the joint request of DATCP and DNR, other matters related to land and water resources.

## **DISCUSSION POINTS**

1. The administration and DATCP officials report that the changes to the LWCB are intended to reflect the ending of the priority watershed program under DNR, which is scheduled for 2009, and the revisions to the farmland preservation program under the Working Lands Initiative. LWCB responsibilities under the farmland preservation program would be eliminated under the bill, and responsibilities under the priority watershed program would end with the program.

2. The priority watershed program aims to improve water quality in designated watersheds impaired by nonpoint source water pollution. The program provides funding for the installation of best management practices to abate the nonpoint source pollution. Under the priority watershed program, the LWCB provides an oversight role that includes: (a) designation of priority

lakes and watersheds, which has not occurred since 1998; (b) approval of watershed plans for designated watersheds, which are documents describing management practices of priority lakes and watersheds to abate nonpoint source water pollution; (c) approval of the designation of critical sites in priority watersheds, which are sites both identified as contributors to a watershed's nonpoint source water pollution and instrumental in achieving water quality goals for the watershed; and (d) review of annual expenditures anticipated for priority watersheds as reported by DATCP and DNR in an annual joint allocation plan. Under the bill, these responsibilities would be repealed or granted to DNR.

3. Under the current farmland preservation program, the LWCB: (a) hears appeals to approve or reject farmland preservation agreements, and hears appeals to approve or reject applications for release of the agreements; and (b) certifies county agricultural preservation plans and municipalities' exclusive agricultural zoning ordinances. Certification of these instruments allows persons within the certified county or municipality to claim farmland preservation tax credits. The statutes also grant the LWCB rule-making authority for the farmland preservation program, although the Board has not promulgated any rules under this authority. Under the farmland preservation program in the bill, DATCP would have administrative duties currently assigned to the LWCB, including approval of county planning and zoning policies and managing farmland preservation agreements with landowners. The bill would remove many of the processes required for a landowner to be released from a farmland preservation agreement. Instead, the bill would require the payment of a conversion fee of three times the highest value category of tillable cropland in the town, village or city in which the land is located, and DATCP would have to find that the agreement's termination would not impair or limit the agricultural use of other protected farmland.

4. The statutes require the Board to set a statewide tolerable soil erosion level to maintain long-term soil productivity, and the Board hears and either approves or rejects appeals of orders to implement best management practices in designated critical sites under the priority watershed program. However, DATCP contends that with agricultural runoff standards specified under current law, and with the expiration of the priority watershed program, these responsibilities are obviated.

5. The LWCB has a less direct role in approving or rejecting other SWRM program directives. Current LWCB responsibilities under the SWRM program include: (a) a review of the annual joint allocation plan, which distributes funds to counties for staffing and cost-sharing of best management practices to abate nonpoint source water pollution; (b) setting guidelines for soil and water conservation standards related to the farmland preservation program, although these guidelines would be repealed by the bill; (c) reviewing land and water resource management (LWRM) plans submitted by counties, and making recommendations to DATCP for their approval or rejection; (d) reviewing DATCP administrative rules for the SWRM program; and (e) reviewing annual reports prepared by DATCP and DNR for the SWRM and nonpoint source pollution abatement programs. Under the bill, DATCP would retain responsibilities for reviewing and approving county LWRM plans, which are required of counties to receive state grants under the SWRM program. Under current law, the LWCB reviews the plans and makes recommendations to

DATCP for approval or disapproval, but does not directly approve plans.

6. Supporters of the LWCB argue that the existence and responsibilities of the Board, which consists of departmental secretaries, gubernatorial appointees and peer-selected county land and water conservation committee members, removes and decentralizes certain decisions from DATCP and DNR. In certain cases, particularly those under the priority watershed and farmland preservation programs, the LWCB exercises approval authority over plans or other policies that have been reviewed by DATCP or DNR with a recommendation included from program staff. The LWCB then makes the final approval or disapproval. Opponents argue that eliminating a governing body could concentrate decisions within the departments. Some have expressed concern that this could make decision-making processes less transparent than when made by a public board.

7. The LWCB has also provided a venue for counties and landowners to provide input on land and water resource decisions. For example, the statutes specify that the LWCB assist counties and DNR to resolve concerns about the priority watershed program. Additionally, the Board consists of three persons appointed by the state association of county land conservation committees and four other at-large gubernatorial appointees as described above. This allows LWCB members that represent county and landowners to participate in decisions regarding land and water conservation. The LWCB also has as advisory members the organizations of county land conservation committees and county land conservation employees. Further, under the farmland preservation and priority watershed programs, the LWCB is provided certain decision-making and appellate authorities. Under the priority watershed program, critical site designations tend to affect landowners, who may be subject to designation as critical sites and therefore subject to requirements to alter their property to reduce nonpoint source water pollution. The LWCB currently has authority to review and reverse these designations; however, the administration indicates these proceedings were rare and will be obsolete as the priority watershed program expires. Under the farmland preservation program, each of the processes for approving or relinquishing farmland preservation agreements include county reviews of the proposals, which the LWCB then considers in its determinations. Further, agricultural preservation plans and exclusive agricultural zoning ordinances are submitted by counties, reviewed by DATCP, and submitted to the LWCB for certification.

8. Board proponents also argue the LWCB serves as a forum for discussing annual funding of the SWRM and nonpoint source pollution abatement programs. This joint allocation plan determines how the state allocates funding to counties. Reviews and recommendations on this plan would be a role of the LWRC under the bill.

9. Opponents of repealing the LWCB argue that although the Board would have fewer ongoing roles as the priority watershed program ends and with the revamped farmland preservation program under the bill, the Board could still meaningfully participate in state policy formation. Specifically, the Board could provide advice for DATCP and DNR on soil and water conservation, animal waste management, runoff, storm water management and financial assistance programs. Opponents also point out that in 2008, to adjust the Board's responsibilities, LWCB members considered revisions to the Board's bylaws to reflect new program roles, and the Board explored changes to its statutory authorizations and responsibilities prior to the Governor's recommended

repeal of the Board.

10. The administration contends that in addition to the Board's program responsibilities being mostly eliminated by changes in state policy, the LWRC would bring together federal, state and university officials to better coordinate existing policies between levels of government. The administration believes this coordination may allow for policy directions that could secure additional federal funding for state soil and water conservation programs. Additionally, the administration intends for the LWRC's composition to allow local governments and interested citizens' groups to provide input on policy preferences. The LWRC will also hold public meetings, which are planned to occur quarterly.

11. It could be argued that advisory functions of the LWCB may better be suited to a council. The Committee has generally approved the revisions to the farmland preservation program under the bill without specifying a role for the LWCB, which may be viewed as consistent with the diminished role of the LWCB and the administration's intention to replace the Board with the LWRC. The Committee could adopt the Governor's recommendation to repeal the Board (Alternative 1).

12. The Committee could also consider deleting the Governor's recommendation (Alternative 4). It could be argued that because the LWCB is already in place, the Board could continue to fulfill its statutory roles with respect to the SWRM program. Additionally, the priority watershed program does not have a sunset date in the statutes. The last priority watersheds will remain open through 2009, and some will likely remain open into 2010 if extensions are approved by DNR. The LWCB could also be retained for its collaboration in the SWRM program.

13. The Committee could also consider restoring the LWCB, but requiring the Board, DATCP and DNR to further investigate the role for the LWCB in the future (Alternative 2). This may allow the LWCB to continue exploring changes in program responsibilities, particularly after the passage of the bill, but retain any statutory roles under programs that would remain in effect. Further, the Committee could require the Board, DATCP and DNR to report findings to the Governor, the Joint Committee on Finance and the appropriate standing committees of the Legislature by January 1, 2010. This alternative may allow for subsequent changes to the Board's responsibilities, or for the Board's replacement under separate legislation or the 2011-13 budget bill. This may also allow the standing committees of the Legislature, as well as counties and other interested parties, to more fully consider the implications of repealing the Board.

14. Another intention of the administration is to reduce DATCP resources dedicated to the responsibilities of the LWCB. As part of general agency reductions, the bill would delete \$32,900 nonpoint account SEG annually, which is associated with DATCP administration and board member mileage and per diem allowances. However, DATCP officials contend that these costs do not fully reflect staff time and resources required for administrative support of the LWCB. DATCP contends restructuring the board into an advisory council would decrease these staffing requirements. DATCP reports that six staff members attend each meeting generally for eight hours per meeting. In addition, these staff members spend an average of two hours preparing for each

meeting. Over the course of a year, which includes six LWCB meetings, DATCP staff spends approximately 360 hours in such preparation and meetings. Additionally, DATCP sends six staff members along on an annual one-day LWCB tour to view local soil and water conservation projects around the state. This staff time amounts to approximately 36 hours, or 396 hours total over a year. DATCP reports staff time currently spent on LWCB meetings and preparation would likely be shifted to the Working Lands Initiative. However, as the LWRC would be created within DATCP, it is likely DATCP personnel would still have some roles in providing information to the council. These costs have not been estimated, but would likely be significantly lower than costs associated with the LWCB. If the Board is retained, the Committee could consider restoring \$32,900 nonpoint account SEG annually (Alternative 3).

**ALTERNATIVES**

1. Adopt the Governor’s recommendation to repeal the Land and Water Conservation Board and create a Land and Water Resources Council.
2. Delete the provision. Further, require the Land and Water Conservation Board, DATCP, and DNR to investigate and recommend statutory changes to the Board's responsibilities and authorities to reflect changes in state soil and water programs. Require the Board and the departments to report findings to the Governor, the Joint Committee on Finance and the appropriate standing committees of the Legislature by January 1, 2010.
3. Restore \$32,900 nonpoint SEG annually for DATCP administrative support and the expenses of the LWCB.

<b>ALT 3</b>	<b>Change to Bill</b>
	Funding
SEG	\$65,800

4. Delete provision. (The LWCB would be retained.)

Prepared by: Paul Ferguson