

# Agriculture, Trade and Consumer Protection

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## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

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June, 2019

Joint Committee on Finance

Paper #135

### **Dairy Assistance Programs (Agriculture, Trade and Consumer Protection)**

[LFB 2019-21 Budget Summary: Page 42, #9 and #10, and Page 43, #13]

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#### **CURRENT LAW**

The statutes require the Department of Agriculture, Trade and Consumer Protection (DATCP) to promote the interests, growth, and sound development of dairying in the state. DATCP is responsible for licensing and oversight of dairy farms and food processing establishments, regulating animal waste management practices and farm conservation practices, and providing grants that support dairy production and processing. As of May 1, 2019, the National Agricultural Statistics Service reports Wisconsin had approximately 7,800 dairy herds. These herds produced 2.54 billion pounds of milk in April, 2019, and consisted of 1.27 million dairy cows.

#### **GOVERNOR**

Create a continuing appropriation in the Division of Agricultural Development with \$200,000 GPR in 2019-20 to establish the Wisconsin Initiative for Dairy Exports (WIDE). Increase funding for dairy processor grants by \$200,000 GPR annually to a total of \$400,000 GPR each year. Specify that, in the provision of dairy processor grants, the Department shall give preference to persons operating small processing plants. Specify that DATCP's dairy promotion duties shall include providing grants to local organizations that coordinate grazing, and expand the authorization of the dairy industry promotion appropriation to allow the provision of grazing grants. Provide \$52,600 GPR in 2019-20 and \$70,100 GPR in 2020-21 with 1.0 organic and grazing specialist position within the Division of Agricultural Development to provide education and technical assistance related to organic farming and grazing.

## DISCUSSION POINTS

### A. Wisconsin Initiative for Dairy Exports

1. DATCP reports that in 2018, dairy exports totaled approximately \$282 million, a decline of 5.5% from the previous year. Data from the first quarter of 2019 indicates that dairy exports are continuing to decline, with a further drop of 18.9% relative to the first quarter of 2018. The Wisconsin Initiative for Dairy Exports (WIDE) is intended to reverse this trend and pursue an increase dairy exports from 15% to 20% of the United States milk supply in the next three to five years.

2. Under the bill, funding for WIDE would be provided under the International Agribusiness Center, housed in the Division of Agricultural Development at DATCP, which provides technical expertise, market research, and market development initiatives to establish trade-enhancing partnerships and grow Wisconsin's agricultural exports. DATCP intends that WIDE would further increase the Agribusiness Center's ability to provide small and medium producers and processors direct access to international buyers.

3. DATCP cultivates relationships with international buyers through reverse buyer missions, through which it invites potential buyers of Wisconsin dairy products to Wisconsin in order to educate them about Wisconsin dairy products and connect them with Wisconsin producers. Reverse buyer missions include: (a) collaboration with industry partners, the University of Wisconsin Center for Dairy Research, in-country trade partners such as the U.S. Department of Agriculture (USDA) Foreign Agricultural Service and Food Export Association; (b) vetting of buyers, including a needs assessment and examination of financial viability and alignment with Wisconsin producer capacity; and (c) recruitment of Wisconsin companies to participate. When buyers visit, they conduct company tours and engage in one-on-one meetings with sellers, and DATCP follows up to provide technical support and resources necessary to establish and grow Wisconsin sales. DATCP reports its first buyers mission, held in 2018, cost approximately \$20,000 and allowed it to host 13 buyers from five countries (Mexico, Guatemala, Colombia, Chile, and the United Arab Emirates). Within three months of the event, DATCP reports at least \$400,000 in sales were reported, and notes that these relationships are expected to continue.

4. DATCP reports that in 2018 it: (a) hosted 16 delegations from China, India, Japan, Nigeria, South Korea, Russia, Taiwan, and Vietnam, among others; (b) participated in 14 events including trade missions and food shows in Asia, Latin America, and the Middle East; (c) presented at 12 state industry gatherings; and (d) worked one-on-one with 76 companies to help them understand and begin the export process. In 2019, DATCP plans to host a cheese buyers mission in June, a retail and food service products buyers mission in August, and a feed ingredients buyers mission at the World Dairy Expo in October. Further, it intends to participate in 17 shows in the United Arab Emirates, China, Vietnam, South Korea, Mexico, Australia, Chile, Peru, Colombia, Brazil and Japan.

5. DATCP reports it intends to use the proposed \$200,000 in funding to: (a) increase presence at international shows to advertise Wisconsin dairy companies; (b) hold in-store promotions at foreign grocery chains in targeted foreign markets; (c) conduct food promotions at

U.S. embassies and through international social media campaigns; (d) increase efforts to host international dairy buyers to meet Wisconsin companies; (e) host additional trade missions to new markets; and (f) create a video marketing Wisconsin dairy products in multiple foreign languages.

6. Although funding is included in the schedule of appropriations, the bill omits language authorizing the appropriation. If the Committee wished to fund WIDE, additional language would be necessary. In an errata item, the administration reports it intended to authorize funding for use as part of the Department's International Agribusiness Center under s. 93.42 of the statutes. Alternative A1 would incorporate this language.

7. Given the proposed plan for the Wisconsin Initiative for Dairy Exports, and the opportunity to increase international exports of Wisconsin dairy products, the Committee could consider adopting the Governor's proposal to provide \$200,000 in 2019-20 for WIDE (Alternative A1). As a continuing appropriation, funding would remain available for expenditure until it is exhausted, but the bill would provide no base funding for future biennia. The Committee could also consider taking no action (Alternative A2).

**B. Dairy Processor Grants**

8. Dairy processor grants provide funding to projects at dairy processing plants that, among others, grow the processing plant, contribute to processor innovation, or improve production and profitability. Eligible projects may include plant modernization and expansion, food safety improvements, staff training, and hiring of professional consultants. Grants are provided on a reimbursement basis, and recipients must provide a match of at least 20%.

9. DATCP reports that earlier grant awards were associated with food safety and quality assurance improvements, in order to comply with the federal Food Safety Modernization Act of 2011. Over time, recipient projects have shifted towards innovation and new processes. Table 1 provides a summary of grant awards since 2013-14.

**TABLE 1**

**Dairy Processor Grants**

<u>Year</u>	<u>Applications</u>	<u>Requested Amounts</u>	<u>Recipients</u>	<u>Awards</u>	<u>Food Safety</u>	<u>Modernization/Expansion</u>	<u>Innovation</u>
2014	22	\$754,733	7	\$200,000	4.0	2.0	1.0
2015/16*	11	351,733	6	200,000	2.0	3.0	1.0
2017	14	678,304	8	200,000	2.0	4.0	2.0
2018	14	611,908	9	200,000	1.0	6.0	2.0
2019	<u>14</u>	<u>426,638</u>	<u>10</u>	<u>200,000</u>	<u>0.5</u>	<u>4.0</u>	<u>5.5</u>
Total	75	\$2,823,316	40	\$1,000,000	9.5	19.0	11.5

\*DATCP conducted one grant round for both of 2015 and 2016.

10. As seen in Table 1, grant requests have exceeded awards by an average of approximately \$365,000 across five grant rounds, suggesting there is sufficient demand to support increased awards. However, current trends in the dairy industry associated with low milk prices may have a downward pressure on future demand for grants, due to low potential profitability of any plant improvement. At the same time, excess dairy production capacity may necessitate additional processing capacity, which would be supported by dairy processing grants.

11. The bill would institute a requirement that DATCP provide preference to "small" processors in its provision of grants. The bill does not define small, and the administration indicates that it chose not to define it in order to allow DATCP flexibility in implementing the provision. DATCP suggests a definition of small could be based upon annual sales, with categories as follows: (a) micro/start up processor: \$0 to \$150,000 in annual sales; (b) small processor: \$150,000 to \$1,500,000 in annual sales; (c) medium processor: \$1,500,000 to \$15,000,000 in annual sales; and (d) large processor: \$15,000,000 or more in annual sales. Although DATCP has not collected data from previous grant recipients on the size of their operations, it believes past recipients generally reflect an even distribution of these categories. If the Committee wished to clarify language in the bill, it could consider specifying a definition of "small" processors with the criteria proposed by DATCP of annual sales of less than \$1,500,000 (Alternative B2).

12. Given that grant demand has exceeded awards by approximately \$365,000 each round over five grant rounds, the Committee could consider providing an additional \$200,000 GPR annually for dairy processor grants (Alternative B1). Conversely, given recent declines in milk prices and concerns about demand for investment in dairy processing, the Committee could take no action (Alternative B3).

### **C. Grazing Grants and Specialist Position**

13. Since 2011-12, DATCP has been provided \$200,000 GPR annually for the purposes of dairy promotion. As written, the appropriation broadly authorizes grants and loans to dairy producers for the purposes of promoting the growth of the dairy industry. This appropriation's use has changed over time as DATCP priorities have shifted. Initially, the appropriation supported the production improvements at dairy farms as part of the Department's Grow Wisconsin Dairy 30x20 initiative, which sought to increase Wisconsin milk production to 30 billion pounds annually by 2020. Wisconsin's annual milk production reached this goal in 2016, and DATCP ceased providing Dairy 30x20 grants in 2015-16. Over the five-year span from 2011-12 through 2015-16, DATCP provided \$942,000 in grants to 202 recipients. In 2016-17, DATCP lapsed the \$200,000 appropriation to the general fund.

14. In 2017-18, DATCP provided \$105,000 to the Higher Educational Aids Board, which provided scholarships to individuals that had experience related to, or were pursuing education in, dairy farming. Scholarships were awarded for programs, including UW-Madison's Farm and Industry Short Course, that could be completed in two years or less at Wisconsin Technical Colleges or UW campuses with dairy programs. In 2018-19, DATCP did not provide scholarships, and funding is planned to be lapsed to the general fund.

15. The bill would expand the authorized use of dairy promotion funding to include

providing grants to local organizations that coordinate grazing. DATCP reports it intends to provide grants to organizations that would provide education and technical assistance related to implementing managed grazing. Managed grazing represents an alternative management method for raising livestock. According to various reports and surveys by DATCP staff and UW researchers, managed grazing is thought to offer a number of economic tradeoffs, allowing for production across more acres of farmland, increasing expenditures on land but reducing expenditures on feed. Managed grazing is also thought to confer ecological benefits if properly implemented. DATCP suggests grant recipients could provide resources to interested farmers to educate them about grazing best practices, provide technical assistance, and help them create grazing plans.

16. DATCP previously administered Grazing Lands Conservation Initiative (GLCI) grants until the program was repealed under 2013 Wisconsin Act 20. Grants were intended to promote the use of managed grazing through technical assistance and educational offerings for farmers. GLCI grant requests generally exceeded available funding, which came from a combination of federal grants and state funds from the segregated (SEG) agrichemical management fund. State funding for GLCI grants was \$375,500 SEG annually at the time of its repeal.

17. DATCP reports the proposed organic and grazing specialist position would: (a) assist in the allocation of grazing grants; (b) provide technical assistance to farmers, including business and market development assistance; (c) increase Department collaboration with organic producers and industry participants; and (d) represent DATCP in advocating for organic farming, in order to stimulate interest and investment in Wisconsin organic production. While a supervisor in the Farm Center has expertise related to some of these topics, and dedicates time on a limited basis to addressing them, the proposed position would allow DATCP to have a staff person dedicated entirely to these issues. 2017 Act 59 had previously deleted 1.0 vacant position dedicated to these duties.

18. Based on the most recently available report from the National Agricultural Statistics Service, in 2016 Wisconsin ranked second in number of organic farms at 1,276, behind California (2,713), and third in total organic acreage at 219,266, behind New York (264,385) and California (1,069,950). Further, Wisconsin produced \$255 million in organic sales in 2016, an increase of 15% over 2015. DATCP contends that despite recent challenges facing the agriculture industry, the organic industry in Wisconsin represents an opportunity for growth.

19. Given that current dairy industry promotion funding is not being utilized, the Committee could consider expanding the authorization for the appropriation to include provision of grazing grants (Alternative C1). Further, given the growth of the organic industry in Wisconsin, the Committee could consider providing 1.0 organic and grazing specialist (Alternative C2). If the Committee wished to adopt the Governor's proposal, it could select Alternatives C1 and C2.

20. Conversely, given that DATCP has either fully or partially lapsed funding provided for dairy industry promotion in 2016-17, 2017-18, and 2018-19, the Committee could consider deleting the dairy industry promotion appropriation and associated funding, in order to repurpose funding for dairy export initiatives or grants to dairy processors under other sections of this paper

(Alternative C3). The Committee could also consider taking no action (Alternative C4).

## ALTERNATIVES

### A. Wisconsin Initiative for Dairy Exports

1. Adopt the Governor's proposal, as amended by the errata item, to create a continuing appropriation and provide \$200,000 GPR in 2019-20 for the Wisconsin Initiative for Dairy Exports. Authorize funding for use as part of the Department's International Agribusiness Center under s. 93.42 of the statutes.

ALT A1	Change to	
	Base	Bill
GPR	\$200,000	\$0

2. Take no action.

ALT A2	Change to	
	Base	Bill
GPR	\$0	- \$200,000

### B. Dairy Processor Grants

1. Adopt the Governor's proposal to provide an additional \$200,000 GPR each year for dairy processor grants and specify that DATCP give preference to small processors in its provision of grants.

ALT B1	Change to	
	Base	Bill
GPR	\$400,000	\$0

2. Specify that small processors be defined as those with annual sales of less than \$1,500,000. (This alternative could be moved in addition to B1 above.)

3. Take no action.

ALT B3	Change to	
	Base	Bill
GPR	\$0	- \$400,000

**C. Grazing Grants and Specialist Position**

1. Adopt the Governor's proposal to specify the Department's dairy promotion duties shall include providing grants to local organizations that coordinate grazing, and expand the authorization of the dairy industry promotion appropriation to allow the provision of grazing grants. (This alternative could be moved in addition to Alternative C2.)

2. Adopt the Governor's proposal to provide 1.0 organic and grazing specialist position with \$52,600 GPR in 2019-20 and \$70,100 GPR in 2020-21. (This alternative could be moved in addition to Alternative C1.)

ALT C2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$122,700	1.00	\$0	0.00

3. Repeal the dairy promotion appropriation under s. 20.115(4)(d) of the statutes and delete funding of \$200,000 GPR each year.

ALT C3	Change to	
	Base	Bill
GPR	- \$400,000	- \$400,000

4. Take no action.

ALT C4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$122,700	1.00

Prepared by: Rory Tikalsky





## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

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June, 2019

Joint Committee on Finance

Paper #136

### **Industrial Hemp Program (Agriculture, Trade and Consumer Protection)**

[LFB 2019-21 Budget Summary: Page 40, #6]

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#### **CURRENT LAW**

The federal Agricultural Act of 2014 legalized the cultivation of industrial hemp under certain circumstances, and cultivation was further expanded under the Agricultural Improvement Act of 2018. Under the federal authorization, Wisconsin established its own industrial hemp research pilot program under 2017 Wisconsin Act 100 and administrative code Chapter ATCP 22. Under Wisconsin law, industrial hemp is defined as the plant *Cannabis sativa* that has a tetrahydrocannabinol (THC) concentration of less than 0.3% by weight. The Department is responsible for licensing and conducting a criminal background check on all growers and processors, and for sampling and testing cultivated hemp to ensure it complies with the THC limit.

#### **GOVERNOR**

Provide an additional \$462,400 GPR in 2019-20 and \$216,500 GPR in 2020-21 with 3.0 two-year project positions to the industrial hemp program. Of these amounts, \$141,000 in 2019-20 and \$188,000 in 2020-21 would be associated with salary and fringe benefits, \$21,400 in 2019-20 and \$28,500 in 2020-21 would be associated with supplies and services, and \$300,000 in 2019-20 would be used to purchase laboratory equipment.

#### **DISCUSSION POINTS**

1. In 2018, the first year of the program, DATCP issued 247 grower licenses and 100 processor licenses, with 135 growers eventually planting a total of approximately 1,870 acres of hemp. As of May 29, 2019, DATCP reports it issued 1,308 grower licenses and 618 processor

licenses. In order to grow hemp, farmers must have both a license and an annual registration. For 2019, as of May 29, 1,224 farmers had an annual registration and registered to plant approximately 15,590 acres of hemp. Actual planted acreage data is not available until later in the summer, and farmers may not plant all acres they registered to plant. Thus, approximately nine times more farmers are expected to grow perhaps eight times more acres of hemp in the second year of the program.

2. When originally authorized, the industrial hemp program was provided a PR appropriation to receive fees associated with the program, but no funding or positions. Since December, 2017, DATCP reports staff time of approximately 10,300 hours has been supported by the appropriation, with staff being reallocated from other areas of the Department. In total, DATCP reports approximately 20 staff within the Division of Agricultural Resource Management (ARM) dedicated time to the hemp program in 2018. Staff time reallocated from ARM resulted in decreased work effort on other program areas within the Division. DATCP reports its reallocation of staff reflected a prioritization of available staff and reduced program activities in other areas. These amounts do not include staff time that was dedicated by the Secretary's Office, legal counsel, or the Division of Food and Recreational Safety.

3. DATCP reports it currently employs two full-time staff dedicated to its hemp program, including a program manager and regulatory specialist. These positions, along with three limited-term employee (LTE) license and permit staff and one LTE chemist, are funded from program revenues (PR) derived from licensing, registration, and sampling fees associated with the hemp program. Further, DATCP reports it intends to hire between six and 10 LTEs to conduct hemp field sampling in 2019. The Department notes that field sampling is labor-intensive, because samples may not be shipped by commercial carrier, and must be transported to the laboratory by DATCP staff.

4. DATCP intends to allocate the 3.0 proposed GPR two-year project positions as follows: (a) 1.0 license and permit program associate, which would be dedicated to processing licensing paperwork, providing education on licensing requirements, and conducting program reporting, sampling and compliance activities; (b) 1.0 hemp field lead, which would be dedicated to organizing inspection, investigation, and sampling for the hemp program, providing outreach to growers, and coordinating compliance activities; and (c) 1.0 chemist, which would be dedicated to regulatory testing for the hemp program within the Bureau of Laboratory Services (BLS). The administration indicates it provided project positions due to the unpredictable nature of the hemp program. The administration suggests that permanent staff could be considered once the program stabilizes.

5. Growers must pay a minimum license fee of \$150, plus \$5 per acre for each acre above 30, up to a maximum of \$1,000. Once licensed, growers pay annual registration fees equal to \$350. Processors do not pay a fee for a license, but pay annual registration fees of \$100. DATCP charges growers for the required testing, at a rate of \$250 per sample collected, which is intended to cover the actual cost of sampling and testing. Each individual field and variety of hemp requires a separate sample, thus growers may pay for several samples. In 2017-18, these license, registration, and sampling fees totaled \$114,700. In 2018-19 through June 3, fees totaled \$752,700. Due to the difference in timing between the growing season and fiscal year, fees associated with

the 2018 growing season may be reflected in 2018-19 revenues, especially testing fees, which are incurred in late summer and fall. Further, substantially increased program revenues are associated with similarly increased applications in the second year of the program.

6. DATCP reports one-time financing of \$300,000 in 2019-20 would be associated with purchase of laboratory equipment necessary to test an increased volume of hemp samples. Further, as registration for the hemp program currently is conducted via paper forms, DATCP would intend to improve its online licensing system to offer online applications, reporting, and sample requests, as well as electronic records keeping for field staff.

7. The variability and uncertainty in hemp program participation makes it difficult to predict future revenues and their ability to cover costs associated with hemp regulation. The February 28 balance of the appropriation, upon submittal of the Governor's budget proposal, totaled approximately \$70,000. Thus, at the time it was not clear PR funding would have been sufficient to meet anticipated one-time costs and staffing proposed under the bill. As of June 3, 2019, the appropriation had a balance of approximately \$352,100, suggesting the Committee could cover some of the proposed program expenditures with this balance. The Committee could consider providing the 3.0 project positions and funding (\$162,400 in 2019-20 and \$216,500 in 2020-21) as PR (Alternative 2a) and one-time financing of \$300,000 as GPR (Alternative 1b). This would allow the regulated community to bear the ongoing cost of its regulation, while the general fund would support one-time expenditures associated with program infrastructure.

8. If GPR funding and positions were not provided, DATCP reports it would hire LTEs and charge reallocated staff time to its PR appropriation as it is able, in order to meet the minimum licensing and inspection duties for the program. It would be incumbent on the Department to manage expenditures based on available revenues to avoid an unsupported overdraft. Due to the uncertainty associated with revenues and expenditures of the new and growing hemp program, the Committee could consider providing additional GPR funding in its supplemental appropriation, which DATCP could request under s. 13.10 of the statutes if PR became insufficient (Alternative 3). This would allow for expenditure of existing PR balances before use of GPR, but allow the Committee to provide supplemental funding if it is merited.

9. If additional staff were not provided, DATCP reports it would not be able to meet the increasing needs of local law enforcement, local governments, and supporting industries like laboratories and financial institutions. Further, the Department expects it would find it challenging to provide a high level of service to the regulated community and meet the public's expectation for regulation of industrial hemp. Due to the relatively controversial nature of hemp, which was previously a schedule one drug under federal law, it could be considered appropriate to provide additional resources to regulate hemp and support public outreach in order to reduce the stigma associated with cultivation of hemp and encourage more farmers to participate.

10. Considering the substantial growth associated with the hemp program in its second year, and uncertainty over the sufficiency of program revenues, the Committee could consider adopting the Governor's proposal to provide 3.0 GPR project positions with \$162,400 GPR in 2019-20 and \$216,500 GPR in 2020-21 (Alternative 1a), and one-time financing of \$300,000 GPR in 2019-20 (Alternative 1b). Given current program revenue balances associated with the hemp

program, the Committee could also consider providing positions and their associated funding (Alternative 2a) and one-time funding (Alternative 2b) as PR.

11. Due to additional changes to the legal status of cultivation of industrial hemp under the Agricultural Improvement Act of 2018, DATCP reports it is expected the U.S. Department of Agriculture will announce new rules in 2019, which may necessitate additional public outreach and education, and changes to state regulations. 2019 Assembly Bill 206/Senate Bill 188 includes provisions that address changes under the Agricultural Improvement Act of 2018, and updates other portions of current hemp regulation due to program developments. Further, AB 206/SB 188 provides substantially similar funding of \$216,500 GPR annually during the 2019-21 biennium with 3.0 permanent GPR positions, and one-time funding of \$300,000 GPR in 2019-20. Considering other legislation is currently pending regarding hemp regulation and funding, the Committee could consider taking no action (Alternative 4). However, if funding were provided under subsequent legislation, it is possible it could be delayed, limiting hemp program activities during the 2019 growing season.

## ALTERNATIVES

1. Adopt one or both of the following, as recommended by the Governor.

a. Provide 3.0 two-year GPR project positions and \$162,400 GPR in 2019-20 and \$216,500 GPR in 2020-21 to the industrial hemp program.

ALT 1a	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$378,900	3.00	\$0	0.00

b. Provide \$300,000 GPR in 2019-20 in one-time funding to the industrial hemp program.

ALT 1b	Change to	
	Base	Bill
GPR	\$300,000	\$0

2. Modify the Governor's proposal by providing one or both of the following from the industrial hemp regulation PR appropriation:

a. 3.0 two-year PR project positions and \$162,400 PR in 2019-20 and \$216,500 PR in 2020-21 to the industrial hemp program.

ALT 2a	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	- \$378,900	- 3.00
PR	<u>378,900</u>	<u>3.00</u>	<u>378,900</u>	<u>3.00</u>
Total	\$378,900	3.00	\$0	0.00

- b. \$300,000 PR in 2019-20 in one-time financing to the industrial hemp program.

ALT 2b	Change to	
	Base	Bill
GPR	\$0	- \$300,000
PR	<u>300,000</u>	<u>300,000</u>
Total	\$300,000	\$0

3. In addition to Alternative 1a and/or 1b above, specify that GPR funding be provided under the Committee's supplemental funding appropriation, which could be requested by DATCP under s. 13.10 of the statutes.

4. Take no action.

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	- \$678,900	- 3.00

Prepared by: Rory Tikalsky





## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

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June, 2019

Joint Committee on Finance

Paper #137

### **Farm-to-School Grants and Position (Agriculture, Trade and Consumer Protection, and Public Instruction)**

[LFB 2019-21 Budget Summary: Page 41, #8, and 356, #12]

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#### **CURRENT LAW**

The Department of Agriculture, Trade and Consumer Protection's (DATCP) farm-to-school program was established in 2010. It seeks to connect schools and local farms to provide students with locally sourced fruit, vegetables, and dairy products, while also supporting local agriculture and providing nutrition education in schools. The program is housed in DATCP's Division of Agricultural Development.

The Department of Public Instruction (DPI) also dedicates time to farm-to-school activities. DPI staff provide direction, training, and technical assistance related to school gardens, local procurement and nutrition education. DPI also administers the AmeriCorps farm-to-school program, which consists of AmeriCorps volunteers who provide nutrition education to students through in-class demonstrations, farm field trips, school gardens, and wellness plans.

#### **GOVERNOR**

Provide DATCP \$200,000 GPR annually for farm-to-school grants. Further, create an additional preferred criterion for grant awards by requiring DATCP to give preference to proposals from school districts in which a high percentage of pupils are eligible for a free or reduced-price lunch. Current law specifies that DATCP must give preference to proposals that are innovative or provide models other school districts may adopt.

Provide DPI 1.0 GPR position and \$48,000 GPR in 2019-20 and \$63,500 GPR in 2020-21. The Executive Budget Book indicates the position is provided to coordinate the farm-to-school grant program with DATCP.

## DISCUSSION POINTS

### A. Farm-to-School Grants

1. 2009 Wisconsin Act 293 created the farm-to-school grant program, but funding has never been provided. Under current law, DATCP is authorized to provide farm-to-school grants, which are intended to support the creation and expansion of farm-to-school programs, including: (a) promoting production, processing, marketing and distribution of food produced in Wisconsin for sale to schools in Wisconsin; (b) construction or improvement of facilities for use of food produced in Wisconsin at schools in Wisconsin; (c) training for food service personnel, farmers, and distributors; and (d) nutritional and agricultural education in the classroom.

2. Grants would be intended to support both school districts and early care providers, and farmers and supply chain partners. DATCP suggests grants in educational settings could support facilities improvements and equipment purchases, staff training, marketing and promotional materials, school program planning and development, and attendance at an annual grantee meeting. Grants in farm and supply chain settings could support equipment purchase, staff and consultant time, trade show costs, and marketing and promotional materials. DATCP reports it intends to require grantees to identify a project cooperator in their application, such as a UW-Extension agent for a farmer, or a culinary coach from a technical college culinary program for a school.

3. DATCP reports it intends to weight grant scoring based on eligibility for free or reduced-price lunch, providing priority to districts with 35% to 50% of students who are eligible for free or reduced-price lunch, and additional priority to those with 50% or more of students eligible for free or reduced-price lunch. The administration indicates it provided this additional criteria to direct funding to areas with the most need.

4. DATCP argues that farm-to-school grants would leverage local expertise and expand farm-to-school activities beyond districts with established programs. Further, the Department believes grants will provide incentives necessary to encourage farmers to enter a new market. DATCP expects that grant reporting requirements would further encourage best practices development and innovation by requiring information sharing of project results.

5. 2009 Act 293 required DATCP to promulgate rules for the administration of the farm-to-school program. However, no rules have been promulgated for the program generally or for grant administration. Farm-to-school grant funding could likely be administered through information published during the application process. However, as a matter of law, it is generally preferable for agencies to administer grants and aids according to procedures established in statute or administrative rule. A process established in law informs recipient parties on what conditions funding will be provided, and statutory or rule provisions also specify expectations and requirements to which the administering agency is accountable.

6. If the Committee wished to provide funding for farm-to-school grants, it could consider: (a) providing DATCP with emergency rule authority without the finding of an emergency; and (b) requiring DATCP to submit draft administrative rules to the Legislative

Council rules clearinghouse by January 1, 2020 (Alternative A3). The Legislature occasionally provides for agencies to establish administrative rules promptly through the emergency process, while waiving the required finding of an emergency, to expedite procedures necessary to administer programs. Requiring the agency to initiate the rule-making process for a permanent rule would minimize reliance on the use of emergency rules.

7. If the Committee wished to increase participation and capacity related to farm-to-school activities, it could consider providing \$200,000 GPR annually for farm-to-school grants (Alternative A1). As funding for farm-to-school grants has not been provided previously, the Committee could consider appropriating funding as one-time (Alternative A2). In combination with initiating rule-making (Alternative A3), the Committee could establish funding on a temporary basis in the 2019-21 biennium, then evaluate further funding on the basis of the program structure established by rule, as well as on the basis of the demand exhibited and projects funded. The Committee could also consider taking no action (Alternative A4).

## **B. Farm-to-School Position**

8. Under the bill, DPI is provided 1.0 position to coordinate the farm-to-school grant program with DATCP. However, DPI reports it did not request a position for work related to DATCP's farm-to-school grant program. DPI suggests that such a position would conduct outreach and site visits, and provide technical assistance and training. However, DPI reports it is unable to provide detail regarding the duties or time allocation of the position without more information about how the DATCP program would be implemented.

9. DPI reports it originally requested a position to administer its AmeriCorps farm-to-school program. The program is currently funded with a grant from Serve Wisconsin. The position currently administering the program is a project position that expires in January, 2020, funded from federal indirect revenues. DPI reports that the position allocates its time as follows: (a) administration and implementation (40%); (b) monitoring and compliance (35%); (c) technical assistance and training for program sites (15%); and (d) outreach and collaboration with program partners (10%).

10. 2009 Act 293 provided DATCP 1.0 GPR position for administration of the farm-to-school program. The position has been funded since 2011-12 and is currently filled. DATCP indicates that current division staff would administer the grants, and the incumbent holding the farm-to-school coordinator position would assist in those efforts.

11. While the administration indicates its intent for the position would be to coordinate the farm-to-school grant program with DATCP, the bill does not provide language requiring the position be allocated in that manner. Thus, if the Committee wished to provide a position to DPI for work related to the AmeriCorps program, it could adopt the Governor's proposal (Alternative B1). Given that DPI is unable to report details related to a position supporting farm-to-school grants, the Committee could consider taking no action (Alternative B2), and examine need at a future date if DATCP grant implementation is able to demonstrate a need for assistance.

## ALTERNATIVES

### A. Farm-to-School Grants

1. Adopt the Governor's proposal to provide DATCP \$200,000 GPR annually for farm-to-school grants.

ALT A1	Change to	
	Base	Bill
GPR	\$400,000	\$0

2. Provide \$200,000 GPR annually for DATCP farm-to-school grants in the 2019-21 biennium, but specify that funding be one-time.

ALT A2	Change to	
	Base	Bill
GPR	\$400,000	\$0

3. Provide DATCP the authority to promulgate an emergency rule under s. 227.24 of the statutes without the finding of emergency. Require DATCP to submit a permanent rule regarding administration of farm-to-school grants in draft form to the Legislative Council rules clearinghouse no later than January 1, 2020. (This alternative could be moved in addition to Alternatives A1 or A2 above.)

4. Take no action.

ALT A4	Change to	
	Base	Bill
GPR	\$0	- \$400,000

### B. Farm-to-School Position

1. Adopt the Governor's proposal to provide DPI 1.0 GPR position and \$48,000 GPR in 2019-20 and \$63,500 GPR in 2020-21 to coordinate the farm-to-school grant program DATCP.

ALT B1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$111,500	1.00	\$0	0.00

2. Take no action.

<b>ALT B2</b>	<b>Change to Base</b>		<b>Change to Bill</b>	
	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>
GPR	\$0	0.00	- \$111,500	- 1.00

Prepared by: Rory Tikalsky





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June, 2019

Joint Committee on Finance

Paper #138

### **Farmer Mental Health (Agriculture, Trade and Consumer Protection)**

[LFB 2019-21 Budget Summary: Page 42, #11]

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#### **CURRENT LAW**

The Wisconsin Farm Center, housed within the Department of Agriculture, Trade and Consumer Protection's (DATCP) Division of Agricultural Development, provides information, referrals, and crisis response to farmers and their families. Farm Center services include technical assistance related to production, processing and marketing, as well as financial consultations, farm succession planning, minority and veterans outreach, and mediation and arbitration.

#### **GOVERNOR**

Create an annual appropriation with \$100,000 in general purpose revenue (GPR) each year of the biennium within the Department's Division of Agricultural Development to provide mental health assistance to farmers and farm families. Further, expand the Department's powers to include the provision of mental health assistance to farmers and farm families.

#### **DISCUSSION POINTS**

1. The Wisconsin Farm Center operates a hotline that farmers may call for assistance on a variety of issues. DATCP reports Farm Center staff screen callers regarding their current mental health and need for counseling. Staff are trained to identify signs of high stress and suicidal ideation, and talk with farmers to reduce their feeling of isolation and refer them to professional help. Further, DATCP reports that staff follow-up with farmers in order to monitor their general well-being.

2. Currently, DATCP staff exercise discretion in their suggestion of counseling and may

offer vouchers that cover the cost of counseling sessions. Farmers are eligible for vouchers if they have at least \$10,000 in gross farm sales and have financial limitations to accessing counseling services. These financial limitations may include lack of health insurance, or a co-pay or deductible related to counseling that is prohibitively expensive. If a caller accepts an offer for counseling vouchers, DATCP sends a letter to the farmer with information about the program, which includes three vouchers. If the three vouchers are eventually used, DATCP reports it may send an additional two to three vouchers to the farmer. If a voucher is eventually used, DATCP reimburses the service provider \$100.

3. DATCP reports: (a) in calendar year 2017 it issued 19 vouchers and 11 were redeemed; (b) in 2018 it issued 89 vouchers and 11 were redeemed; and (c) in 2019 through May, it has issued 38 and 15 have been redeemed. DATCP suggests that farmers may not use vouchers they receive due to the stigma associated with addressing mental health issues. DATCP argues that reassurance from family and friends is necessary to reduce this stigma, and it intends to allocate some of the proposed funding to increase community involvement in addressing mental health issues.

4. DATCP reports that due to limited available funding, it does not advertise its counseling vouchers. Instead, it conserves vouchers for the highest need callers. DATCP estimates it has approximately \$5,000 in funding remaining for vouchers. DATCP reports it previously funded counseling vouchers with grant awards, primarily from the U.S. Department of Health and Human Services. Between 2000 and 2010, DATCP received grants totaling \$184,600, which supported training, retreats, and counseling vouchers. The Department has not received grant funding since that time, and it reports no federal funding is currently available.

5. DATCP intends to use proposed funding to: (a) increase training of Farm Center staff and counselors to who provide services to farm families; (b) establish workshops for farm families on topics such as stress management, family communication, and coping with grief and change; and (c) coordinate with workforce development organizations to help displaced farmers acclimate to new employment and improve their job-seeking skills. In addition to core mental health services it would provide, DATCP contends that increased expenditure on other Farm Center activities would allow it to proactively address stressors that cause mental health difficulties in farmers. Thus, DATCP reports it also intends to expand its provision of succession planning, business diversification assistance, and farmer transition resources. DATCP reports that currently its case load is dedicated primarily to financial viability, and argues that additional resources would allow it to expand its services related to preparing farmers for future challenges.

6. The 2017 U.S. Census of Agriculture reports that net cash farm income in Wisconsin declined 22% from the 2012 Census of Agriculture. The National Agricultural Statistics Service also reports the monthly all-milk price for Wisconsin, after peaking in September, 2014, at \$26.60 per hundredweight (100 pounds), has averaged approximately \$16.60 from January, 2018, through April, 2019. Data released in November, 2018, by the Centers for Disease Control and Prevention (CDC) indicate that the suicide rate for males in the "Farmers, Ranchers, and Other Occupational Managers" category was 44.9 per 100,000 civilian noninstitutionalized working persons in 2012, and 32.2 in 2015. Further, data indicate that the suicide rate for males in the "Agricultural Workers" category was 20.4 per 100,000 civilian noninstitutionalized working persons in 2012, and 17.3 in 2015. Data

previously provided related to these categories had attracted significant nationwide attention, as CDC had reported a substantially higher suicide rate of 84.5 per 100,000; however, subsequent analysis revealed incorrect coding of data, and CDC retracted the report. For comparison, the suicide rate among working-age adults was 17.3 per 100,000 in 2016. Thus, data suggests that farmers are disproportionately affected by suicide, as compared to the national average. Further, a separate 2017 report from CDC showed that suicide rates are higher in nonmetropolitan/rural areas (19.74 per 100,000 in 2013-2015), as opposed to medium/small metropolitan (16.77) and large metropolitan areas (12.72).

7. Considering mental issues that some farmers are experiencing, the higher risk of suicide for persons with occupations related to farming and for those in rural areas, and currently limited availability of DATCP funding for mental health assistance to farmers, the Committee could consider adopting the Governor's proposal (Alternative 1). The Committee could also consider providing \$50,000 GPR each year (Alternative 2) or taking no action (Alternative 3).

**ALTERNATIVES**

1. Adopt the Governor's proposal to create an annual appropriation with \$100,000 GPR each year of the biennium within DATCP's Division of Agricultural Development to provide mental health assistance to farmers and farm families. Additionally, expand the Department's powers to include the provision of mental health assistance to farmers and farm families.

<b>ALT 1</b>	<b>Change to</b>	
	<b>Base</b>	<b>Bill</b>
GPR	\$200,000	\$0

2. Modify the Governor's proposal to provide \$50,000 GPR each year of the biennium.

<b>ALT 2</b>	<b>Change to</b>	
	<b>Base</b>	<b>Bill</b>
GPR	\$100,000	- \$100,000

3. Take no action.

<b>ALT 3</b>	<b>Change to</b>	
	<b>Base</b>	<b>Bill</b>
GPR	\$0	- \$200,000

Prepared by: Rory Tikalsky





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June, 2019

Joint Committee on Finance

Paper #139

### **Buy Local, Buy Wisconsin Grants (Agriculture, Trade and Consumer Protection)**

[LFB 2019-21 Budget Summary: Page 43, #12]

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#### **CURRENT LAW**

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers the Buy Local, Buy Wisconsin program to increase the consumption of foods in proximity to where the food is produced. Program activities currently include: (a) production of a local foods marketing guide; (b) workshops for such topics as food safety assistance for producers; (c) facilitating relationships between food producers and nearby consumers, including DATCP activities related to farm-to-school programs around the state; and (d) administering Buy Local, Buy Wisconsin grants.

Under current law, DATCP is appropriated \$200,000 each year in general purpose revenue (GPR) for Buy Local, Buy Wisconsin (BLBW) grants. Grants are to support: (a) the creation, promotion and support of regional food systems and agricultural tourism trails; or (b) the development of regional food systems, including creating or expanding facilities for production, processing and transport of locally produced food, or strengthening networks of producers and consumers of locally produced food.

The statutes require an equal recipient match on grant awards. Grants may not exceed \$50,000 per recipient in a fiscal biennium, by administrative rule. Contracts awarding grants generally are limited to two years, with possible extension to a third. Program administrative rules specify the following eligible costs: (a) operating expenses, including salaries and wages, contracts, travel, supplies and publicity; (b) real estate or equipment rental within the term of the grant contract; (c) non-durable equipment; and (d) reasonable depreciation expenses for capital equipment.

## GOVERNOR

Increase funding for the Buy Local, Buy Wisconsin grant program by \$100,000 GPR each year. Under the bill, total budgeted amounts would be \$300,000 GPR each year.

## DISCUSSION POINTS

1. The table below shows the history of Buy Local, Buy Wisconsin grants. In the 2010-11, 2011-12, and 2012-13 fiscal years, the Department elected to lapse part or all of the grant appropriation to the general fund to meet agency lapse requirements under multiple biennial budget acts.

### Buy Local, Buy Wisconsin Grant History

Year	Applications		Awarded		Not Funded	
	Number	Amount	Number	Amount	Number	Requests Minus Awards
2008	95	\$3,216,800	7	\$225,000	88	\$2,991,800
2009	75	2,703,200	9	222,700	66	2,480,500
2010	37	1,533,500	5	177,700	32	1,355,800
2014	57	1,860,000	8	200,000	49	1,660,000
2015	41	1,545,600	8	199,300	33	1,346,300
2016	23	773,800	7	200,000	16	573,800
2017	32	1,093,400	8	200,000	24	893,400
2018	25	978,600	6	200,000	19	778,600
2019	<u>31</u>	<u>1,104,200</u>	<u>9</u>	<u>200,000</u>	<u>22</u>	<u>904,200</u>
Totals	416	\$14,809,100	67	\$1,824,700	349	\$12,984,400

2. The table shows the program remains oversubscribed, although demand has declined over time. DATCP reports it has removed certain program guidelines it had implemented administratively through the grant proposal process that tended to discourage applications from individual farming operations. DATCP expects current program applications could increase as a result of this change.

3. From 2008 to 2019, DATCP reports program recipients have reported new sales of approximately \$10 million associated with grant assistance, and approximately 2,800 producers have benefited from sales by program participants. DATCP does not formally track program participants' success after grant-funded projects have completed, so information on the long-term retention or expansion of participant businesses is not available.

4. While other DATCP grant programs focus assistance on the dairy industry, DATCP notes that BLBW grants allow it to provide assistance to a broader set of agricultural producers. One other such program, the DATCP Farm-to-School program, would be provided grant funding of

\$200,000 annually under the bill. However, the Farm-to-School program has a generally narrower focus on providing locally produced food to schools, while BLBW is intended to increase sales of locally produced or processed foods to the broader public.

5. BLBW grants are funded under a biennial appropriation, meaning total amounts budgeted in both years would be available for DATCP to expend at any point in the biennium, including transferring expenditure authority from the second year to the first year. However, only funding appropriated in 2020-21 would be part of the base used in subsequent budgets. Thus, if the Committee wished to provide funding increases on a one-time basis during the 2019-21 biennium in order to limit base funding in future biennia, it could provide the \$200,000 in increased funding in 2019-20.

6. Given unmet demand for BLBW grants and the opportunity to provide grants that support the agriculture industry more generally, the Committee could consider adopting the Governor's recommendation (Alternative 1). The Committee could also consider providing the Governor's recommended biennial amount (Alternative 2) in the first year of the biennium, which would provide additional funding in the 2019-21 biennium but maintain base funding of \$200,000 each year. The Committee could also take no action (Alternative 3).

## ALTERNATIVES

1. Adopt the Governor's recommendation to increase Buy Local, Buy Wisconsin grants by \$100,000 each year. (Base funding for grants would be \$300,000 GPR each year.)

ALT 1	Change to	
	Base	Bill
GPR	\$200,000	\$0

2. Provide \$200,000 GPR for Buy Local, Buy Wisconsin grants in 2019-20. (The program would be appropriated \$400,000 in 2019-20, as recommended by the Governor, but \$200,000 for base funding would be maintained for 2020-21.)

ALT 2	Change to	
	Base	Bill
GPR	\$200,000	\$0

3. Take no action.

ALT 3	Change to	
	Base	Bill
GPR	\$0	- \$200,000

Prepared by: Paul Ferguson





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June, 2019

Joint Committee on Finance

Paper #140

### Laboratory Equipment and Service Charges (Agriculture, Trade and Consumer Protection)

[LFB 2019-21 Budget Summary: Page 45, #17]

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#### CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection's (DATCP) Bureau of Laboratory Services (BLS) analyzes samples gathered during inspections and regulatory actions under the food safety, industrial hemp, and agrichemical management programs. The Bureau charges the respective agency programs for these services, with the charges reflected as expenditures to the respective programs, and program revenues (PR) to the laboratory.

#### GOVERNOR

Provide \$250,000 PR in 2019-20 and \$300,000 PR in 2020-21 for increased supplies and services costs within the Bureau of Laboratory Services.

#### DISCUSSION POINTS

1. BLS is funded from a program revenue-service (PR-S) appropriation, meaning its budget consists of expenditures it passes on to other programs within the Department. BLS charges as necessary to cover the cost of services provided to each program, and programs subsequently pay these amounts from their own operating budgets. PR-S appropriations allow agencies to centralize certain operating functions and maintain separate budgets for those functions. Another example of a PR-S appropriation at DATCP is information technology equipment, staff and services. BLS's appropriation allows DATCP to more comprehensively plan and track lab expenditures. Because expenditures eventually are paid by the respective program area, BLS appropriated amounts reflect pass-through spending and do not reflect actual expenditures.

2. DATCP has seen increased costs associated with lab services in recent years, as seen in the table. DATCP staff attribute increased costs to a larger volume of testing, increased supplies and services costs, and costs of replacement of old equipment. Increases in budget authority shown in the table reflect standard budget adjustments and general lab increases of \$300,000 in 2017-18 and \$350,000 in 2018-19. Under the bill, these amounts would increase further due to standard budget adjustments, a reallocation of 1.90 staff from other appropriations, and increases of \$250,000 in 2019-20 and \$300,000 in 2020-21.

**DATCP Bureau of Laboratory Services Operations**

	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>
Budget	\$2,835,900	\$2,851,100	\$3,183,900	\$3,291,600	\$3,885,900	\$3,955,400
Expenditures	<u>2,868,400</u>	<u>2,737,200</u>	<u>2,808,800</u>	<u>2,724,900*</u>	--	--
Difference	-\$32,500	\$113,900	\$375,100	\$566,700*		

\*As of June 5

3. As seen in the table, DATCP has not utilized the additional authority it received under 2017 Wisconsin Act 59. As the appropriation is biennial, DATCP may expend amounts in either year of the biennium. Thus, in the 2017-19 biennium, through June 5, DATCP has remaining authority of \$941,800. DATCP reports it was able to conserve expenditure authority by having one of its divisions purchase equipment, in lieu of BLS purchasing it and billing the division. Also, DATCP has not utilized the PR-S structure for costs associated with its newly created hemp program, instead billing laboratory testing costs directly to the hemp program appropriation. In both instances, DATCP conserved expenditure authority in the appropriation by billing costs directly to the relevant program, so that it would have sufficient flexibility in BLS expenditure authority if needed.

4. While DATCP has discretion to allocate expenses as it sees fit, either through its pass-through of BLS expenditures, or direct billing to programs, a maximum expenditure limit on its laboratory services appropriation reduces its flexibility to use the appropriation for its intended purpose of centralizing laboratory services and expenditures. During the 2017-19 biennium, DATCP elected to directly bill certain expenditures to ensure that sufficient authority was available if needed for other purposes. In either case, expenditures were eventually borne by the program area and within that program's appropriation limit regardless of any expenditure limit on the lab services appropriation. Interim recording of expenditures reflected the agency's preferred accounting practice.

5. As a PR-S appropriation, expenditures recorded in the appropriation reflect transfers within the same agency, and expenditures are actually borne by the respective program's appropriation. Given that DATCP is able to record expenditures related to lab services regardless of the amount in the schedule for its lab services appropriation, the Committee could consider modifying the appropriation to a continuing appropriation (Alternative 2). This would allow the Department to account for lab services expenditures in a more consistent and transparent manner, and would allow the appropriation schedule to accurately reflect expenditures associated with laboratory services. Under a continuing appropriation, any necessary increase in the amount in the schedule could be

performed by the Department of Administration (DOA), which may administratively increase budgeted amounts in continuing appropriations. The Committee could also adopt the Governor's proposal (Alternative 1).

6. Given that DATCP is not expected to fully utilize its expenditure authority in the lab services appropriation during the 2017-19 biennium, the Committee could also consider taking no action (Alternative 3). This would maintain the BLS appropriation as biennial, which would retain a notional limit on BLS operations expenditures. However, it is possible DATCP could continue its practice of selectively billing certain items directly to the appropriate program, in order to maintain laboratory services expenditures below this limit.

**ALTERNATIVES**

1. Adopt the Governor's proposal to provide an additional \$250,000 PR in 2019-20 and \$300,000 in 2020-21 for laboratory services.

ALT 1	Change to	
	Base	Bill
PR	\$550,000	\$0

- 2. Modify DATCP's laboratory services appropriation to a continuing appropriation.
- 3. Take no action.

ALT 3	Change to	
	Base	Bill
PR	\$0	- \$550,000

Prepared by: Rory Tikalsky





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June, 2019

Joint Committee on Finance

Paper #141

### **Food, Lodging and Recreation Continuing Appropriation Authority (Agriculture, Trade and Consumer Protection)**

[LFB 2019-21 Budget Summary: Page 46, #22]

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#### **CURRENT LAW**

The Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for licensing and ensuring compliance with health and sanitary standards for establishments engaged in food production, food processing, lodging, or offering certain public recreational activities. These facilities include dairy farms, food warehouses, restaurants, grocery stores, public swimming pools, hotels, and campgrounds. DATCP funds collects multiple licensing fees from regulated establishments. The Department also oversees local agent programs that may implement licensing and inspection programs for regulated establishments.

#### **GOVERNOR**

Convert the annual PR appropriation for food, lodging, and recreational establishment regulation to a continuing appropriation. A continuing appropriation would allow DATCP to expend all monies received, including available cash balances, for the program's purposes.

#### **DISCUSSION POINTS**

1. Prior to 2015 Wisconsin Act 55, DATCP held only regulatory authority for such operations as dairy farms, milk haulers, food warehouses, food processors, and retail food establishments. Act 55 consolidated state programs for food and recreational licensing and regulation in DATCP by transferring from the Department of Health Services a number of regulatory programs for restaurants, lodging establishments and other operations. Act 55 also folded the DHS program revenues into the existing DATCP appropriation [s. 20.115 (1)(gb) of the statutes]. Although the

consolidated programs share one statutory appropriation, DATCP tracks and budgets the account for previous DHS programs separately from DATCP's historical food regulation account.

2. Table 1 shows the condition of the account under s. 20.115 (1)(gb) for DATCP's customary food regulation programs, while Table 2 shows the condition of the food, lodging and recreation facility account previously administered by DHS. According to DATCP estimates in its agency request documents, the food, lodging and recreational program account has a structural imbalance that would result in an estimated shortfall of \$2.9 million by June 30, 2021, assuming current base revenues and allocated expenditures under the bill. The account for food regulation programs historically administered by DATCP is expected to have a balance of \$9.4 million on July 1, 2019, and \$9.9 million on June 30, 2021.

**TABLE 1**

**DATCP Food Regulation Account Condition**

	<u>Actual</u> <u>2017-18</u>	<u>Estimated</u> <u>2018-19</u>	<u>Bill</u> <u>2019-20</u>	<u>Bill</u> <u>2020-21</u>
Opening Balance	\$7,561,800	\$8,436,200	\$9,352,800	\$9,652,700
Revenues	6,756,700	6,800,000	6,800,000	6,800,000
Expenditures/Transfers	<u>5,882,300</u>	<u>5,883,400</u>	<u>6,500,100</u>	<u>6,504,900</u>
Closing Balance	\$8,436,200	\$9,352,800	\$9,652,700	\$9,947,800

**TABLE 2**

**DATCP Food, Lodging, and Recreation Regulation Account Condition**

	<u>Actual</u> <u>2017-18</u>	<u>Estimated</u> <u>2018-19</u>	<u>Bill</u> <u>2019-20</u>	<u>Bill</u> <u>2020-21</u>
Opening Balance	\$1,448,400	\$387,800	-\$590,800	-\$1,751,100
Revenues	2,466,600	2,400,000	2,400,000	2,400,000
Expenditures	<u>3,527,200</u>	<u>3,378,600</u>	<u>3,560,300</u>	<u>3,560,300</u>
Closing Balance	\$387,800	-\$590,800	-\$1,751,100	-\$2,911,400

3. Maintaining two accounts allows the agency to charge program expenses to the fees from payers for that class or industry. However, because the appropriations exist in a single statutory appropriation, DATCP has authority to expend funds up to the maximum provided by the Legislature, and DATCP occasionally reallocates expenditure authority between the accounts. Further, because both programs already commingle fees from many disparate types of businesses and operations, it could be considered that fidelity of funding is less of a concern. DATCP indicates it has begun reviewing fee structures under each account with the expectation of rebalancing revenues to eliminate or minimize one account subsidizing the program activities of the other.

4. In addition to a structural imbalance in the food, lodging and recreation account, the Department indicates the food regulation programs have necessary supplies and services costs that

have typically exceeded the agency's ability to meet them with existing authority. The costs cover such expenses as: (a) travel, primarily by field inspection staff; (b) laboratory analysis of samples gathered during regulatory activities; and (c) information technology services. DATCP sought the conversion of the appropriation in its 2019-21 agency budget request and argues the provision would allow the agency to use its available cash balances to meet such expenses. DATCP reports costs in each category have generally increased in recent years but obligations may be difficult to accurately forecast for budgeting purposes.

5. Table 3 shows the differences in 2017-18 between what each account was allocated for expenditures and what amounts were expended. Overall, DATCP used the appropriation's entire expenditure authority in 2017-18, as well as \$147,600 in compensation reserves.

**TABLE 3**

**2017-18 Account Allocations versus Expenses**

	<u>Retail Food and Processing</u>	<u>Restaurants, Lodging, and Recreation</u>
Allocated	\$5,883,300	\$3,378,600
Expended	<u>5,882,300</u>	<u>3,527,200</u>
Difference	\$1,000	-\$148,600

6. The Department indicates it has attempted to control expenditures by maintaining vacancies and reallocating associated salary funds to supplies costs or limited-term employees. However, DATCP will likely continue to expend the full amount authorized under s. 20.115(1)(gb). DATCP staff estimate the agency may require \$600,000 in additional annual expenditure authority in the 2019-21 biennium to accommodate likely program supplies and services expenses. The appropriation has base allocations of \$2.2 million each year for supplies and services. The bill would provide minimal increases as a standard budget adjustment for increased facilities rent costs.

7. A continuing appropriation would allow DATCP to expend all monies received, including available cash balances, generally at the Department's discretion. In contrast, the current annual appropriation structure restricts expenditures to the amounts specified by the Legislature in the appropriations schedule. Under both appropriation types, monies collected by the program remain in the appropriation at the close of each fiscal year, but an agency has significantly more discretion over expenditure amounts from a continuing appropriation.

8. The Committee could consider adopting the Governor's recommendation to convert the appropriation to continuing (Alternative 1). Some may argue that allowing DATCP to use additional resources is necessary to promote the effective and efficient function of programs for food safety and the sanitary operation of food, lodging and recreational establishments, and available balances are sufficient to cover these costs in the near term. On the other hand, multiple program revenue appropriations across state agencies use the annual appropriations structure to minimize the overuse of fee revenues collected from regulated entities. Further, increased expenditures may eventually require fee increases on these entities.

9. The Committee could also consider retaining the annual appropriation, but provide additional expenditure authority each year in DATCP's retail food and food processing accounts to accommodate additional travel, laboratory and other supplies costs. The Committee could provide amounts of \$150,000, consistent with supplements the agency required in 2017-18 (Alternative 2), or \$600,000 (Alternative 3) as the agency has indicated would cover possible program cost increases in the 2019-21 biennium. Either alternative would provide DATCP with additional budgetary authority to cover possible program expenses in the 2019-21 biennium but maintain expenditure limits that otherwise would be removed under a continuing appropriation.

10. The Committee could also take no action (Alternative 4). DATCP would be required to manage expenses within the amounts established in the final appropriations schedule under the bill. DATCP could request additional expenditure authority under s. 16.515 of the statutes if budget authority were insufficient in either fiscal year, at which time the Committee could further evaluate actual program conditions.

**ALTERNATIVES**

1. Adopt the Governor's recommendation to convert the DATCP appropriation for food, lodging and recreation establishment regulation from annual to continuing.

2. Provide \$150,000 PR annually for DATCP food, lodging and recreational establishment regulation.

ALT 2	Change to	
	Base	Bill
PR	\$300,000	\$300,000

3. Provide \$600,000 PR annually for food, lodging and recreational establishment regulation.

ALT 3	Change to	
	Base	Bill
PR	\$1,200,000	\$1,200,000

4. Take no action.

Prepared by: Paul Ferguson



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

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May, 2019

Joint Committee on Finance

Paper #529

### **Concentrated Animal Feeding Operation Fees and Regulatory Positions (Natural Resources -- Environmental Quality)**

[LFB 2019-21 Budget Summary: Page 304, #6 and Page 305, #7]

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#### **CURRENT LAW**

The federal Clean Water Act requires the Environmental Protection Agency (EPA) to regulate point source dischargers of pollutants into waters of the United States. Under a 1974 memorandum of understanding with EPA, the Department of Natural Resources (DNR) is delegated regulatory authority to enforce national water pollution standards in Wisconsin. Under this authority, DNR regulates concentrated animal feeding operations (CAFOs) as point sources of discharges with Wisconsin Pollutant Discharge Elimination System (WPDES) permits issued under s. 283.31 of the statutes. CAFOs are defined as large-scale animal feeding operations of 1,000 animal units or more and some smaller operations with certain discharges of pollutants into state waters. Measurement in animal units adjusts for the relative size and manure production of different animals, with 700 dairy cows, 1,000 beef cattle, and 125,000 broiler chickens each approximating 1,000 animal units.

CAFO permittees currently pay a fee of \$345 annually. Of this amount, \$250 is deposited into the general fund as general purpose revenue (GPR) and \$95 is deposited into a program revenue (PR) appropriation for management of the state's water resources. DNR is required to report annually to the Joint Committee on Finance and the Legislature's agricultural and environmental standing committees on how these PR funds are used. Permits are issued with five-year terms, and DNR reports 305 permitted CAFOs as of April 1, 2019.

In 2018-19, CAFO permitting oversight is budgeted 22.0 positions and \$2,168,700, consisting of 8.5 GPR, 9.5 segregated (SEG) environmental fund (nonpoint account), 2.0 environmental improvement fund (EIF) SEG, and 2.0 federal (FED) positions, with associated funding of \$861,300 GPR, \$913,800 nonpoint SEG, \$174,800 EIF SEG, and \$218,800 FED.

## GOVERNOR

Increase the fee paid by WPDES permit holders that operate CAFOs from \$345 annually to \$660 annually, and establish a fee of \$3,270 upon initial issuance of a permit and every five years thereafter. Create a PR continuing appropriation within the Division of External Services to receive the five-year \$3,270 fee and \$315 of the annual \$660 fee. Provide 5.0 positions within this continuing appropriation, and estimate its expenditures at \$425,000 each year during the biennium.

Modify the current requirement that \$95 of the annual CAFO permit fee be deposited into a PR appropriation within the Division of Environmental Management, and instead require its deposit into a Division of External Services PR appropriation separate from the PR appropriation created under the bill.

## DISCUSSION POINTS

### A. Regulatory Positions

1. DNR reports that on January 1, 2019, there were 304 permitted CAFOs in Wisconsin. Since 2000, the Department reports that each year an average of 15 new CAFO permits were issued, and one was discontinued, and it expects this trend to continue. Thus, it is anticipated there will be approximately 318 active permits at the end of 2019, and 332 at the end of 2020.

2. Table 1 shows permitted CAFOs and the resulting staff ratio since 2005. Permit data in the table reflects active permits as of January 1 each year. Historically, DNR has not comprehensively tracked positions dedicated to CAFO regulation. The data provided in the table reflects approximate allocations of staff based on available internal DNR tracking of staffing assignments, generally reflecting calendar year totals. Staff levels since 2016 reflect officially designated staff by fiscal year.

3. Regulatory staffing dedicated to CAFOs was last increased under 2017 Wisconsin Act 59, which provided an additional 2.0 EIF SEG positions. The Governor's proposal provides an additional 5.0 PR positions for CAFO regulation. DNR reports it would allocate the positions as follows: (a) 0.5 hydrogeologist and 0.5 compliance enforcement coordinator as central office staff, expanding existing 0.5 hydrogeologist and 0.5 compliance enforcement coordinator to full-time; (b) 1.0 central intake position in the central office; (c) 1.0 spills response coordinator split into four 0.25 positions associated with field staff in each of the regional offices; and (d) 2.0 field staff.

4. In response to the Legislative Audit Bureau's 2016 audit of wastewater permitting and enforcement at the DNR, the Department reported that in order to accomplish required work related to CAFO regulation, it would require a permit-to-field-staff ratio of 20:1. The Department reports this number continues to be its goal for CAFO regulatory staff levels. The proposed allocation of three field staff would result in a permit-to-staff ratio of approximately 20:1 during the 2019-21 biennium. The administration indicates the proposed amount of 5.0 staff was chosen to accomplish this goal. DNR reports that additional field staff would allow it to more frequently inspect operations, increase interactions with permittees, proactively address issues, and avoid permit noncompliance and resulting enforcement actions. DNR also notes that hiring additional staff would allow for workloads

that are more manageable and improve staff retention, allowing it to reduce costs associated with recruitment, training, and managing new staff. DNR expects greater staff retention would improve program consistency.

**TABLE 1**  
**CAFO Positions and Permits by Year**

<u>Year</u>	<u>Active Permits<sup>a</sup></u>	<u>Regulatory Staff</u>			<u>Ratio of Permits to Field Staff</u>
		<u>Central Office</u>	<u>Field</u>	<u>Total</u>	
2005	135	3.0	8.0	11.0	16.9
2006	147	3.0	8.0	11.0	18.4
2007	159	3.0	9.0	12.0	17.7
2008	169	5.0	10.0	15.0	16.9
2009	180	5.0	10.5	15.5	17.1
2010	189	5.0	10.5	15.5	18.0
2011	212	5.0	10.5	15.5	20.2
2012	248	5.0	10.5	15.0	23.6
2013	251	6.0	10.0	16.0	25.1
2014	262	6.5	10.5	17.0	25.0
2015	267	6.5	10.5	17.0	25.4
2016	279	7.5	12.5	20.0 <sup>b</sup>	22.3
2017	289	7.5	12.5	20.0 <sup>b</sup>	23.1
2018	298	8.5	13.5	22.0 <sup>b</sup>	22.1
2019	304	8.5	13.5	22.0 <sup>b</sup>	22.5
2020	318 <sup>c</sup>	10.5 <sup>d</sup>	16.5 <sup>d</sup>	27.0 <sup>b</sup>	19.3
2021	332 <sup>c</sup>	10.5 <sup>d</sup>	16.5 <sup>d</sup>	27.0 <sup>b</sup>	20.1

<sup>a</sup> Permits totals are as of January 1.

<sup>b</sup> Fiscal year actual and proposed staffing. Staff totals prior to 2016 approximately reflect calendar years.

<sup>c</sup> Estimated permitted CAFOs.

<sup>d</sup> DNR anticipated allocation.

5. The Department reports that increasing its hydrogeologist from half-time to full-time would allow it to increase its efforts to evaluate and avoid potential groundwater impacts associated with CAFOs. Similarly, expanding the compliance enforcement coordinator to full-time would increase the Department's capacity to standardize and improve CAFO compliance efforts across regions.

6. DNR intends for the 1.0 spills response coordinator to be split into four 0.25 positions housed in each field office. DNR reports this would give each office the technical skills and expertise to lead manure spill response within each district, including outside regular business hours. Housing staff in each field office would allow faster and more robust responses to manure spill events, and reduce the impact of spills on water quality and public health. Further, additional staff would address increased need to respond to spills, which have occurred more frequently in recent years, as shown in

Table 2. DNR tracks data related to spill volume as it is available. Thus, the third column of the table represents known spill volume measured in gallons, but is not intended to be comprehensive.

**TABLE 2**

**Reported Manure Spills**

<u>Year</u>	<u>Spills</u>	<u>Gallons*</u>
2007	38	302,900
2008	49	895,500
2009	41	550,400
2010	54	329,800
2011	52	383,900
2012	37	204,500
2013	60	1,378,300
2014	85	2,175,800
2015	49	83,100
2016	68	2,447,600
2017	92	869,300
2018	<u>101</u>	<u>380,000</u>
Total	726	10,001,100

\*Reflects known spill volumes and is not intended to be comprehensive.

7. The 1.0 central intake position would facilitate and improve DNR review of permit applications, including ensuring that required materials are submitted and properly completed, collaborating with permittees and their consultants, and assisting technical staff in reviewing applications to limit delays in the permitting process. DNR reports that central intake efforts are currently split among four positions that experience frequent turnover, which requires continued training of staff on these duties. Consolidating these duties and centralizing them could allow DNR more continuity in permit review, reduce its permit backlog by providing faster review of permits, and provide permittees with more consistency in their interactions with DNR.

8. EPA staff have noted that the size of a state's permit backlog is one indicator of how well its wastewater permit program is administered. In its audit, LAB reported that DNR has established a goal of a permit backlog of no more than 15% of CAFO permits, and EPA staff believe that the 15% goal is reasonable. Table 3 shows the Department's CAFO permit backlog since 2005. The permit backlog has grown in recent years to 20.3% as of May, 2019. DNR reports that the following factors affect the variation in the permit backlog: (a) number of permits expiring in a year; (b) availability of staff to review permits; (c) the number of existing facilities not in substantial compliance, meaning they do not meet current permit conditions, which prevents DNR from reissuing their permit. Additional office staff dedicated to permit review would be expected to reduce the permit backlog.

**TABLE 3**

**CAFO Permit Backlog**

<u>Year*</u>	<u>Backlog</u>
2005	13.6%
2006	13.2
2007	10.4
2008	13.6
2009	11.9
2010	13.5
2011	13.7
2012	15.1
2013	15.4
2014	9.9
2015	9.9
2016	17.2
2017	24.9
2018	21.8
2019	20.3

\*As of July, except 2019, which is as of May.

9. DNR argues that investment in spills coordination, hydrogeology, permit compliance and intake, and field staff are necessary for its CAFO program and its efforts to protect water quality. By increasing staffing for water impacts evaluation, spills mitigation, and permit noncompliance, the Department argues it would be able to provide adequate oversight of CAFOs. Additionally, it argues that additional permit intake and field staff would improve its ability to meet the regulated community's need for responsiveness to permit applications and compliance issues.

10. As the number of permitted CAFOs in Wisconsin increases, DNR regulatory staff become responsible for increased volume of inspections, permit reviews, and enforcement actions. DNR reports that this results in: (a) reduced frequency of compliance inspections, and a reduction or elimination of manure hauling compliance checks; (b) reduced maintenance-of-compliance efforts, which allow permittees to proactively address issues and reduce the need to impose enforcement actions; (c) reduced review of annual reports submitted by permitted operations; (d) reduced information and education efforts, such as DNR staff involvement in annual CAFO workshops; and (e) increased permit backlogs. Thus, DNR argues, continued supplementation of field and central office staff allows the Department to proactively address compliance issues, reduce the need for enforcement actions, and reduce its backlog of permits.

11. The 2016 LAB audit provided DNR a number of recommendations relating to CAFO regulation and permitting. Among other recommendations, LAB recommended that the Department: (a) reduce its permit review backlog; (b) improve the frequency of its inspections; and (c) assess regional variation in CAFO enforcement and train staff to increase enforcement consistency. The expected duties of proposed staff, as outlined by DNR, would intend to address these

recommendations.

12. Currently, the Department of Agriculture, Trade, and Consumer Protection (DATCP) is charged with providing farmers assistance in implementing soil and water conservation standards. As part of this duty, it provides county land and water conservation departments annual grants to cover costs associated with county conservation staff. During the 2017-19 biennium, DATCP was provided \$8,964,100 annually, consisting of \$5,936,900 nonpoint SEG and \$3,027,200 GPR, for these purposes. DATCP reports that in 2018, county conservation staff totaled 364. Of these 364, 112 were funded by DATCP, 211 were funded by counties, and 41 were funded by other sources. The Governor's proposal increases funding for county conservation staffing grants, as discussed in a separate issue paper entitled "County Conservation Staffing."

13. One of the eligible activities for county conservation staff funding is conservation practice engineering, design, and installation. County conservation staff provide technical support to farmers seeking to construct conservation projects, such as manure storage facilities, barnyard runoff control systems, and other agricultural best management practices. At the statewide level, DATCP's Bureau of Land and Water Resources supports these staff. DATCP employs 10 engineers and specialists to: (a) help local staff design and install structures; (b) train local staff to review plans; (c) develop and maintain best management practice standards; (d) develop standard designs for structures; and (e) train and certify local staff to be conservation engineering practitioners.

14. DNR reports that it regularly collaborates with county conservation staff on issues related to CAFOs. DNR staff tasked with review of engineering plans and permits work with county staff during permit review, although DNR notes the extent and type of interaction varies depending on the expertise and capacity of local staff. Further, county staff are involved in on-site oversight of construction projects at CAFOs. DNR also works with county staff in event of emergencies, like manure spills. DNR reports it has seen a significant decrease in recent years in assistance provided by county conservation staff to CAFOs, noting that most CAFOs rely on private consultants for engineering, design, and planning related to CAFO permitting requirements.

15. While DATCP and local conservation staff provide support related to engineering of agricultural best management practices and implementation of nonpoint standards, DNR's federally delegated regulatory authority require it to lead enforcement activities related to CAFOs. Activities related to review of permit applications, facility inspection, and enforcement actions are based on DNR administrative rules and statutory authority developed to meet federal standards and approved by EPA for that purpose.

16. Considering the growing number of permitted CAFOs in Wisconsin, the increasing rate and volumes of manure spills, a permit backlog above EPA accepted levels, and deficiencies in CAFO permitting activities identified by LAB, the Committee could consider adopting the Governor's proposal to provide an additional 5.0 CAFO regulatory staff supported by PR (Alternative A1), or a variety of other fund sources (Alternative A2). Given that the Governor's proposal provides funding sufficient to support only 4.0 positions, as discussed in a subsequent section, the Committee could consider providing 4.0 CAFO regulatory staff from PR (Alternative A3), or a variety of other fund sources (Alternative A4). Given concerns about availability of funding, as discussed in the next section, the Committee could also consider taking no action (Alternative A5).

## **B. Fees and Funding Structure**

17. The Governor's proposal would increase the annual CAFO permit fee from \$345 to \$660, and establish a five-year fee of \$3,270 paid upon issuance and renewal of permits (Alternative B1a). The administration indicates that the proposed fee levels for annual and five-year fees were chosen to generally reflect an equal balance in revenues between total annual fees (\$660) and the five-year fee (an average of \$654 annually). Further, the administration indicates it proposed a five-year initial issuance and renewal fee to reflect the additional work associated with (re)issuing a permit, which can include review of permits for completeness, compliance with design specifications, environmental analysis, and administration of public notice and comment. The Committee could consider a five-year and annual fee (Alternative B1a or B2a).

18. Although a five-year fee captures initial costs of issuing permits, periodic permit fees could result in additional complexity for permittees, with payments varying year to year. If the Committee wished to assess a consistent annual fee, it could consider establishing an annual fee that smooths these fee amounts (Alternative B1b or B2b).

19. As part of their permit, CAFOs are required to report the number of animal units they keep. As of May, 2019, DNR reports CAFO facilities kept approximately 900,000 animal units, with the average CAFO keeping approximately 2,900 units, and the median CAFO keeping approximately 2,000 units. Due to their size and complexity, CAFOs with more animal units would be expected to require more staff time associated with both permit application review, and inspection and enforcement activities. Establishing a fee based on animal units would result in fees that are more proportional to the cost of regulating each entity. Further, as CAFOs increase in size, the amount of manure and wastewater produced also increases. Because measurement in animal units reflects the relative size and manure production of different animals, a fee per animal unit would allow DNR to link fees to the expected manure production and wastewater discharge of an operation, and thus the expected environmental impact of the operation. As a result, operations with larger potential environmental impacts would contribute more towards DNR regulatory efforts intended to prevent and reduce any environmental impacts of CAFOs. Given the relatively increased regulatory cost and potential environmental impact of CAFOs with more animal units, the Committee could consider assessing CAFO fees based on animal unit size on the date of (re)issuance of a permit (Alternatives under B1c or B2c).

20. It is estimated the Governor's proposed fee increases would produce an additional \$315,000 annually during the biennium (Alternatives under B1). Thus, revenues under the Governor's proposal would not cover the proposed 5.0 PR positions and \$425,000 PR annually, although they could support 4.0 positions. If the Committee wished to cover the cost of the proposed 5.0 positions, it could consider establishing revenues of \$425,000 annually (Alternatives under B2).

21. Regulatory fees are often assessed on regulated entities to cover the state's costs associated with their oversight and regulation. For example, the Department of Safety and Professional Services, Department of Financial Institutions, and Public Service Commission are all largely funded by program revenue assessments on the entities that they are charged with regulating. While the Governor's proposal intends to fund additional CAFO staff entirely with increased fees, CAFOs are not currently charged fees that cover their cost of regulation. As noted previously, staff

costs associated with directly with CAFO regulation, excluding administrative and other Departmental supplies and services costs associated with staff, totaled \$2,168,700 in 2018-19 from GPR, PR, SEG, and FED sources. A fee structure sufficient to raise the approximately \$2,600,000 annually necessary to fully fund current and proposed CAFO staff would require an annual fee of \$8,000 or \$2.90 annually per animal unit.

22. Conversely, given that CAFOs do not currently cover their cost of regulation, the Committee could consider providing an alternative source of funding for proposed increases to regulatory staff. Most CAFO regulatory staff are supported by either GPR (8.5 positions) or nonpoint SEG (9.5 positions). The Committee could consider providing proposed staff as GPR (Alternative B3a or B4a), nonpoint SEG (Alternative B3b or B4b), or half of each (Alternative B3c or B4c).

23. While the Committee could consider using nonpoint account SEG to cover some or all of proposed costs associated with the proposed positions, without other action by the Committee, the nonpoint account balance would not be sufficient to support such expenditures. Under the bill, it is expected the nonpoint account of the environmental fund would have authorized expenditures that exceed anticipated revenues by approximately \$7.7 million annually during the 2019-21 biennium. Further, on June 30, 2018, the account had a closing cash balance of \$11.1 million and an available (unencumbered) balance of \$5.9 million. Thus, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021.

24. In addition to other fee changes, the Committee could consider incorporating 2019 Assembly Bill 69/Senate Bill 31, which would specify that the current \$250 from each annual CAFO permit fee deposited into the general fund be deposited into a separate PR account dedicated to CAFO regulation. The bill is intended to allow fees paid by CAFOs to support regulatory efforts associated with CAFOs. Proponents argue the bill would support additional staff and regulatory activities at DNR related to CAFOs, in order to reduce permit backlogs and improve inspection efforts. If the Committee wished to specify that existing CAFO fee revenue be directed for use in regulating CAFOs, it could convert the GPR portion of the fee to PR (Alternatives under B5).

25. As written, the bill does not specify the initial applicability of the five-year fee for CAFOs. The administration reports that for existing CAFOs, it intended that DNR assess the fee upon reissuance of their permit. However, bill language could be construed to allow DNR to assess the fee on all CAFOs upon the effective date of the bill, and every five years thereafter. The Committee could consider specifying that the five-year fee apply upon renewal of a CAFO's permit for existing operations, which would avoid unanticipated costs for existing operations. (This language is incorporated as part of alternatives offering a five-year fee.)

### **C. Appropriation Structure and Reporting Requirements**

26. Current law specifies that of the \$345 annual CAFO fee, \$250 be deposited into the general fund and \$95 be deposited into a program revenue appropriation [s. 20.370 (4)(mi)] under the Division of Environmental Management dedicated to environmental quality and management of the state's water resources. Further, current law requires DNR report annually to the Joint Committee on Finance and the Legislature's agricultural and environmental standing committees on how these PR

funds are used.

27. The bill would create a new PR continuing appropriation [s. 20.370(9)(ag)] within the Division of External Services for receipt of the newly proposed and increased fees. At the same time, it would transfer deposit of the existing \$95 PR fee from its appropriation in the Division of Environmental Management [(4)(mi)] to the equivalent appropriation in the Division of External Services [s. 20.370(9)(mi)]. DNR transferred CAFO regulatory duties to the Division of External Services under its 2017 reorganization, and transfer of this \$95 fee to the Division of External Services is considered a technical fix related to this transfer. However, the bill omits transfer of reporting requirements related to the \$95 fee to the Division of External Services appropriation [(9)(mi)]. The administration reports it intended to transfer this reporting requirement as well.

28. Under the bill, the appropriation receiving the \$95 annual CAFO fee in the Division of External Services [(9)(mi)] receives other miscellaneous PR funding, and has broad authorization for expenditure of moneys received. While not expected, it is possible that DNR could expend CAFO fees from this appropriation on other Division of External Services activities.

29. The bill would result in deposits of CAFO fees into two separate PR appropriations [(9)(mi) and (9)(ag)], and it would delete requirements related to reporting of expenditures on PR CAFO fees [assigned to (4)(mi)]. If the Committee wished to simplify administration of CAFO PR fees and restrict use of CAFO PR solely to regulation of CAFOs, it could create a new PR continuing appropriation within the Division of External Services, and specify that all program revenue received from CAFO fees be deposited into the appropriation (Alternative C2). The Committee could also consider adopting the Governor's proposed appropriation structure for PR fees (Alternative C1). Further, if the Committee wished to retain the reporting requirement associated with use of these fees, it could require DNR to report annually to the Committee, and other standing committees concerned with agriculture and the environment, on the use of PR fees received from CAFO permittees (Alternatives under C4).

30. The bill transfers 9.5 nonpoint SEG positions and \$864,300 annually associated with CAFO regulation within the Division of External Services from its nonpoint source general program operations appropriation [s. 20.370(9)(mr)] to its environmental fund general program operations appropriation [s. 20.370(9)(mv)]. Funding was provided in the current appropriation as part of the 2017 reorganization, but subsequent review identified the appropriation does not have authorizing language sufficient to allow expenditure of funds for CAFO regulation. Thus, DNR reports it requested the transfer of funding to an appropriation [(9)(mv)] with language sufficiently broad to support the intended use of these funds. The environmental fund general program operations appropriation [(9)(mv)] generally supports administrative and management staff associated with environmental fund programs, and is not intended to support program staff. Further, increased activities, and resulting staff and funding, associated with CAFO regulation in recent years arguably justifies delineating CAFO regulation from other nonpoint general operations activities currently housed in the existing appropriation [(9)(mr)].

31. If the Committee wished to better align appropriation of the 9.5 nonpoint SEG positions and \$864,300 annually with their existing duties, and increase transparency related to CAFO regulatory funding, it could create a new nonpoint SEG appropriation, and transfer the funding and

positions to that appropriation (Alternative C3). The Committee could also consider adopting the Governor's proposal to transfer staff and funding to environmental fund general operations [(9)(mv)], and house CAFO staff with administrative and managerial staff (Alternative C1). In addition to either alternative, the Committee could also consider requiring DNR to report annually to the Committee, and other standing committees concerned with agriculture and the environment, on the expenditure of nonpoint SEG funds from the appropriation (Alternative C4c or C4d).

**ALTERNATIVES**

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

**A. Regulatory Positions**

1. Provide 5.0 positions for CAFO regulatory staff, supported by PR. (This would adopt the Governor's proposal.)

<b>ALT A1</b>	<b>Positions Change to Base Bill</b>	
PR	5.00	0.00

2. Modify the Governor's proposal to instead support positions with:

<b>ALT A2</b>	<b>Positions Change to Base Bill</b>	
Specify Below	5.00	5.00
PR	<u>0.00</u>	<u>- 5.00</u>
Total	5.00	0.00

- a. GPR.
- b. Nonpoint SEG.
- c. 50% GPR and 50% nonpoint SEG.

3. Provide 4.0 positions for CAFO regulatory staff, supported by PR. (This amount would be supported by increased fee revenue proposed under the bill.)

<b>ALT A3</b>	<b>Positions Change to Base Bill</b>	
PR	4.00	- 1.00

4. Modify Alternative A3 above to instead support positions with:

<b>ALT A4</b>	<b>Positions Change to Base Bill</b>	
Specify Below	4.00	4.00
PR	<u>0.00</u>	<u>- 5.00</u>
Total	4.00	- 1.00

- a. GPR.
- b. Nonpoint SEG.
- c. 50% GPR and 50% nonpoint SEG.

5. Take no action.

<b>ALT A5</b>	<b>Positions Change to Base Bill</b>	
PR	0.00	- 5.00

**B. Fees and Funding Structure**

1. Authorize expenditures of \$315,000 PR annually, and establish revenues to generate the same amount, structured as one of the following. (This would produce the same revenue as proposed by the Governor and be sufficient to fund 4.0 positions.)

<b>ALT B1</b>	<b>Change to Base</b>		<b>Change to Bill</b>	
	<b>Revenue</b>	<b>Funding</b>	<b>Revenue</b>	<b>Funding</b>
PR		\$630,000		- \$220,000
PR-REV	\$630,000		\$0	

- a. \$315 annually, and \$3,270 upon issuance of a permit and every five years thereafter. (This would adopt the Governor's proposal.) Further, specify that the five-year fee apply upon the next renewal of existing CAFO permits.
- b. \$970 annually.
- c. 35¢ per animal unit, based on the number of animal units authorized upon (re)issuance of the permit.

2. Authorize expenditures of \$425,000 PR annually, and establish revenues to generate the same amount, structured as one of the following. (This would produce revenue sufficient to

support the proposed 5.0 positions.)

ALT B2	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
PR		\$850,000		\$0
PR-REV	\$850,000		\$220,000	

a. \$480 annually, and \$4,130 upon issuance of a permit and every five years thereafter. Further, specify that the five-year fee apply upon the next renewal of existing CAFO permits.

b. \$1,305 annually.

c. 47¢ per animal unit, based on the number of animal units authorized upon (re)issuance of the permit.

3. Do not increase fees. Provide funding of \$425,000 annually consisting of:

ALT B3	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
Specify Below		\$850,000		\$0
PR		<u>0</u>		<u>- 850,000</u>
Total		\$850,000		\$0
PR-REV	\$0		- \$630,000	

a. GPR.

b. Nonpoint SEG.

c. \$212,500 GPR and \$212,500 nonpoint SEG, with positions split equally between GPR and nonpoint SEG.

4. Do not increase fees. Provide funding of \$315,000 annually consisting of:

ALT B4	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
Specify Below		\$630,000		\$630,000
PR		<u>0</u>		<u>- 850,000</u>
Total		\$630,000		- \$220,000
PR-REV	\$0		- \$630,000	

- a. GPR.
- b. Nonpoint SEG.
- c. \$157,500 GPR and \$157,500 nonpoint SEG.

5. In addition to any of the above alternatives:

a. Delete the current law \$250 annual GPR fee. (When paired with alternatives under B1 or B2, this would have the effect of converting the fee to PR.)

ALT B5a	Change to	
	Base	Bill
GPR-REV	-\$81,300	-\$81,300

b. Convert the current law \$250 GPR fee to PR. (This could be moved in addition to alternatives B3 or B4.)

ALT B5b	Change to	
	Base	Bill
GPR-REV	-\$81,300	-\$81,300
PR-REV	<u>81,300</u>	<u>81,300</u>
Total	0	0

6. Take no action. Fees would remain at \$345 annually, consisting of \$250 GPR and \$95 PR.

ALT B6	Change to	
	Base	Bill
PR-REV	\$0	-\$630,000

### C. Appropriation Structure and Reporting Requirements

1. Adopt the Governor's proposal to create a PR continuing appropriation [s. 20.370(9)(ag)] within the Division of External Services to receive newly proposed fees and increased fees under the bill, and transfer current law PR fees to the Division of External Services miscellaneous program revenue appropriation [s. 20.370(9)(mi)]. (This would not transfer reporting requirements on current law PR fees.)

2. Create a program revenue continuing appropriation within the Division of External Services for the purposes of regulating animal feeding operations under Chapters 281 and 283 of the statutes, and to receive PR fees paid by animal feeding operations under Chapter 283 of the

statutes. Specify that current law PR fees and any fee increase adopted in alternatives above be deposited into this appropriation.

3. Create a nonpoint SEG annual appropriation within the Division of External Services for the purposes of regulating animal feeding operations under Chapters 281 and 283 of the statutes.

4. Require the Department of Natural Resources to report annually to the Joint Committee on Finance, and other standing committees concerned with agriculture and the environment, on the expenditure of funds from any of the following appropriations. (This alternative could be moved into any other alternatives.)

a. The appropriation [s. 20.370(9)(ag)] created under Alternative C1, and the appropriation [s. 20.370(9)(mi)] proposed under the bill to receive existing CAFO PR fees.

b. The PR appropriation created under Alternative C2.

c. The nonpoint SEG appropriation created under Alternative C3.

d. The PR and nonpoint SEG appropriations created under Alternatives C2 and C3.

Prepared by: Rory Tikalsky

# **AGRICULTURE, TRADE AND CONSUMER PROTECTION**

## **LFB Summary Items for Which No Issue Paper Has Been Prepared**

<u>Item #</u>	<u>Title</u>
1	Standard Budget Adjustments
15	Position Realignment
16	Debt Service Reestimate
18	Computer System Equipment, Staff and Services
19	Weights and Measures Inspection Increase
20	Program Revenue Reestimate
21	Federal Revenue Reestimates

## **LFB Summary Items Addressed in a Previous Paper**

<u>Item #</u>	<u>Title</u>
3 & 4	Soil and Water Resource Management Funding (Paper #536)
5	County Conservation Staffing (Paper #537)
14	Transfer Abandoned Tank Removal Program from the Department of Natural Resources (Paper #534)

## **LFB Summary Items Removed From Budget Consideration**

<u>Item #</u>	<u>Title</u>
2	Medical Marijuana Dispensaries, Testing Laboratories, and Cultivation
7	Repeal Minimum Markup of Motor Vehicle Fuel