Legislative Fiscal Bureau

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

May 19, 2011 | Joint Committee on Finance | Paper #466

Aids in Lieu of Property Taxes (DNR -- Stewardship Program)

[LFB 2011-13 Budget Summary: Page 303, #1]

CURRENT LAW

Since 1992, when DNR acquires land, the state pays aids in lieu of property taxes on the land to the city, village, or town in which the land is located in an amount equal to the tax that would be due on the estimated value of the property at the time it was purchased (generally the purchase price) adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. The municipality then pays each taxing jurisdiction (including the county and school district) a proportionate share of the payment, based on its levy.

GOVERNOR

Specify that the state make no payments for aids in lieu of property taxes for lands acquired by the Department after the effective date of the bill. Provide $700,000 SEG in 2011-12 and $1,325,000 SEG in 2012-13 from the forestry account of the conservation fund to reflect estimated aids in lieu of property tax payments for prior purchases.

DISCUSSION POINTS

1. The Department of Natural Resources (DNR) currently has a variety of options with respect to land acquisition under the stewardship program. It may purchase the land outright using funds allocated for that purpose. The Department may also purchase conservation easements on property, essentially buying certain rights from the landowner. These rights are typically purchased in perpetuity – the landowner may sell the property, but the conditions of the easement are attached to the deed. Easements can include (but are not limited to) public access rights for hunting, fishing, and other outdoor recreation, rights-of-way for trails, sustainable forestry requirements, and development restrictions to preserve the conservation values of the property. DNR may also provide matching grants to non-profit conservation organizations (NCOs) or units of local government to acquire land. Any land acquired with the help of stewardship dollars may not be converted to uses inconsistent with the uses approved by DNR under the grant contract. When DNR purchases land

directly, the state becomes obligated under current law to make payments in lieu of property taxes to local taxing districts. With the purchase of an easement, the responsibility for payment of property taxes and most of the costs of maintaining the property remain with the landowner.

2. DNR provides aids to cities, villages, or towns in lieu of property taxes for DNR-owned land within each municipality. Aids in lieu of property taxes are paid on property the tax year after it is purchased, and payments vary depending on when land was purchased. The aid payment for land purchased prior to July 1, 1969, is 88¢ per acre. For land purchased beginning July 1, 1969, through December 31, 1991, payments are based on the statewide average property tax rate for municipal, county, and school taxes for the tax year after purchase applied to the land's assessed value. For this category of land, each year after the initial year the payment is reduced by 10% of the first year amount until the greater of 10%, or a payment of 50¢ per acre, is reached in the tenth and subsequent years. Land purchased beginning in 1992 is subject to current regulations for the determination of aids in lieu of taxes payments.

3. Land acquired by the DNR beginning in 1992 is subject to a state payment made primarily from a sum-sufficient GPR appropriation. Those payments are calculated under a tax equivalency formula intended to compensate local governments for the taxes that would be paid on the property if it were taxable. Total payments are calculated by multiplying the property's estimated value by a mill rate. The estimated value is generally based on the property's purchase price. Each year, that value is adjusted, based on the percentage change in equalized value of unimproved real property in the municipality where the property is located, as determined by the Department of Revenue. The mill rate used in the calculation is the current tax rate for all purposes, net of state tax credits, that is applied in the municipality where the property is located. The municipality receiving the payment is required to share it with overlying local governments, such as the school district, county, and technical college district.

4. The following table shows aids in lieu of property taxes payments made by the state to local units of government since fiscal year 2000-01.

TABLE 1

Aids in Lieu of Property Tax Payments 2000-01 through 2012-13

	Current Law			Governor's Bill		
Fiscal Year	GPR	SEG	Total	GPR	SEG	Total
2000-01	$3,393,500	$0	$3,393,500			
2001-02	3,906,100	0	3,906,100			
2002-03	4,755,400	0	4,755,400			
2003-04	4,349,000	1,000,000	5,349,000			
2004-05	4,133,000	2,000,000	6,133,000			
2005-06	3,160,100	4,000,000	7,160,100			
2006-07	4,190,800	4,000,000	8,190,800			
2007-08	5,381,400	4,000,000	9,381,400			
2008-09	6,352,000	4,000,000	10,352,000			
2009-10	7,675,400	3,960,000	11,635,400			
2010-11*	8,279,900	3,960,000	12,239,900			
2011-12*	9,123,000	3,960,000	13,083,000	8,240,000	4,843,000**	13,083,000**
2012-13*	9,940,000	3,960,000	13,900,000	8,240,000	5,285,000	13,525,000

*Estimated
** As adjusted to reflect more current estimates.

Payments are made from a GPR sum sufficient appropriation and an annual forestry account SEG appropriation. Under current law, total payments for aids in lieu of property taxes are estimated to be approximately $13.1 million in 2011-12 and $13.9 million in 2012-13 (the amounts shown in the table include $364,000 GPR annually for payments for lands acquired prior to January 1, 1992). Under the bill, DNR would continue to make aids in lieu of property taxes payments for properties purchased through the effective date of the bill, but would no longer make any aids in lieu of property taxes payments for lands acquired after the effective date of the bill. Due to the timing of aids in lieu of property tax payments (payments for calendar year 2011 land purchases will be made beginning in fiscal year 2012-13), fiscal year 2011-12 payments would be estimated to be the same under current law as under the bill. The fiscal year 2012-13 payment would include payments for additional acreage purchased in calendar year 2011 prior to the effective date of the bill. Aids in lieu of taxes payments in fiscal year 2012-13 would be expected to be approximately $375,000 GPR less under the bill than under current law, but would be expected to decrease further in future biennia (a decrease of approximately $3.9 million in the 2013-15 biennium and perhaps $9 million by the 2015-17 biennium). Under the bill (adjusted to reflect more recent estimates), aids in lieu of property tax payments would be estimated at $13.1 million in 2011-12 and $13.5 million in 2012-13.

5. Although the current law aids in lieu of property taxes formula is intended to produce a state payment that is equivalent to what is paid in property taxes, in practice, state payments typically exceed the property taxes that would have been paid on the property because the purchase price of conservation land has routinely exceeded the property's assessed value. In October of 2000, the Legislative Audit Bureau (LAB) released an evaluation of the Warren Knowles-Gaylord Nelson Stewardship program. The report found that within a sample of 74 property acquisition grants, the average appraised value per acre of the property was more than double (120% greater) the average assessed value per acre. When adjustments were made to make comparisons on a per-property rather than a per acre basis, the average difference increased to 305%. The Legislative Audit Bureau noted that the sample was specifically selected to include large grants. Since it was not a random sample, the result could not be projected to all grants. While these wide discrepancies in appraised and assessed valuations have raised questions by some about the fair market value of stewardship properties, the report also notes that infrequent updates in assessed values also raise questions about fairness in local property taxes.

6. When acquiring land with stewardship funds, DNR generally hires private real estate appraisers to determine the fair market value of prospective land purchases. A large disparity between assessed and appraised value may result from local assessors significantly undervaluing all property, not having updated assessments, or as a result of local land use policies. Assessors and appraisers generally determine the value of property based on the property's highest and best use, which is that use which will produce the greatest net return to the property owner over a reasonable period of time. Commonly-accepted definitions of highest and best use utilized by appraisers generally take into account four different factors when making the determination: physical possibility, (taking into account the size, terrain, soil composition and utility availability for the parcel that may limit the use of the land); legal permissibility, (including applicable zoning regulations, building codes, deed restrictions, historic district controls and environmental regulations); financial feasibility, (meaning any use that produces a positive rate of return based on the characteristics of the property); and maximum productivity, (under which no other use of the land would provide a greater net return to the owner based on land costs, physical characteristics,

legal constraints and the economic characteristics of the surrounding area).

7. For a particular piece of property, there may be some difference of opinion among those doing the property valuation relating to any of these factors. The physically possible uses of the parcel, for example, would be influenced by the proximity of a sewer line to the parcel. The legally permissible uses of a parcel of land could be affected by current zoning designations and a particular municipality's history of approving zoning changes that affect the ability of land in the municipality to be developed. In these cases, assessors and appraisers (and potential buyers) must make certain assumptions related to these factors to be able to determine a value for the property.

8. Providing less than the fair market value for land could be considered a taking without just compensation in violation of the Fifth and Fourteenth Amendment to the U.S. Constitution. Further, under Wisconsin Statutes s. 32.09(5)(b), any increase or decrease in the fair market value of a property caused by any public improvement for which property is acquired, or the likelihood that the property would be acquired for such an improvement, may not be taken into account in determining just compensation for the property.

9. Assessed value is the value placed on a property by the local unit of government for property tax purposes. Most assessors value property at some fraction of market value, despite a statutory requirement that property be assessed at full value. A series of court cases, dating back to the nineteenth century, has interpreted statutes to allow assessed values at a fraction of market value, provided the same fraction applies to all property in the taxation district. As a result, local assessors can assess property at a level below market value without violating the state constitution's requirement of uniform taxation.

10. To the extent that the purchase price paid by DNR for land is based on appraised values and to the extent that appraised values exceed assessed values, the resulting aids in lieu payments made under state ownership of land may be greater than the property taxes that would be paid if the property remained under private ownership. Further, in some cases, lands purchased by the state were fully or partially exempted from property taxation before purchase (such as managed forest lands, railroad rights-of-way or properties owned by certain tax-exempt corporations). When the DNR property being purchased (a) is exempt from local property taxes (such as when owned by certain nonprofits or public utilities), (b) is subject to preferential tax treatment (such as under the managed forest law or agricultural use value), or (c) has a purchase price that exceeds the local assessed value, transferring the property to DNR results in a net gain in revenues for the affected local governments.

11. The following table compares the estimated aids in lieu of taxes payments on properties acquired in fee title by DNR under the stewardship program from January 1, 2009, through September 30, 2009, (51 parcels) to the amount paid in taxes for that year (2009 property tax levy paid in 2010). [The 51 parcels are those for which complete data was reported]. In some cases, the 2009 property tax amount listed is based on the estimated property taxes at the time of closing. In addition, in some cases, properties were enrolled in the managed forest law (MFL) program and agricultural properties benefited from use value assessment, which would result in a lower than expected 2010 tax bill. Overall, the aids in lieu of taxes payments were nearly three times greater than the property taxes. Even excluding properties previously enrolled in MFL or forest crop law and properties subject to agricultural use value or another property tax exemption, local payments were routinely more than double under state ownership for the parcels reviewed.

TABLE 2 (Corrected)

2009 State Land Purchases (January through September)

Property Category	Acres	Purchase Price	County	2009 Tax Amount	Aids in Lieu Estimation*	% Change
Fishery	46	$81,200	Ashland	$539**	$1,285	138
Fishery	10	32,800	Bayfield	8**	490	--*
Fishery	13	50,100	Bayfield	400**	749	87
Fishery	76	205,600	Bayfield	2,011**	3,072	53
Fishery	54	136,000	Bayfield	1,157**	2,479	114
Fishery	40	165,000	Burnett	1,093	2,516	130
Fishery	24	85,000	Burnett	303**	1,250	313
Wildlife Area	20	50,000	Burnett	400**	696	74
Fishery	27	94,000	Burnett	534	1,383	159
Park	71	600,000	Columbia	6,627**	10,424	57
Wildlife Area	42	195,000	Columbia	918	3,091	237
Wildlife Area	24	47,500	Columbia	234**	795	--*
Park	9	145,000	Columbia	2,594	2,519	-3
Wildlife Area	73	161,000	Columbia	853	2,219	160
Park	32	192,400	Columbia	547	2,882	--*
Park	28	168,800	Dane	122	3,031	2,384
Wildlife Area	61	184,000	Dodge	4,834**	3,288	-32
Wildlife Area	95	353,500	Dodge	538	5,831	984
Natural Area	25	166,100	Door	1,647	1,802	9
Northern Forest	20	42,000	Douglas	33	718	--*
Northern Forest	2	30,000	Douglas	151**	527	249
Northern Forest	40	80,000	Douglas	854	1,280	50
Park	43	98,500	Douglas	819**	1,576	92
Wildlife Area	42	78,800	Dunn	992	1,278	29
Wild River	40	85,000	Florence	895	1,397	56
Natural Area	25	57,400	Grant	1,221	1,212	-1
Wildlife Area	160	500,000	Green Lake	1,316	8,093	515
Wild River	55	124,000	Iron	0	1,362	--*
Wildlife Area	20	40,000	Jefferson	195**	570	192
Wildlife Area	20	80,000	Jefferson	92	1,192	1,196
Natural Area	1	16,800	Kenosha	231**	291	26
Fishery	48	159,000	Lincoln	536	2,575	380
Park	12	112,500	Marathon	793	2,125	168
Fishery	42	56,000	Marinette	824**	743	-10
Northern Forest	41	200,000	Oneida	1,238	2,009	62
Wildlife Area	42	146,900	Polk	767	2,589	238
Wildlife Area	68	140,000	Portage	1,928	2,408	25
Park	<1	220,000	Sauk	1,522	3,368	121
Wildlife Area	20	84,600	Sauk	977	1,260	29
Wild River	221	508,300	Sauk	444	7,581	1,607
Wildlife Area	23	112,700	Sauk	174	1,767	916
Northern Forest	53	343,000	Sawyer	2,968	3,989	34
Fishery	20	50,000	Sheboygan	533**	786	47
Wildlife Area	538	950,000	Taylor	10,731	18,352	71
Fishery	60	150,000	Taylor	881**	2,657	202
Northern Forest	1,103	2,096,000	Vilas	110	19,808	--*
Natural Area	51	360,000	Walworth	171	5,421	3,070
Natural Area	86	1,074,000	Walworth	199	14,816	--*
Fishery	1	56,000	Waushara	1,182	871	-26
Fishery	9	28,000	Waushara	0	427	--*
Wildlife Area	39	89,700	Wood	136**	1,419	943
Total	3,715	$11,282,200		$58,272	$164,269	182

Note: Aids in lieu estimation is calculated using the purchase price multiplied by the equalized tax rate for the taxing district in 2009.
*At least a portion of the property was enrolled in managed forest law or forest crop law.
**This figure is calculated based upon the estimated property taxes at the time of closing.

12. Some would argue that aids in lieu of property taxes are unnecessary as local municipalities receive other benefits related to DNR land purchases beyond aids in lieu payments (Alternative 1). For instance, the recreational opportunities such as public hunting, fishing, snowmobiling, hiking, biking, and nature appreciation available on DNR-owned land could increase tourism-related revenue to the region, and property values of land surrounding the protected greenspace may increase to the benefit of the local taxing districts. In addition, local government infrastructure costs associated with future developments on the property would be avoided if the state owned the land.

13. While providing ongoing payments to municipalities for property tax exempt state land purchases helps to support local budgets and offset associated costs (such as police and fire protection and road maintenance), the intent of the aids in lieu formula was to establish a fair level of compensation, rather than to create a financial incentive for cooperation.

14. The current aids in lieu formula is calculated by multiplying the estimated value of the property (generally the purchase price) by the effective tax rate of the taxation district, and is adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. It may be argued that if the goal is to compensate municipalities for lost tax revenue, that the formula should be modified to instead define the estimated value as the equalized value of the property in the year prior to purchase by the state or the purchase price, whichever is less. In cases where the property had previously been tax exempt, the last recorded equalized value could be used, or a payment of $10 per acre would be made (such as in a case where a historical assessed value could not be determined), whichever amount was greater (Alternative 2). The amount determined under this revised formula could then continue to be adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. This formula would provide local governments with an amount approximating the lost level of tax revenue. Such a formula could more closely meet the goal of protecting local governments from a loss in property tax revenues. However, even under this formula, in some cases (such as for previously tax-exempt land or when the property has been enrolled under the managed forest law program), payments in lieu of property taxes would increase over what the taxation district had been receiving previously. Although, in these cases other additional payments (such as a portion of the timber harvest revenue for MFL property) would be lost.

15. The fiscal effect of this formula change would depend on how much the equalized values for the area where DNR purchases land varies from the purchase price. As previously mentioned, the sample analyzed by LAB indicated that, on average, appraised values were two to four times higher than assessed values. For the 51 properties shown in Table 2, aids in lieu of property tax payments would, on average, be seven times the tax revenues previously received by local taxation districts. While neither the LAB sample nor Table 2 results can be reliably generalized across all cases in order to precisely predict the level of savings that the state would experience, both would indicate that it would be reasonable to expect that, in the aggregate, payments of aids in lieu of taxes would be reduced by at least one-half for state land purchases. The modified aids in lieu of property tax payments would ensure that local governments do not experience a reduction in the support that they had been experiencing (and would see an increase in the case of certain tax-exempt properties).

16. It should be noted that as current costs associated with the payment of aids in lieu of taxes are due to previous land purchases, modifying the formula under Alternative 2 would affect

future land acquisitions and would not have a major effect on expenditures in the 2011-13 biennium. The change would be expected to reduce 2011-13 payments by $190,000 from current law levels. However, future GPR expenditures would be expected to be reduced substantially (by one-half or more) to generally reflect actual property tax levels of properties being purchased by the state. For example, in the 2013-15 biennium payments would be expected to be approximately $2 million lower than under current law and perhaps $4.5 million lower in 2015-17. On the other hand, Alternative 2 would require additional payments of $185,000 in 2012-13 compared to the bill (and almost $2 million in the 2013-15 biennium).

17. The Legislature has included this provision (Alternative 2) in both the 2003-05 and 2005-07 budgets; however, the Governor item vetoed it both times. Given the increasing costs of the program, it could be argued the state should not provide a financial windfall to local governments to place conservation lands in state ownership for public recreational purposes (typically paying at least twice the property tax payment prior to DNR ownership). In addition, the stewardship program is currently authorized at $86 million in annual bonding authority, and restrictions on conservation easement purchases utilizing stewardship funds under the bill could increase the number of acres DNR would purchase in fee title, thereby increasing state costs for aids in lieu of property taxes payments in the future.

18. Alternatively, to ensure that all units of local government receiving payments in lieu of property taxes for land acquired since 1992 are treated equally, the adjustment to the calculation of aids in lieu could be applied retroactively to all payments made for land acquired since January, 1992. This option would apply the changes to existing payments, generating expected annual aids in lieu of property tax payments of approximately $6.7 million in 2011-12 and $7.1 million in 2012-13. This option (Alternative 3) would remove the financial windfall local governments have received on lands purchased since 1992. Local governments would still receive aids in lieu of taxes to generally compensate them for property tax levels received at the time of purchase (and as increased each year to reflect the overall increase in unimproved property). Table 3 shows the estimated aids in lieu payments, under the bill, under Alternative 2 (aids in lieu payments on lands purchased after the effective date of the bill would be calculated based on equalized value); under Alternative 3 (aids in lieu payments would be calculated retroactively based on equalized value); and under current law (Alternative 4).

TABLE 3

Aids in Lieu of Property Tax Payments

Fiscal Year	Bill	Alternative 2 Based on Equalized Value	Change to Bill	Alternative 3 Equalized Value Retroactive	Change to Bill	Alternative 4 Current Law	Change to Bill
2011-12	$13,083,000*	$13,083,000	$183,000	$6,725,000	-$6,175,000	$13,083,000	$183,000
2012-13	13,525,000	13,710,000	185,000	7,130,000	-6,395,000	13,900,000	375,000
2013-14	13,655,000	14,355,000	700,000	7,710,000	-5,945,000	15,060,000	1,405,000
2014-15	13,790,000	15,052,000	1,262,000	8,340,000	-5,450,000	16,320,000	2,530,000

*The fiscal year 2011-12 payment would be $183,000 higher than the $12,900,000 estimate included in the bill.

19. In most cases, the aids in lieu payment to municipalities greatly exceeds revenues previously generated by property taxes. The Department has reported that the current formula led to

a reduction in the number of local objections to state acquisition of land. However, municipalities may argue that while the aids in lieu of taxes payment may provide more revenue than previously received, the payment could be much less than the potential revenues to the taxation district should the property be sold to a party intent on capitalizing on its development potential. Maintaining the current aids in lieu formula would provide a greater level of compensation to municipalities (Alternative 4). On the other hand, school and local government costs that may be needed for more intensive land development would be avoided with state ownership.

20. Payments for aids in lieu of taxes are currently made from a sum sufficient GPR appropriation ($8.2 million each year) and a forestry account SEG appropriation ($4,843,000 in 2011-12 and $5,285,000 in 2012-13). The forestry account is expected to have an available balance of approximately $2.3 million on June 30, 2013. An increase or reduction based on formula changes could be made from the forestry account, or from the general fund.

ALTERNATIVES

1. Adopt the Governor's recommendation that the state make no payments for aids in lieu of property taxes for lands acquired by the Department after the effective date of the bill. Provide an additional $843,000 SEG in 2011-12 (an increase of $183,000 to the amount estimated in the bill) and $1,325,000 SEG in 2012-13 from the forestry account of the conservation fund to reflect estimated aids in lieu of property tax payments.

ALT 1	**Change to Bill** Funding
SEG	$183,000

2. For lands purchased after the effective date of the budget act, adjust the current aids in lieu of property taxes formula by defining the estimated value of the property to mean the lower of the equalized value of the property in the year prior to purchase by the Department or the purchase price (instead of the purchase price, as currently provided in statute). In cases where the property had previously been tax exempt, the calculation would be the lower of either: (a) the purchase price, or (b) the last recorded equalized value, or a payment of $10 per acre, whichever amount was greater. The amount determined under this formula would continue to be adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. (While savings of only $190,000 compared to current law would be realized in 2012-13, payments for aids in lieu of property taxes would be expected to decline by one-half, or more, for future purchases.) In addition, provide $183,000 in 2011-12 as a reestimate and $185,000 in 2012-13. Specify that the increase be made from one of the following sources:

a. GPR

ALT 2a	**Change to Bill** Funding
GPR	$368,000

b. Forestry SEG

ALT 2b	Change to Bill Funding
SEG	$368,000

3. Adopt Alternative 2, but specify that that this formula be applied to the calculation of aids in lieu of taxes payments for all lands purchased beginning January 1, 1992. In addition, delete $6,175,000 in 2011-12 and $6,395,000 in 2012-13. Specify that the reduction be made from one of the following sources:

a. GPR

ALT 3a	Change to Bill Funding
GPR	- $12,570,000

b. Forestry SEG

ALT 3b	Change to Bill Funding
SEG	- $12,570,000

c. GPR and Forestry SEG (65% of the reduction would be from GPR and 35% from forestry SEG, which is consistent with the current distribution).

ALT 3c	Change to Bill Funding
GPR	- $8,170,500
SEG	-4,399,500
Total	- $12,570,000

4. Delete the provision. Current law aids in lieu of property tax payments would be estimated at $13,083,000 in 2011-12 and $13,900,000 in 2012-13. Provide an additional $183,000 in 2011-12 and $375,000 in 2012-13 from one of the following sources:

a. GPR

ALT 4a	Change to Bill Funding
GPR	$558,000

b. Forestry Account SEG

ALT 4b	**Change to Bill** Funding
SEG	$558,000

Prepared by: Erin Probst