



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #710

Replace Existing Farmland Tax Credits with a Per Acre Farmland Preservation Credit (Shared Revenue and Tax Relief -- Property Tax Credits)

[LFB 2009-11 Budget Summary: Page 573, #8]

CURRENT LAW

The farmland preservation credit received by eligible claimants depends on the interaction of household income and allowable property taxes and on the contract, zoning, or planning provisions that cover the land. The initial step in the credit formula determines the income factor, which can be interpreted as the amount of income that a household can afford to contribute to the payment of property taxes. By including higher percentages of income as income rises, the income factor introduces an element of progressivity to the program.

The income factor is then deducted from eligible property taxes (\$6,000 maximum) to determine what portion of the tax is "excessive" for a claimant with a particular income level. The "excessive" property tax is then prorated to determine the potential credit, which guarantees that claimants of all income levels continue to pay part of their property tax, with larger farms paying a higher percentage. The potential credit amount is then adjusted to 70%, 80%, or 100% of that amount, depending on the degree of land use restriction, with larger credits given for more restrictive conditions.

Finally, regardless of income, claimants may receive 10% of their eligible property taxes if that amount is larger than the tax credit formula amount. These claimants are generally those with a high income level compared to their property taxes. As a result of their relatively higher income, their "excessive" property taxes are reduced to the point where it is more beneficial to receive the minimum credit.

The farmland tax relief credit provides tax relief on the first \$10,000 in property taxes based on a reimbursement rate, determined annually by the Department of Revenue (DOR), that distributes the funds available for credit payments in that year. For each year, annual credit

payments are to total \$15 million plus an amount (which can be positive or negative) equal to the amount estimated to be expended in the previous year minus the actual expenditures for the credit in the previous year. For tax year 2008, with \$14,264,000 available for distribution, DOR established the credit reimbursement rate at 19% of the first \$10,000 in property taxes.

Both of the current law credits are claimed against income taxes due, but are refundable (a refund is provided even if the credit exceeds the claimant's tax liability). Current law funding in 2010-11 would be \$12,900,000 GPR for the existing farmland preservation credit and \$15,000,000 SEG from the lottery fund for the farmland tax relief credit.

GOVERNOR

Beginning after tax year 2009, end both the farmland preservation tax credit, except for those claimants under an existing farmland preservation agreement, and the farmland tax relief credit. Beginning in tax year 2010, replace these existing credits with a new, per acre farmland preservation credit, using most of the current law funding for the existing credits, under which a claimant may claim as a credit against income taxes an amount calculated by multiplying the claimant's qualifying acres by one of the following amounts:

- a. \$10, if the qualifying acres are located in a farmland preservation zoning district and are also subject to a farmland preservation agreement that is entered into after the budget's effective date;
- b. \$7.50, if the qualifying acres are located in a farmland preservation zoning district, but are not subject to a farmland preservation agreement that is entered into after the budget's effective date; or
- c. \$5, if the qualifying acres are subject to a farmland preservation agreement that is entered into after the budget's effective date, but are not located in a farmland preservation zoning district.

Specify that that credit may be claimed against state income taxes required of persons filing as individuals and fiduciaries, corporations, or insurance companies. Provide that if the allowable amount of the credit claim exceeds the income taxes otherwise due on the claimant's income, if any, the Department of Revenue would have to certify the amount not used to offset income taxes to the Department of Administration for payment to the claimant.

Specify that the maximum amount of the credits that may be claimed in any fiscal year is \$27,280,000 (due to the 1% across-the-board reductions, the amounts provided in 2010-11 under the two sum certain appropriations created to make credit payments would total only \$27,007,200). Provide that if the total amount of eligible claims exceeds \$27,280,000, the excess claims would have to be paid in the next succeeding fiscal year to ensure that the funding limit is not exceeded.

For 2011-12 and each succeeding fiscal year, require DOR to prorate the per acre amounts based on the Department's estimate of the amount of eligible claims to be filed for that fiscal year, and to account for any excess claims from the preceding fiscal year. Specify that if a

payment to which an eligible claimant is entitled is delayed because the claim was an excess claim, the claimant would not be entitled to any interest payment, with regard to: (a) the delayed claim; or (b) any other refund to which the claimant is entitled if that other refund is claimed on the same income tax return as the per acre farmland preservation credit.

DISCUSSION POINTS

1. The Governor's recommended changes to the farmland preservation tax credit take up some of the recommendations of the Working Lands Initiative Group, which was convened by the Secretary of the Department of Agriculture, Trade and Consumer Protection (DATCP). The Working Lands Initiative Group was made up of members from the following interest areas: agricultural and environmental groups; builders and realtors groups; businesses and business groups; and county and municipal government associations. One of the recommendations of the group included updating the existing farmland preservation program to improve agricultural planning and zoning, increase tax credits, and improve the flexibility of local governments to administer the program.

2. Beginning after tax year 2009, the Governor's recommendations would essentially end both the farmland preservation tax credit, except for those claimants under an existing farmland preservation agreement, and the farmland tax relief credit. These credits would be replaced with a new, per acre farmland preservation credit using most of the current law funding for the existing credits. The total funding available for the new credit in 2010-11 would be \$27,007,200.

3. The farmland preservation tax credit program has historically been intended to carry out three different policy goals: (a) to preserve agricultural land and open space and encourage local land use planning; (b) to provide tax relief to owners of agricultural land; and (c) to encourage compliance with state soil and water conservation standards. The farmland tax relief credit is solely a property tax relief program for farmers.

4. The proposed per acre credit would continue features intended to pursue the policy goals of preserving farmland, encouraging local land use planning, and encouraging compliance with soil and water conservation standards (the specific policy proposals related to land use, planning, and soil and water conservation are dealt with in a separate LFB paper). However, the property tax relief aspects of the existing credits would not be a feature of the proposed credit.

5. The Working Lands Initiative Group report indicates that Wisconsin is at a turning point in that "the extensive farmland that has characterized our character as a dairy state is rapidly disappearing to development." Past studies have identified the farmland areas in southeastern Wisconsin, along with portions of northern Illinois, as the one of the most threatened, prime agricultural areas in the country. Table 1 compares the acreage of land in farms in the state over the past 28 years according to the United State Department of Agriculture's National Agricultural Statistical Service. A "farm" for this purpose means any establishment with \$1,000 or more of agricultural products produced and sold. Since 1980, farm acreage in the state has dropped by 3.4 million acres, or 18.3%. Many of these farmland acres were lost in south central and southeast Wisconsin.

TABLE 1**Comparison of the Number of Wisconsin Acres in Farms**

<u>Year</u>	<u>Acres</u>	<u>% Change</u>
1980	18,600,000	
1990	17,600,000	-5.4%
2000	16,200,000	-8.0
2007	15,200,000	-6.2

6. The loss of one million acres in farms since 2000 has occurred despite the state's institution of use value assessment on agricultural land, which began in the mid to late 1990s and was fully implemented for property taxes levied in 2000 (payable in 2001). As the Working Lands Initiative Group acknowledged, use value assessment of agricultural land has overshadowed the state's farmland tax credits in terms of tax relief. Table 2 provides an indication of the property tax relief that has been provided on land classified as agricultural land for property tax purposes since the institution of use value assessment (the acreage shown in Table 2 is less than that in Table 1 because farms contain some land that is not classified as agricultural). As shown in table, property taxes on agricultural land have declined from \$153.1 million in tax year 1999(00) to an estimated \$37.5 million in 2008(09). This represents a 75.5% decline in property taxes levied on agricultural land in the state. During this same period, total net property tax levies increased by 58.5%.

TABLE 2**Net Property Taxes on Agricultural Land**

<u>Year</u>	<u>Net Taxes</u>	<u>Change</u>	<u>Cumulative Change</u>	<u>Acres</u>	<u>Change</u>	<u>Cumulative Change</u>	<u>Tax/Acre</u>	<u>Change</u>	<u>Cumulative Change</u>
1999(00)	\$153,097,257			13,022,973			\$11.76		
2000(01)	105,876,469	-30.8%	-30.8%	12,792,631	-1.8%	-1.8%	8.28	-29.6%	-29.6%
2001(02)	101,286,491	-4.3	-33.8	12,759,643	-0.3	-2.0	7.94	-4.1	-32.5
2002(03)	56,239,695	-44.5	-63.3	12,611,329	-1.2	-3.2	4.46	-43.8	-62.1
2003(04)	39,540,654	-29.7	-74.2	12,533,787	-0.6	-3.8	3.15	-29.4	-73.2
2004(05)	39,294,326	-0.6	-74.3	12,452,012	-0.7	-4.4	3.16	0.3	-73.1
2005(06)	37,141,705	-5.5	-75.7	12,360,428	-0.7	-5.1	3.00	-5.1	-74.5
2006(07)	36,086,188	-2.8	-76.4	12,274,258	-0.7	-5.7	2.94	-2.0	-75.0
2007(08)	37,467,520	3.8	-75.5	12,223,703	-0.4	-6.1	3.07	4.4	-73.9
2008(09)	37,500,000*	0.1	-75.5	12,173,356	-0.4	-6.5	3.08	0.3	-73.8

*Estimated based on preliminary tax information.

7. The amounts in Table 2 are net taxes after property tax credits that are included on the property tax bill, such as the school levy credit, lottery credit, and first dollar credit, which was first applied to 2008(09) taxes. Under use value assessment, some of the property taxes on agricultural land were shifted to other property tax classifications on farms, such as improvements and forest land. However, the amounts do not include the additional property tax relief on land

associated with the farmland tax relief and the farmland preservation income tax credits, which total an estimated \$26.5 million in 2008-09.

8. Under use value assessment, if agricultural land is converted to another use, a conversion charge is imposed. The charge is based on the number of acres sold and the difference between the market value per acre of agricultural land sold in the county and the use value per acre of agricultural land in the county, both in the prior year. The financial benefits of use value assessment, along with the potential cost associated with converting land out of agriculture could be considered strong incentives to keep land in agricultural production. However, despite these incentives, land continues to be converted out of agricultural use in the state.

9. Since use value assessment has dramatically reduced agricultural property taxes, it could be argued that the continued expenditure of state funds for this purpose is no longer necessary. Deleting the farmland preservation credit entirely would make \$12,157,200 GPR available for other purposes. Similarly, deleting the \$14,850,000 SEG lottery fund revenues used for the new farmland preservation credit would increase the estimated funding available for the lottery credit by 12.4% in 2009-10. [Alternative 8]

10. However, as acknowledged by the Working Lands Initiative Group, proponents of the land use aspects of the farmland preservation credit contend that making the tax credit contingent on local planning and zoning encourages counties and municipalities to make planning, zoning, and land use decisions that may not otherwise be made. In part, local officials have made these land use and planning decisions in order to make the tax credit available to landowners within their jurisdictions. While not totally precluding the development of agricultural land, the existing program's land use planning and exclusive agricultural zoning requirements have also forced local officials to make affirmative rezoning decisions regarding where development should occur, and this has inhibited development in some areas of the state. The new, per acre farmland preservation credit would retain and build on the planning and zoning aspects of the current farmland preservation credit. Proponents contend that eliminating the farmland preservation credit program entirely would remove a strong incentive for counties and municipalities to perform planning and zoning activities.

11. Also, under the Governor's recommendations, DATCP would be allowed to modify existing farmland preservation agreements and enter into new agreements if landowners meet certain land use and soil and water conservation compliance conditions. Without a tax credit as an incentive for subjecting their land to those conditions, it is unlikely any landowners would enter into such agreements. Therefore, deleting the funding for the tax credit could eliminate any land use planning in those areas of the state where farmland preservation credits are paid under agreements rather than exclusive agricultural zoning.

Amount of Per Acre Credits

12. The new, per acre credit would first take effect for tax year 2010 and would have total funding of \$27,007,200 in 2010-11, from two appropriations: (a) a \$12,157,200 GPR appropriation associated with the current law funding for the existing farmland preservation credit; and (b) a \$14,850,000 SEG appropriation from the lottery fund associated with the current law funding for the farmland tax relief credit. However, the bill also specifies that a maximum amount

of \$27,280,000 in credits may be claimed in any fiscal year. These amounts are different due to the 1% across-the-board reductions made to most sum certain appropriations under a separate provision in the bill. The Committee could amend the statutory amount to equal the amount of funding available for the new credit in 2010-11. [Alternative 2]

13. One question with regard to the new, per acre credit is how many acres will qualify for payments. It is unlikely that all 15.2 million acres in farms, as classified by the U.S. Department of Agriculture, or the 12.2 million acres classified as agricultural land for property tax purposes, would qualify for the new credit. However, it would likely include some subset of the acres currently receiving the existing farmland tax relief credit, which is paid to over 52,000 claimants across the state. Using the current state average of 200 acres per farm, that credit is currently paid on an estimated 10.4 million acres in the state. Some of these acres would not qualify for the new credit because they are not subject to the land use requirements required under that credit.

14. Because the new credit would have land use requirements, the number of qualifying acres could be much more limited in the early years of the credit. All exclusive agricultural zoning ordinances in effect on the effective date of the bill would continue to be in effect until they expire or are recertified as a farmland preservation zoning ordinance by DATCP. Claimants subject to these ordinances would be eligible to claim the new, per acre credit for tax year 2010. Existing farmland preservation agreements holders could file for a credit under the current law credit formula or they could modify their agreement in order to be eligible for the new, per acre credit. However, they could not file for both the existing farmland preservation credit and the new credit. DATCP would have the authority to enter into new farmland preservation agreements with landowners who could then claim the new credit. However, these acres would have to be within an agricultural enterprise area allowed under the bill, and prior to 2012, DATCP could only designate a combined 200,000 acres in these enterprise areas.

15. Under the bill, a tax credit claimant could receive a \$5, \$7.50, or \$10 per acre tax credit depending on whether the qualifying acres are subject to zoning restrictions, a farmland preservation agreement, or both. If the ongoing funding level (\$27,007,200) is insufficient to fund these per acre amounts, DOR would be required to prorate the credits (after the first year). Therefore, the actual per acre amounts would depend on the number of qualifying acres on which the credit would be claimed. How owners of the following types of land react to the per acre credit and its requirements will impact the number of qualifying acres and size of the per acre credits: (a) land currently subject to exclusive agricultural zoning, on which current farmland preservation claimants could claim the per acre credit; (b) land currently subject to exclusive agricultural zoning on which the current farmland preservation credit is not being claimed, but whose owners could choose to claim the new credit; (c) land under an existing farmland preservation agreement, where the agreement holder would modify their agreement in order to claim the new credit; and (d) land on which the per acre credit could be claimed under a new agreement, as allowed under the bill.

16. DATCP staff estimate that current farmland preservation claimants have 2,960,000 acres subject to exclusive agricultural zoning, which would initially qualify for the per acre tax credit in 2010. These landowners, who are already subject to the land use and soil and water conservation compliance requirements associated with the existing credit, would likely claim the per acre credit. In addition, DATCP estimates that 180,000 additional acres could be under new zoning

ordinances and qualify for the new credit sometime in 2010. Therefore, DATCP estimates that a total of 3,140,000 acres under exclusive agricultural zoning would likely receive a credit in 2010. Under the bill, these acres would only be eligible for the \$7.50 per acre credit, which means the cost of the new credit could be as low as \$23.6 million.

17. The deletion of the farmland tax relief credit could motivate landowners currently subject to exclusive agricultural zoning who, for some reason, have decided not to claim the current farmland preservation credit to claim the new credit in order to replace the lost credit. Under the bill, these landowners would be subject to the same conversion fee for any land rezoned out of exclusive agricultural zoning regardless of whether or not they claim the per acre credit, which would eliminate another reason these landowners have for not claiming a credit. By comparing the areas of the state subject to exclusive agricultural zoning with the number of farmland tax relief claimants in those areas minus the existing farmland preservation claimants, it is estimated that up to an additional 2,100,000 acres (using an average of 200 acres per claimant) could qualify for the per acre credit at some point.

18. In addition, DATCP estimates that existing farmland preservation agreement holders currently receive the tax credit on 740,000 acres. These agreement holders could either modify their agreement to claim the new credit or claim the existing farmland preservation credit. DATCP could also enter into new agreements with landowners on an additional 200,000 acres in agricultural enterprise areas by 2012.

19. Therefore, although not likely in the early years of the new credit, a total of 6,180,000 acres could possibly be eligible for the per acre credit at sometime in the future. Table 3 summarizes the types of acres that could qualify for the credit over the next several years. At an average credit of \$7.50 per acre, the cost of the credit could be as high as \$46.35 million, if the appropriation was not limited to \$27,007,200 and these acres qualify for the credit. Conversely, if the funding is not increased and these acres eventually qualify for the credit, the average credit under the new program would drop to \$4.37 per acre. The funding in the bill is sufficient to support \$7.50 per acre credits on 3,600,000 acres, so an increase of more than 460,000 acres above the DATCP estimate under point #16 would trigger proration of credit amounts.

TABLE 3

Estimate of Potentially Qualifying Acres

<u>Type</u>	<u>Acres</u>	<u>Cumulative Total</u>
Exclusive Agricultural Zoning		
Current farmland preservation credit claimants	2,960,000	2,960,000
Those not claiming the farmland preservation credit	2,100,000	5,060,000
Those subject to new zoning	180,000	5,240,000
Agreement Holders		
Modified current agreements	740,000	5,980,000
New agreements	200,000	6,180,000

Distribution of Tax Credit Funding

20. Replacing the two existing credits and their funding with a new, per acre credit will change how that funding is distributed throughout the state. In 2007, there were over 52,000 non-corporate landowners that claimed the farmland tax relief credit compared to nearly 18,000 claimants for the farmland preservation credit. Attachment 1 to this paper lists the number of claimants and the total amount of credits claimed in each county in 2007 for the farmland preservation and farmland tax relief credits, as well as the percentage of farmland tax relief credit claimants who also claimed the farmland preservation credit.

21. Since the land use requirements of the new credit are similar to those under the existing farmland preservation credit, the initial pool of claimants under the new credit would likely consist primarily of those claimants who can currently claim the farmland preservation credit under exclusive agricultural zoning. Therefore, the existing funding for the farmland tax relief credit, which is more widely spread throughout the state, would likely instead be targeted toward those areas of the state currently subject to exclusive agricultural zoning.

22. Many landowners who are currently claiming a farmland tax relief credit would not be initially eligible for the new credit. Specifically, current farmland tax relief claimants in counties with little or no agricultural zoning would likely be the ones who would lose their farmland tax relief credit, and not initially be eligible for a new credit. Attachment 2 categorizes the state's counties by the amount of exclusive agricultural zoning. Comparing the lists of counties with no or some zoning from Attachment 2 with the participation data from Attachment 1 can provide an indication of the number of farmland tax relief claimants in each county who could lose their farmland tax relief credit and not be eligible for the new credit. Some claimants in these counties could claim the new credit if they have an existing farmland preservation agreement and DATCP agrees to modify their existing agreement. Also, a limited number in a designated agricultural enterprise area could enter into a new agreement and have their acres be eligible for the credit. Over time, if more counties or municipalities carry out the zoning required to make landowners eligible for the new credit, the credit amounts may be distributed more evenly across the state, similar to the existing farmland tax relief credit.

Administration of the Credit

23. When the Working Lands Initiative Group initially proposed the per acre farmland preservation credit, their proposal assumed that the new credit would be funded from a sum sufficient appropriation. Under such an approach, the amounts in the appropriations schedule would reflect an estimate of credit claims, but the actual expenditures could be higher or lower than the estimate. All credit claims would be fully funded, so proration of the per acre amounts would not be needed. Although the potential credit total would be lower than the bill's appropriations if DATCP's participation estimate is accurate, there is a chance that considerably more could be spent if a high proportion of farmland tax relief claimants in counties with exclusive agricultural zoning decide to claim the credit. Given this uncertainty, the Committee could retain the bill's funding level as the sum sufficient estimate if this approach is used.

24. A second decision under a sum sufficient approach relates to the fund that would be

used to provide the variable funding. Either the GPR or SEG appropriation could be made sum sufficient, with the other remaining as a sum certain amount. If the SEG appropriation is the sum sufficient amount (Alternative 3a), overages or underages would affect the net lottery and gaming proceeds available for distribution in the following year as lottery and gaming credits. If the GPR appropriation is used (Alternative 3b), changes from the budgeted amount would affect the general fund's closing balance for that year.

25. The bill would fund the proposed credit from a sum certain appropriation. Therefore, rather than allowing the amount appropriated to float to fully fund credit claims each year, a fixed \$27,007,200 would be available for expenditure. Under the bill, if the tax year 2010 total amount of credits exceeds the \$27,007,200 available for 2010-11, DOR would have to suspend paying additional claims because it could only pay claims up to the appropriation amount. On July 1, 2011, when the 2011-12 fiscal year appropriation becomes available for expenditure, DOR could pay the remaining claims for the 2010 tax year. Then, for the 2011 tax year, DOR would be required to prorate the per acre amounts in order to spend only the \$27,007,200 appropriated in 2011-12, minus the amounts already expended from the appropriation to pay the 2010 tax year claims.

26. DOR indicates that it could administer the per acre credit as it is proposed under the bill. However, this could prove to be difficult, particularly during the early years of the new credit, when it is unclear how many acres would be eligible. Also, it is likely that the number of eligible acres could grow each year during the early years of the credit. No information would be available to DOR to determine how many additional acres would qualify for the credit. Therefore, DOR could have to prorate the per acre credit amounts, without knowledge of how many new qualifying acres would be coming into the program each year. Given the unknowns associated with the number of qualifying acres, the amount appropriated for the credit could be exceeded if acreage grows faster than anticipated, which could lead to tax processing delays and part of the funding that would otherwise be available for one tax year being used to fund the credits from a previous tax year.

27. From a taxpayer perspective, the bill's provisions related to the administration of the new credit could also be problematic. If the appropriation is insufficient to cover all the credit claims in a given tax year, tax filers who file their taxes nearer the end of the tax filing period would have to wait several months until DOR processes their refund because DOR would not have access to the next year's appropriation. This could lead to confusion among taxpayers as to why their return has not yet been processed and to delays in receiving any refund they may have coming.

28. Other state tax credits administered by DOR require another state agency, that is more familiar with the businesses receiving those credits, to gather information and certify to DOR the number of businesses that would likely apply for the tax credit. For example, the Department of Commerce has a role in a number of income tax credit programs that can provide capital financing either through refundable credits (e.g., dairy manufacturing facilities) or reduced tax liabilities (e.g., development zones) that are based on certain investment expenditures. Typically, Commerce is responsible for certifying individual businesses or expenses as eligible for tax credits and allocating the credits to eligible taxpayers. For some credits, Commerce notifies DOR of the number of credits certified and the taxpayer files the Commerce certification with their return.

29. A similar certification process could be established under the proposed per acre credit. A landowner wishing to claim the per acre tax credit could submit a request for certification to DATCP. The landowner would have to provide DATCP with the number of acres they seek to have qualified for the credit and a signed verification that the landowner meets the credit's income and land use requirements, and is in compliance with state soil and water conservation standards. Only those landowners receiving a DATCP certification would be eligible for the credit. All this information could be made available to DOR in the event of an audit. The certification would not have to be completed each year for the same landowner, but if a landowner has newly qualifying acres, those acres would have to be certified. DATCP could be required to periodically re-certify those landowners with no changes to their qualifying acres. DATCP could be required to inform DOR by August 15, of the tax year for which the credit would be filed, of how many acres have been certified for the credit. DOR would then know both the amount of funding available for the credit for the next tax year and the number of acres that would qualify for the credit. DOR staff could then set the prorated per acre amounts, if needed, in time to publish their tax forms for the next filing year. If the Committee chose this option, it could require DATCP to promulgate emergency rules relating to the credit and the certification process [Alternative 4].

30. DATCP officials indicate that they do not currently have the ability, or the information on claimants, to make a certification decision. Under this alternative, DATCP would be required to have initial contact with tens of thousands of potential claimants who could claim the credit. The Department would have to obtain information on income, acreage, the land use provisions the acreage is subject to, and whether the landowner is compliant with state soil and water standards. However, if the landowner is required to verify their income, acreage, land use, and soil and water conservation qualifications, DATCP staff would primarily have to take account of the qualifying acres. Also, under the bill, DATCP would be the agency signing farmland preservation agreements with landowners, so the agency would have some of this information. All of this information submitted by the landowner would have to be available for audit as it would regardless of whether the Committee requires DATCP to certify the qualifying acres.

Use of Lottery and Gaming Revenue

31. Under Article IV, Section 24, of the Wisconsin Constitution, the net proceeds from the lottery and all moneys received by the state related to bingo and pari-mutuel racing must be used for property tax relief for residents of the state, as provided by law. The Legislature has complied with this directive by using these revenues for the lottery and gaming credit, which directly reduces the property tax bills of those owning a primary residence in the state, and for the farmland tax relief credit, which provides an income tax credit based on property taxes paid on agricultural land.

32. The bill would delete the farmland tax relief credit and use the funding for that credit to partially fund the new, per acre farmland preservation credit. The amount of the new credit would be based solely on a claimant's eligible acres and the level of land use control applying to that acreage. There would no longer be any connection to the property taxes paid by the claimant. The only connection to property taxation is that the claimant must be responsible for paying the property taxes levied against the qualifying acreage.

33. The shift in emphasis and formula for the new credit may raise a question about whether it is providing property tax relief as required by the constitution. Since the credit will probably be \$7.50 per acre in most cases and the average property tax on agricultural land has been about \$3 per acre, it could be argued that the credit goes beyond providing property tax relief. Even considering that the SEG funding represents only 55% of the total funding, this would fund \$4.12 per acre out of the \$7.50 total, which still exceeds \$3. Although a court may construct a rationale to validate this use of lottery and gaming proceeds, it is also possible that a court could hold that this use violates the constitutional requirement.

34. Replacing the \$14,850,000 SEG provided under the bill for the new credit with GPR would remove any constitutional concern (Alternative 5). This would increase lottery and gaming funding in 2010-11 by the same amount, which would increase the average lottery and gaming credit by \$10, from \$77 to \$87. If the Committee is concerned about the constitutional issue, but is hesitant to increase GPR spending for this program, the SEG funding portion of the Governor's proposal could be deleted, either restoring the farmland tax relief credit (Alternative 6a) or using the SEG funds to increase the lottery and gaming credit (Alternative 6b). To match the remaining GPR funding for the new credit with the credit formula, the per acre credit amounts could all be reduced by 55%.

35. A final option, which could diminish any constitutional concern, but perhaps not entirely eliminate the issue, would be to reduce SEG funding to an amount commensurate with a \$3 per acre payment. With most claims being at \$7.50 per acre, this would fund 40% of that amount. SEG funding under this option could be set at \$10,800,000, with the remaining \$4,050,000 going to increase the average lottery credit by about \$2.50. The reduction in SEG funding for the new credit could either be replaced with GPR funding (Alternative 7a) or accommodated within the credit formula by reducing the per acre credit amounts by 15% (Alternative 7b).

ALTERNATIVES

1. Approve the Governor's recommendation to create a new, per acre farmland preservation income tax credit that would replace both the farmland preservation tax credit, except for those claimants under an existing farmland preservation agreement, and the farmland tax relief credit beginning in tax year 2010. Provide the new, per acre credit total funding of \$27,007,200 in 2010-11, from two appropriations: (a) a \$12,157,200 GPR appropriation associated with the current law funding for the existing farmland preservation credit; and (b) a \$14,850,000 SEG appropriation from the lottery fund associated with the current law funding for the farmland tax relief credit.

Specify that the maximum amount of the credits that may be claimed in any fiscal year is \$27,280,000. Provide that if the total amount of eligible claims exceeds \$27,280,000, the excess claims would have to be paid in the next succeeding fiscal year to ensure that the funding limit is not exceeded. For 2011-12 and each succeeding fiscal year, require DOR to prorate the per acre amounts based on the Department's estimate of the amount of eligible claims to be filed for that fiscal year, and to account for any excess claims from the preceding fiscal year. Specify that if a payment to which an eligible claimant is entitled is delayed because the claim was an excess claim, the claimant would not be entitled to any interest payment, with regard to: (a) the delayed claim; or

(b) any other refund to which the claimant is entitled if that other refund is claimed on the same income tax return as the per acre farmland preservation credit.

2. Modify the Governor's recommendation by setting the statutory funding level (\$27,280,000 under the bill) equal to \$27,007,200, which equals the total funding available under the bill from the GPR and SEG appropriations created to pay the per acre credits.

3. Modify the Governor's recommendation by converting one of the following appropriations from a sum certain appropriation to a sum sufficient appropriation:

- a. the \$14,850,000 SEG appropriation from the lottery and gaming fund; or
- b. the \$12,157,200 GPR appropriation.

4. Modify the Governor's recommendation by requiring DATCP to certify the number of qualifying acres that would be eligible for the per acre farmland preservation tax credit. Specify that DATCP would be required to notify DOR of the number of qualifying acres by August 15 of the tax year for which credits on those acres would be claimed. Require DOR to use this information in determining any required proration to the per acre amounts of the credits.

Provide DATCP the authority to promulgate emergency rules related to the certification process for the proposed credit that would have to specify income, acreage, land use, and soil and water conservation standards compliance information, and any other requirements or information related to the credit that the Department determines would be needed from landowners requesting certification. Specify that after the initial certification, DATCP would not have to certify each claimant's acres each year. Require DATCP to certify any changes in a claimant's qualifying acres and to periodically re-certify claimants with no changes in qualifying acres.

5. Modify the Governor's recommendation by deleting the use of \$14,850,000 SEG in 2010-11 for the per acre farmland preservation credit and providing \$14,850,000 GPR in 2010-11 for this purpose. Increase funding for the lottery and gaming credit in 2010-11 by \$14,850,000 SEG.

ALT 5	Change to Bill
	Funding
GPR	\$14,850,000

6. Modify the Governor's recommendation by deleting the use of \$14,850,000 SEG in 2010-11 for the per acre farmland preservation credit. Reduce the per acre credit amounts by 55% to reflect this funding reduction. Set the maximum, annual credit level at \$12,157,200. In addition, do one of the following:

- a. restore the farmland tax relief credit and provide \$14,850,000 SEG in 2010-11 for this purpose; or
- b. increase funding for the lottery and gaming credit in 2010-11 by \$14,850,000 SEG.

7. Modify the Governor's recommendation by reducing SEG funding for the per acre farmland preservation credit in 2010-11 by \$4,050,000 and increasing SEG funding for the lottery and gaming credit in 2010-11 by the same amount. In addition, do one of the following:

a. Provide an additional \$4,050,000 GPR in 2010-11 for the per acre farmland preservation credit to replace the SEG reduction.

ALT 7a	Change to Bill Funding
GPR	\$4,050,000

b. Reduce the per acre credit amounts for the per acre farmland preservation credit by 15% and set the maximum, annual credit level at \$22,957,200.

8. Delete the Governor's recommendation. In addition, beginning with tax year 2010, delete the current farmland preservation credit, except for existing agreement holders, and the farmland tax relief credit. Delete \$12,157,200 GPR in 2010-11 for funding associated with the farmland preservation credit and \$14,850,000 SEG for funding associated with the farmland tax relief credit. Increase the estimated funding available for the lottery credit by \$14,850,000 SEG associated with deleting the farmland tax relief credit.

ALT 8	Change to Bill Funding
GPR	- \$12,157,200

9. Delete the Governor's recommendation.

Prepared by: Al Runde
Attachments

ATTACHMENT 1

2008 Farmland Credits by County ⁽¹⁾

	<u>Farmland Tax Relief</u>		<u>Farmland Preservation</u>		<u>Farmland Preservation Participation Rate</u>
	<u>Count</u>	<u>Amount</u>	<u>Count</u>	<u>Amount</u>	
Adams	189	\$78,110	23	\$13,641	12.2%
Ashland	69	22,202	9	2,216	13.0
Barron	962	264,137	330	252,165	34.3
Bayfield	131	33,743	25	19,425	19.1
Brown	978	208,350	653	347,841	66.8
Buffalo	753	344,280	153	124,037	20.3
Burnett	144	46,442	20	14,218	13.9
Calumet	760	162,974	251	122,976	33.0
Chippewa	1,168	290,155	60	19,557	5.1
Clark	1,622	364,713	65	30,548	4.0
Columbia	1,326	497,644	773	495,587	58.3
Crawford	649	215,678	140	142,452	21.6
Dane	2,496	975,480	1,568	922,201	62.8
Dodge	1,914	565,403	748	439,544	39.1
Door	450	103,800	57	26,315	12.7
Douglas	48	12,497	NA	NA	NA
Dunn	1,078	372,165	132	101,441	12.2
Eau Claire	717	173,402	206	136,892	28.7
Florence	13	4,070	NA	NA	NA
Fond du Lac	1,500	376,066	1,097	589,601	73.1
Forest	39	10,691	NA	NA	NA
Grant	1,961	568,389	736	410,078	37.5
Green	1,089	381,529	182	121,207	16.7
Green Lake	510	150,898	230	135,867	45.1
Iowa	1,100	349,422	939	712,601	85.4
Iron	12	3,000	NA	NA	NA
Jackson	508	219,440	44	30,901	8.7
Jefferson	1,182	339,356	859	480,462	72.7
Juneau	455	167,436	46	33,893	10.1
Kenosha	206	96,242	23	13,293	11.2
Kewaunee	817	173,654	604	310,523	73.9
La Crosse	524	215,283	257	211,946	49.0
Lafayette	1,068	390,834	504	409,436	47.2
Langlade	333	100,027	197	94,001	59.2
Lincoln	208	66,700	6	2,290	2.9
Manitowoc	1,178	261,938	770	447,398	65.4
Marathon	1,867	551,055	307	199,467	16.4
Marinette	332	94,554	17	6,266	5.1
Marquette	267	111,431	30	20,901	11.2
Menominee	NA	NA	NA	NA	NA

ATTACHMENT 1 (continued)

2008 Farmland Credits by County ⁽¹⁾

	<u>Farmland Tax Relief</u>		<u>Farmland Preservation</u>		<u>Farmland Preservation Participation Rate</u>
	<u>Count</u>	<u>Amount</u>	<u>Count</u>	<u>Amount</u>	
Milwaukee	130	\$33,306	22	\$4,704	16.9%
Monroe	982	344,854	71	36,080	7.2
Oconto	717	186,882	23	10,494	3.2
Oneida	35	16,602	NA	NA	NA
Outagamie	1,082	217,387	327	125,150	30.2
Ozaukee	277	95,149	144	99,460	52.0
Pepin	366	128,070	55	34,196	15.0
Pierce	880	318,087	122	97,850	13.9
Polk	700	225,442	62	44,031	8.9
Portage	731	270,381	85	60,067	11.6
Price	140	39,462	14	6,699	10.0
Racine	377	142,072	36	19,625	9.5
Richland	685	227,612	407	326,765	59.4
Rock	1,126	379,517	788	438,940	70.0
Rusk	316	69,137	33	16,514	10.4
St. Croix	923	277,389	216	122,578	23.4
Sauk	1,260	464,506	525	401,960	41.7
Sawyer	68	23,109	6	3,686	8.8
Shawano	1,172	305,501	339	179,629	28.9
Sheboygan	878	221,681	576	321,997	65.6
Taylor	603	180,790	24	17,298	4.0
Trempealeau	1,146	382,325	288	191,700	25.1
Vernon	1,209	364,384	254	206,638	21.0
Vilas	22	9,010	NA	NA	NA
Walworth	683	257,060	398	210,668	58.3
Washburn	137	40,705	8	9,230	5.8
Washington	664	216,771	118	57,353	17.8
Waukesha	363	139,334	97	52,328	26.7
Waupaca	817	240,334	96	50,791	11.8
Waushara	351	126,045	28	23,244	8.0
Winnebago	648	168,163	147	76,659	22.7
Wood	740	219,640	28	18,394	3.8
Other ⁽²⁾	<u>700</u>	<u>234,901</u>	<u>262</u>	<u>148,320</u>	<u>37.4</u>
Total ⁽³⁾	52,172	\$16,127,232	17,998	\$11,388,689	34.5%

⁽¹⁾ Data on the number of claims and credit amounts processed between August 1, 2007, and July 31, 2008.

⁽²⁾ Credits on returns for which no county is identified.

⁽³⁾ Totals do not add due to non-disclosure in certain counties.

NA= Data for five or fewer claims not disclosed by DOR.

ATTACHMENT 2

Degree of Exclusive Agriculture Zoning by County

Counties With No Exclusive Agricultural Zoning (28)

Ashland	Juneau	Sawyer
Bayfield	Lincoln	Taylor
Buffalo	Marinette	Trempealeau
Chippewa	Menominee	Vilas
Douglas	Monroe	Washburn
Florence	Oconto	Waupaca
Forest	Oneida	Waushara
Green	Pepin	Wood
Iron	Price	
Jackson	Rusk	

Counties With Some Exclusive Agricultural Zoning (29)

Adams	Grant	Portage
Barron	Green Lake	Racine
Burnett	Lafayette	Sauk
Calumet	Langlade	Shawano
Clark	Marathon	St. Croix
Crawford	Marquette	Vernon
Dodge	Milwaukee	Washington
Door	Outagamie	Waukesha
Dunn	Pierce	Winnebago
Eau Claire	Polk	

Counties With Land Primarily Under Exclusive Agricultural Zoning (15)

Brown	Jefferson	Ozaukee
Columbia	Kenosha	Richland
Dane	Kewaunee	Rock
Fond du Lac	La Crosse	Sheboygan
Iowa	Manitowoc	Walworth