

July 2, 2009

Budget Bill is Approved

By Jordan Lamb

On Monday, June 29, 2009, just hours before the end of the fiscal year, Governor Jim Doyle signed the State Budget Bill. Governor Doyle vetoed about \$10 million in spending from the bill sent to him by the Legislature. Interestingly, this is the first time in 32 years that the budget bill has been completed before the start of the next biennium, on July first.

There were a number of provisions in the final budget bill that were important to Wisconsin farmers including the following:

- **Working Lands Initiative Created:** The Working Lands Initiative is intended to help keep Wisconsin farmland in production. The proposal consists of three key components: revisions to the current Farmland Preservation Program; creation of authority for farmers and local governments to establish voluntary Agricultural Enterprise Areas; and establishment of a state grant program to assist with the purchase of Agricultural Conservation Easements (PACE). To review a more detailed summary of the Working Lands Initiative that was contained in the budget bill, go to: [http://www.wisconsinfarmland.org/documents/Summary%20of%20JFC%20action%20DATCP%20-%205-20-09 .pdf](http://www.wisconsinfarmland.org/documents/Summary%20of%20JFC%20action%20DATCP%20-%205-20-09.pdf) on the Internet.
- **Use Value Assessment – NO CHANGE TO CURRENT LAW:** During the budget debate, the State Senate adopted an amendment to their version of the budget bill that would have modified the definition of agricultural land for property tax purposes. Under the proposed change, any land that was platted OR zoned for residential, commercial or industrial use could *not* have been considered “agricultural land” and consequently, would not be eligible for use value assessment. **The conference committee REMOVED this proposed change, leaving use value assessment unchanged.**
- **No New Slaughter Fee:** The Governor’s budget proposed a per animal fee for all cattle, hogs, calves and poultry slaughtered in Wisconsin. The revenue generated from this fee would have been used to pay for four animal health staff persons at DATCP and seven DATCP meat inspectors. The Legislature removed the slaughter fee and, instead, paid for the animal health positions with a transfer of money from the Agricultural Chemical Cleanup Program.

- **CAFO Permit Fees Increased:** The holder of a WPDES permit for a concentrated animal feeding operation will now be required to pay an annual fee of \$345 to the Department of Natural Resources. \$95 of each annual fee that is paid will be credited to DNR's account relating to the management of the state's water resources and the state's fishery resources. Finally, the DNR is required to annually report to the legislature describing the use of the moneys collected from this fee.
- **No Capital Gains Tax Changes for Farmers:** Gains and losses from the sales of capital assets (*i.e.* the sale of a business, or a portion of a business) are reportable for both Wisconsin and federal income tax purposes. Wisconsin previously allowed a state income tax exclusion for 60% of the net capital gain from assets held more than one year. The budget bill decreases the percentage of capital gains that are excluded for purposes of calculating income subject to tax from 60% to 30% **except for gains on certain assets used in farming. The 60% capital gain tax exclusion is maintained for income from the sale of farm livestock, farm real property, depreciable farm property, or farm equipment that is held more than one year.**
- **Beginning Farmer Tax Credit / Refundable Farm Asset Owner Tax Credit:** The bill creates a refundable beginning farmer tax credit and a refundable farm asset owner tax credit for tax years beginning after December 31 2010.

The beginning farmer tax credit equals the amount paid by the beginning farmer to enroll in a financial management program in the year to which the claim related. The credit can be claimed on one-time basis, and the maximum credit that can be claimed is \$500.

The farm asset owner tax credit equals 15% of the lease amount received by an established farmer in the year to which the claim related. The credit can only be claimed for the first three years of any lease of the established farmer's assets to a beginning farmer. Partnerships, LLCs, and tax-option corporations could not claim the farm asset owner tax credit, but the eligibility for, and the amount of the credit would be based on the amounts received by the entities. A partnership, LLC, or tax-option corporation computes the amount of credit that each of its partners, members, or shareholders can claim in proportion to their ownership interests.

Federal Clean Water Act Developments

By Jordan Lamb

A. Court Issues Two-Year Stay on Permits for Pesticide Applications

The U.S. Court of Appeals for the Sixth Circuit has stayed until April 9, 2011, its ruling that will require anyone who applies a pesticide in, over, or near waters of the United States to obtain a Clean Water Act permit (*National Cotton Council of America v. EPA*, 6th Cir., No. 06-4630, *stay issued* 6/08/09). In a statement issued on June 15, the Environmental Protection Agency said it will use the time to issue National Pollutant Discharge Elimination System (NPDES) general permits for pesticide applications covered by the ruling. The agency also said it will help states with regulatory authority to develop their own permits and will provide outreach and education to the regulated community, which includes local governments, farmers, and foresters.

A motion by the National Cotton Council of America and other agriculture and forestry industry organizations for a full appeals court review of the three-judge panel's decision vacating the EPA rule is still pending (*National Cotton Council of America v. EPA*, 6th Cir., No. 06-4630, *motions for rehearing filed* 4/9/09.)

B. U.S. Senate Committee Acts on Clean Water Restoration Act Legislation

The Senate Environment and Public Works Committee marked up legislation last week that would amend the Clean Water Act to “clarify” its jurisdiction over the nation's waterways. The Clean Water Restoration Act (S. 787 Sen. Russ Feingold (D-Wis.)) replaces the term “navigable waters” with the term “waters of the United States” for determining which waters are protected by the act. The legislation is similar to a bill introduced last session.

Bill co-sponsors include Sen. Barbara Boxer (D-Calif.), chairman of the Senate Environment and Public Works Committee, and Sen. Benjamin Cardin (D-MD), chairman of the Environment and Public Works Subcommittee on Water and Wildlife. The bill defines waters of the United States to include all waters that are subject to the ebb and flow of the tide; territorial seas; and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds.

According to bill language, S. 787 is intended to address “confusion, permitting delays, increased costs, litigation, and reduced protections for waters of the United States” resulting from two U.S. Supreme Court decisions: *Rapanos v. United States*, 547 U.S. 715, 62 ERC 1481 (2006) and *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159, 51 ERC 1838 (2001). The Supreme Court addressed the issue most recently in *Rapanos*, although a majority of justices in that decision failed to agree on the extent of federal jurisdiction over wetlands under the Clean Water Act.

Several state and national agricultural organizations filed written comments with the Committee to state their opposition to S. 787 prior to the Committee’s mark-up of the bill. On June 12, American Farm Bureau Federation, American Forest & Paper Association, American Iron and Steel Institute, American Road and Transportation Builders Association, Associated General Contractors of America, CropLife America, Edison Electric Institute, The Fertilizer Institute, Foundation for Environmental and Economic Progress, Industrial Minerals Association-North America, International Council of Shopping Centers, NAIOP, the Commercial Real Estate Development Association, National Association of Home Builders, National Association of Manufacturers, National Cattlemen’s Beef Association, National Council of Farmer Cooperatives, National Mining Association, National Multi Housing Council, National Pork Producers Council, National Stone, Sand and Gravel Association, Public Lands Council, Responsible Industry for a Sound Environment, Southern Crop Production, United Egg Producers and the Western Business Roundtable filed a joint letter with the Committee expressing their opposition.

At the June 18, meeting of the Senate Environment and Public Works Committee, minority ranking member, Sen. James M. Inhofe (R-OK), presented a statement explaining his opposition to this legislation. Inhofe stated, “I see this bill as a significant part of a hostile agenda aimed squarely at rural America. Whether it’s new energy taxes from cap-and-trade legislation or more unfunded environmental mandates, it’s clear that this bill is yet one more raw deal for rural America.”

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Jordan Lamb is a partner at DeWitt Ross & Stevens' Capitol Square office in Madison. Jordan's law practice focuses on government relations and administrative law. She concentrates on legislative drafting, legislative research, and facilitating communication between clients and state government including administrative agencies and the State Legislature. Ms. Lamb also offers litigation support for administrative law issues. Jordan can be contacted at 608-252-9358 or at jkl@dewittross.com. For more information about DeWitt Ross & Stevens, go to www.dewittross.com.



Brought to you by:
Professional Dairy Producers of Wisconsin
N5776 County Road D, Suite 1
Fond du Lac, WI 54937
Phone: 800-947-7379
mail@pdpw.org
www.pdpw.org