



## Legislative Fiscal Bureau

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August 16, 2022

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Agriculture, Trade and Consumer Protection Request for Funding for Nitrogen Optimization Pilot and Cover Crop Insurance Rebate Programs -- Agenda Item III

### REQUEST

On June 28, 2022, the Department of Agriculture, Trade and Consumer Protection (DATCP) requested a transfer \$2,400,000 in 2022-23 from the nonpoint account of the segregated (SEG) environmental fund for the implementation of the commercial nitrogen optimization pilot program and cover crop insurance premium rebates program. Funding would include \$1,600,000 for the commercial nitrogen optimization pilot and \$800,000 for cover crop insurance rebates transferred to the appropriation under s. 20.115(7)(qf) of the statutes for soil and water resource management aids. The request fulfills a requirement of 2021 Wisconsin Act 223 (introduced as AB 727/SB 677) requiring DATCP to request supplemental funding under s. 13.101 of the statutes for the programs created under the act.

### BACKGROUND

Nitrogen is a common component of nutrients applied to agricultural fields. Although nitrogen is critical to plant growth, excess nitrogen applications in agricultural processes is known to produce nonpoint source water pollution, which may have adverse impacts on surface water quality as high nutrient loads in water bodies increase the concentration of algae, threaten native species, reduce water clarity, and deplete oxygen concentrations. Nitrogen in the form of nitrate may also have negative human health effects, and state and federal nitrate drinking water standards limit nitrate concentrations to no more than 10 parts per million (ppm). In the Wisconsin Groundwater Coordinating Council Report to the Legislature in 2021, it was estimated that the number of private wells exceeding the health standard for nitrate in Wisconsin is over 42,000, or around 6% of private wells.

The Departments of Agriculture, Trade and Consumer Protection (DATCP) and Natural Resources (DNR) operate a variety of nonpoint source water pollution abatement programs that seek to reduce soil and water runoff in urban and agricultural settings. In particular, nonpoint prevention efforts in agricultural settings often seek to optimize nutrient application used to improve crop yields by reducing total applications of nutrients, or improving timing and placement of nutrients. Current state-funded programs provide financial and technical assistance to agricultural operations to implement practices that reduce runoff or prompt more effective use of applied fertilizers and other nutrients. Cover crops are one such practice that agricultural operators may use to provide nutrients to the soil and also reduce runoff of other applied fertilizers or manure. 2021 Act 223 established a commercial nitrogen optimization pilot program and a cover crop insurance rebate program administered by DATCP to implement strategies that optimize the application of commercial nitrogen and that encourage broader use of cover crops to benefit Wisconsin soils, surface water and groundwater. (The programs are discussed in detail in subsequent sections.)

Act 223 did not provide funding for the two programs, but instead incorporated them into existing statutes for the DATCP soil and water resource management (SWRM) program. SWRM financial assistance programs are funded primarily by nonpoint account SEG, which derives mostly from tipping fees paid by landfills for each ton of solid waste disposed of in the landfill. The nonpoint account of the environmental fund has a preliminary available balance of \$10.0 million as of July, 1, 2022. Act 223 required DATCP to request that the Joint Committee on Finance supplement the current SWRM cost-sharing aids appropriation under s. 20.115(7)(qf) of the statutes with sufficient nonpoint SEG to provide nitrogen optimization grants and cover crop insurance premium rebates. Act 223 also requires that DATCP implement an emergency rule for each program.

## **ANALYSIS**

### **Commercial Nitrogen Optimization Pilot Program**

Under Act 223, the commercial nitrogen optimization pilot program is to support grants to agricultural producers that operate projects over at least two growing seasons to study the optimal application of commercial nitrogen fertilizers. Recipient producers must collaborate with a UW System institution to monitor the project on-site. The maximum grant is \$50,000, up to 20% of which could be provided to the UW institution for a given project. DATCP is to allocate grants to different areas of the state with different soil and geologic characteristics, and prioritize projects that are innovative, of a longer term, and not receiving other state or federal funds.

DATCP promulgated an emergency rule on July 11, 2022, to amend Chapter ATCP 52 of the administrative code, which currently implements the producer-led watershed protection grants program, to include the commercial nitrogen optimization pilot program. DATCP is requesting \$1,600,000 to fund this program.

The emergency rule requires DATCP to make grants for commercial nitrogen optimization pilot projects at least once per fiscal biennium, subject to funding availability. Grants may be awarded to projects undertaken by agricultural producers that: (a) are intended to reduce nitrate in groundwater and surface water; (b) collect data to balance the appropriate amount of nitrogen to a

crop at the right time while reducing nitrogen loss to the atmosphere, groundwater or surface water; (c) install conservation practices to assist with nitrogen optimization coupled with monitoring runoff and testing soils; or (d) optimize commercial nitrogen use via agronomic methods and techniques.

Under the rule, DATCP would consider additional criteria when choosing recipients, such as location, proposed length and scale, level of innovation, viability, management and technical qualifications of applicant, and ability of the UW System institution to collaborate with the producer. Grant funds may be used to reimburse the following expenses: (a) personnel costs for a project coordinator; (b) incentive or stipend payments for participating producers; (c) water quality monitoring; (d) soil testing; (e) monitoring support to UW System institutions; (f) equipment rental or purchases, with purchases over \$2,500 requiring DATCP approval; and (g) other reasonable and necessary costs, including agronomy or applicator services, seed, or nutrient management planning. Neither Act 223 nor the emergency rule specify a minimum recipient match for grant resources.

State SWRM cost-sharing generally is oversubscribed, as are DNR nonpoint pollution abatement funding programs. The U.S. Department of Agriculture (USDA) administers federal conservation programs, including the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program (CSP), which assist farmers financially and technically in achieving environmental improvement goals. Federal program data also indicates these programs typically have requests that are not funded. Further, it should be noted Wisconsin administers several state programs, such as producer-led watershed protection grants and the UW Discovery Farms program, that have an emphasis on collaboration and research in reducing agricultural impacts. Given the interest in state programs with this model, it could be beneficial to provide funding for commercial nitrogen pilot projects and to encourage additional collaboration between agricultural operations and UW researchers. Also, competition for current state and federal conservation programs suggests that Wisconsin farmers could be interested in seeking assistance from this new program as an alternative.

DATCP engaged stakeholders across the state to assess demand for the program and produce their requests. Agency staff held virtual public meetings and collected feedback from agribusiness organizations, conservation groups, county governments, university entities, and the federal government. The Department also states that staff worked with UW System on costs of various practices in different locations, including inputs and analyses to determine how much funding would be needed to implement successful projects. DATCP reports that \$1,600,000 funding reflects stakeholder input that agency staff received [Alternative A1].

As introduced, 2021 Assembly Bill 727/Senate Bill 677 would have provided funding of \$1,000,000 on a one-time basis in each year of the 2021-23 biennium for the commercial nitrogen optimization pilot program. Although DATCP solicited stakeholder input in arriving at the \$1,600,000 request, the \$1,000,000 funding that would have been provided under AB 727/SB 677 as introduced could allow the Department and UW System to implement the program, but limit commitments of the nonpoint account while initiating the program [Alternative A2]. The Committee could also deny the request and consider funding in the course of the 2023-25 biennial budget [Alternative A3].

## **Cover Crop Insurance Rebate Program**

Act 223 authorizes DATCP to provide rebates of \$5 per acre of a cover crop planted for crop insurance premiums paid on those acres. Act 223 prohibits rebate funding on any acreage for which a person received cover-crop assistance from various state or federal agricultural assistance programs. Excluded federal programs are the EQIP and the CSP. Excluded state programs are: (a) producer-led watershed protection grants; (b) SWRM cost-sharing aids; (c) lake management planning grants; (d) lake management grants; and (e) river protection grants. DATCP may cooperate with the USDA Risk Management Agency, which administers the Federal Crop Insurance Corporation, or any related federal or state agency in implementing the rebate program. Act 223 authorizes DATCP to promulgate administrative rules specifying, among other provisions, eligible cover crops and acreage limits that may be imposed if funding requests exceed amounts available in a fiscal year.

DATCP promulgated an emergency rule for the cover crop rebate program on August 1, 2022. The Department would hold at least one application period per fiscal biennium, pending funding availability. Interested participants may enroll acres planted to cover crops, including grasses, legumes or other non-woody and non-grass plants, planted for seasonal cover. Although not specified in the rule text, DATCP indicates the program would "enroll acres planted to cover crops in the fall which will be planted to an insurable crop in the following growing season." Accepted participants would be forwarded to USDA, and would receive a \$5 per acre insurance premium discount on the following year's crop insurance invoice for every enrolled acre of cover crop. DATCP also indicates applications would typically be due in mid-January.

Under the emergency rule, DATCP would verify eligibility of acres for which applications were submitted, including by participant self-certification, applicant-provided documentation of acreage planted, or in-person site visits. The rule would provide DATCP up to 10% of the cover crop funding allotment to conduct verification.

DATCP is requesting \$800,000 to fund this program. The Department would fund rebates on a first-come, first-served basis. If requests exceed available funding, the Department would prioritize rebates based on the following: (a) timing of the application; (b) whether this is the first time a cover crop has been planted on the field; (c) whether the acres have received a rebate previously; and (d) the number of acres for which a rebate is requested.

The Pandemic Cover Crop Program (PCCP) is a federal program that was established by USDA during the COVID-19 pandemic to help farmers maintain their cover crop systems while the agriculture industry was experiencing financial stress. This program provides premium support to eligible producers who insured a spring crop planted on acreage where a qualifying cover crop was planted. The premium support is up to \$5 per acre, but no more than the full premium owed. Funding was available for the 2021 and 2022 cropping years, and it is unknown whether the program will be offered in future years. In 2022, Wisconsin farmers received rebates of \$1.66 million for their crop insurance through PCCP.

DATCP has requested \$800,000 for cover crop rebates, which is approximately half the amount paid out as part of the PCCP, to account for differences in program eligibility between the federal program and the state program. Given that federal funding may not be ongoing, it could be argued the level of state funding requested is appropriate to support the implementation of the program [Alternative B1].

In addition to assessing PCCP to determine demand for rebates, DATCP reports staff studied programs in surrounding states to anticipate participation. The Department indicates that surrounding states with a cover crop insurance rebate programs have reported routinely maximizing use of their appropriated funding. In Iowa, \$1,000,000 is allocated for rebates and in Illinois, \$600,000 is allocated for rebates. Each of these states' programs offer farmers \$5 per acre for cover crops and provide compensation only for cover crops planted outside of other federal and state incentives.

As introduced, AB 727/SB 677 would have provided ongoing funding of \$400,000 each year for crop insurance rebates. It could be argued that because other state and federal programs fund the installation of cover crops, \$400,000 in 2022-23, as proposed in AB 727/SB 677 as introduced, is appropriate to begin implementing the Wisconsin rebate program [Alternative B2]. The Committee could also deny the request and consider funding in the course of the 2023-25 biennial budget [Alternative B3].

DATCP intends to use any unspent funds from the nitrogen optimization pilot program for the cover crop insurance premium rebate program due to uncertainty about participation in the first year of the program. It should also be noted the SWRM aids appropriation is an annual appropriation, meaning funding unencumbered at the close of each fiscal year, if any, would revert to the nonpoint account balance.

## **ALTERNATIVES**

### **A. Nitrogen Optimization Pilot Program**

1. Approve the transfer of \$1,600,000 in environmental fund (nonpoint account) SEG in 2022-23 to the Department of Agriculture, Trade and Consumer Protection appropriation for soil and water resource management aids [s. 20.115 (7)(qf)] for the implementation of the commercial nitrogen optimization pilot program.
2. Approve the transfer of \$1,000,000 nonpoint SEG in 2022-23 for the commercial nitrogen optimization pilot program.
3. Deny the request.

### **B. Cover Crop Insurance Rebate Program**

1. Approve the transfer of \$800,000 in environmental fund (nonpoint account) SEG in 2022-23 to the DATCP appropriation for soil and water resource management aids [s. 20.115 (7)(qf)] for the implementation of the cover crop insurance rebate program.

2. Approve the transfer of \$400,000 nonpoint SEG in 2022-23 for the cover crop insurance rebate program.
3. Deny the request.

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