



Capitol LINK

CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS

March, 2014

2013-14 Legislative Session Wrap-Up

There are just days remaining in the 2013-14 Legislative session and it appears that the Legislature will give its final approval to the "Implements of Husbandry" legislation, which will create a system to allow farm implements to operate legally on the roadways. However, the Legislature is poised to adjourn without addressing the high capacity well issues that farmers face as they enter the 2014 growing season

Implements of Husbandry Legislation Moves Toward Final Approval

By Jordan Lamb, DeWitt Ross & Stevens

Under current law, Implements of Husbandry (IoH) (i.e., tractors, combines and other farm implements) are subject to statutory road weight limits. If the IoH exceeds those weight limits, then the vehicle must be unloaded until it meets those limits or must get a permit to operate overweight. But, there is no overweight permit system for IoH. So, if the vehicle is overweight, it arguably just cannot be used on the roadways. Current weight limits allow IoH to operate if they have a gross vehicle weight of up to 80,000 pounds (depending on number and spacing of axles) or up to 20,000 pounds per axle. Many IoH in use today exceed those weight limits.

State Representative Keith Ripp (R-Lodi) and State Senator Jerry Petrowski (R-Marathon) have drafted legislation (SB 509 / AB 648) to implement several changes to current law based on recommendations made by a study group consisting of more than 20 stakeholders representing various transportation and farm organizations, equipment manufacturers, law enforcement, local officials and the University of Wisconsin-Madison/Extension.

The Senate version of this legislation, SB 509, was unanimously recommended for passage by the Senate Committee on Transportation and was passed by the full Senate on March 11 on a voice vote. The Assembly adopted several amendments to the Senate version of the bill when it passed the legislation on March 21, 2014. The bill will go back to the Senate for final concurrence in early April before it can be sent Governor Walker for his consideration.

Some key provisions of the legislation are:

Width - There will be no permit requirement for over-width loH. Certain lighting and marking requirements are imposed on loH that exceed 15 feet wide. loH measuring 15-22 feet wide or vehicles that extend across the centerline will be required to have lighting. loH over 22 feet wide are required to have lighting and an escort vehicle. Width requirements are also established for agricultural commercial motor vehicles. Owners will be given 18 months to retrofit vehicles with required lighting.

Weight - The legislation increases the allowable gross vehicle weight for loH by 15% (i.e., from 80,000 pounds to 92,000 pounds). The per axle weight limit is also increased 15% (i.e., from 20,000 pounds to 23,000 pounds per axle.) This is not in addition to the fall harvest 15%. Rather, this 15% is applied to loH year-round.

- Exemptions. As amended by the Assembly, the bill exempts certain loH including self-propelled combines, forage harvesters, fertilizer or pesticide application equipment and other tillage and planting loH from per wheel, axle, or group of axles weight limitations on non-state trunk highways (i.e., on town or county roads.) However, local governments may override this exemption by resolution or ordinance.
- Permits for Certain loH Must be Given. A self-propelled combine, forage harvester, fertilizer or pesticide application equipment and other tillage and planting loH must be given a permit to operate overweight. This category of loH cannot be denied a permit. The local authority (town or county) must provide an authorized route for use of this equipment.
- Fall Harvest 15%. The fall harvest 15% overweight allowance will continue to apply to other vehicles used for harvest. In order to exceed these weight limitations for any loH, you must receive local written authorization. (A uniform local form is required to be developed by DOT.)

Length - One loH vehicle may be up to 60' long. A two-vehicle loH train is limited to 100'. A three-vehicle loH train may be 70-100' long with a maximum allowable speed limit of 25 mph for trains that are 100' long. A local permit is required to exceed these length limitations.

Height - Under this bill, there is no height limitation for loH. The bill also specifies that the operator of the loH is generally responsible for ensuring that there is adequate height clearance between the implement of husbandry and overhead structures or obstructions.

Miscellaneous:

- Pick-up trucks are permitted to tow or pull loH (i.e., hay wagons, etc.)
- Towns and counties can "opt out" of this loH permit system and choose to simply allow loH or a specific category of loH on their roadways without any permit requirements.

High Capacity Well Legislation Not Addressed This Session

By Jordan Lamb, DeWitt Ross & Stevens

A unanimous Wisconsin Supreme Court decision in July 2011, known as "the Lake Beulah decision," directed DNR to use broad, undefined authority when considering applications for high capacity wells. In 2013, we saw the effect of this decision in practice when farmers attempted to secure high capacity well permits and the analysis from DNR had vastly changed.

Accordingly, Senator Neal Kedzie (R-Elkhorn) and Rep. Jeff Mursau (R-Crivitz) introduced legislation, (SB 302/AB679), which would address the Court's Decision through Legislation and restore regulatory certainty to the high capacity well permitting program. SB 302 was recommended for passage by the Senate Natural Resources Committee but will not be given consideration by the full Senate or Assembly.

In accordance with the Legislature's action in 2011 Wisconsin Act 21 and in response to the Lake Beulah Court's criticism that the Legislature did not "explicitly" restrict the DNR's general

duty when it originally enacted the Groundwater Protection Statute, SB 302 explicitly defines the DNR's authority with regard to reviewing applications for high capacity well approvals and returns the DNR to the system negotiated in 2003 Wisconsin Act 310.

SB 302 revises Wis. Stat § 281.34 to reaffirm the limitations on the authority granted by the Legislature to the DNR over high capacity wells, as originally intended in 2003 Wisconsin Act 310. The bill expressly limits the DNR's ability to apply a higher standard of environmental review to only those proposed high capacity wells located in a groundwater protection area, that impact a spring, or that is used for bottling water.

In addition, the legislation allows for the replacement and reconstruction of high capacity wells and clarifies that no new conditions, modifications, or environmental review may be applied to wells based solely on the condition the wells are changing ownership.

Nonetheless, the Wisconsin Legislature failed to consider the legislation that would have addressed the critical well water access issues for Wisconsin farmers, leaving continued uncertainty in the high capacity well permitting process for yet another growing season.

The PDPW Capitol Link monthly e-newsletter is sponsored by DeWitt Ross & Stevens law firm. DeWitt Ross & Stevens is a Wisconsin law firm whose members are leaders in their areas of practice and in their communities. Founded in 1903, today there are more than 80 attorneys in their Madison and Milwaukee offices. Nominated by peers as top lawyers nationally and locally, DeWitt's attorneys offer numerous services including strategic counseling, advocacy, collaboration, alternative dispute resolution, negotiation, mediation, lobbying, and litigation.

This newsletter is a periodic publication produced by PDPW and DeWitt Ross & Stevens. The information provided in this newsletter is provided for educational and informational purposes only. PDPW does not attempt to influence legislation or administrative rules at any level. The contents of this newsletter are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific situation. You are urged to consult an attorney concerning your own situation and any legal questions you may have.

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
820 N Main Street Suite D Juneau, WI 53039
800-947-7379 www.pdpw.org