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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2009-10**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Transportation, Tourism,  
Forestry, and Natural Resources (SC-TTFNR)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (June/2012)

## Record of Committee Proceedings

### Committee on Transportation, Tourism, Forestry, and Natural Resources

#### Senate Bill 300

Relating to: certain areas of land subject to managed forest land orders that were part of a parcel of land under single ownership that exceeded 8,000 acres in size.

By Senators Holperin, Decker, Lassa, Taylor and Hansen; cosponsored by Representatives Brooks and Nass.

September 23, 2009 Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

September 30, 2009 **PUBLIC HEARING HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.  
Absent: (0) None.

#### Appearances For

- Jim Holperin, Eagle River — 12th Senate District

#### Appearances Against

- None.

#### Appearances for Information Only

- Eugene Roark, Madison — Wisconsin Woodland Owners Association
- Kathy Nelson — Wisconsin DNR

#### Registrations For

- None.

#### Registrations Against

- None.

#### Registrations for Information Only

- None.

October 15, 2009 **EXECUTIVE SESSION HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.  
Absent: (0) None.

Moved by Senator Sullivan, seconded by Senator Hansen that **Senate Substitute Amendment** be recommended for introduction and adoption.

Ayes: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Noes: (0) None.

INTRODUCTION AND ADOPTION OF SENATE SUBSTITUTE AMENDMENT  
RECOMMENDED, Ayes 7, Noes 0

Moved by Senator Hansen, seconded by Senator Sullivan that **Senate Bill 300** be recommended for passage as amended.

Ayes: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

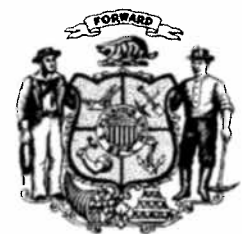
Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0

Elizabeth Novak  
Committee Clerk



WISCONSIN STATE LEGISLATURE



9/29/2009

To: Senator Jim Holperin

My name is Steve Gostisha, I am a Supervisor for the Town of Goodman located in Northern Marinette County, Wisconsin. I cannot attend today's hearing but wish to enter the following as Testimony in support of SB 300.

Like so many communities in Northern Wisconsin, the Town of Goodman is comprised of large tracts of public forest land and privately owned Open Managed Forest Land. Per Wis. Stats, § 77.80, Managed Forest Land, the purpose of the MFL program is to encourage the proper management of private forest lands and provide accessibility of private property to the public for recreational purposes.

Under the MFL program an owner may designate up to 160 acres in each municipality subject to managed forest land order as closed to public access. Recently some land owners have been taking advantage of the Closed MFL law and subdividing large tracts of land greater than 160 acres under the name of multiple Limited Liability Companies (LLCs).

In early 2009, the Coleman Lake Club formed 56 LLCs, each owning approximately 160 acres for explicit entry into the Closed MFL program. The LLCs are named CLC.001 LLC through CLC.056 LLC. The registered agent for each LLC is Robert A. West, C/O Coleman Lake Club, W13203 US Highway 8, Goodman, WI 54125. Robert A. West is the manager of the Coleman Lake Club.

Though each LLC is a separate entity, the underlying ownership of the property still resides with the Coleman Lake Club. Therefore the Coleman Lake Club, as the single land owner, would essentially have 56 land parcels in the Closed MFL Program totaling approximately 8,500 contiguous acres.

The Coleman Lake Club is a private hunting and fishing club whereby members pay initial and annual membership fees for fishing and hunting privileges. Per the Restated Declaration of Restrictive Covenants filed with the Marinette County Register of Deeds dated July 10, 2001, the restrictions on use of the Coleman Lake Club are as follows:

“(the Redefined Property)...shall be used solely for the purpose of operating a non-profit private fishing and hunting, outdoor recreational club and for no other purpose during the term of this Declaration. It is understood that the following specific uses are consistent with and allowed by the foregoing restrictions, provided the same are ancillary to the use of the Redefined Property as a private club: fishing, boating, hunting, hiking, cross-country skiing, tennis and other private recreational uses; clubhouse, private dining and sleeping facilities and other private food operations;

harvesting or extraction of certain natural resources (such as timber or gravel) according to a plan which is ancillary to the foregoing recreational uses; and as such other uses are consistent with the foregoing. It is the express intent of the undersigned to prohibit the use or subdividing of the Redefined Property for residential or commercial development, or as a public park or any other public use."

Private hunting and fishing clubs that wish to enter land into the MFL program must obtain permission from the DNR to charge a reasonable membership fee to the public. The Coleman Lake Club does not allow public access to their land. This Club exists solely for the benefit of their own private interests and the interests of its shareholders and members.

The Coleman Lake Club is fragmenting its ownership in order to manipulate the law of separate entity. Though each LLC is a separate entity it is directly tied to the parent company. Who are the members of each LLC? If each LLC is a business, what is the business purpose of the LLC and why was it formed? What are the ties to the parent organization and is each LLC a profit motivated business? When sales are generated within an LLC, where does the money flow, to the parent organization? If there are any connections to the parent organization there is no clear path of ownership and therefore the parent company is really the owner of the LLC and should be prevented from entry into the Closed MFL program.

Entry of the Coleman Lake Club property into the Closed MFL program would take \$15,756,537 from the Equalized Value of the Town of Goodman; property tax rates in Goodman will increase by roughly \$2.06 per \$1,000 of assessed value or \$206 per \$100,000 of value. Additionally, \$55,000 of the Goodman Armstrong Creek School District Levy will be shifted to Armstrong Creek residents thus increasing property taxes in the Town of Armstrong Creek. Also, with the drop in Equalized Value, there is no guarantee that State School Aids will cover any of the lost revenue. You are already aware of the shortcomings of the School Aid formula and how it impacts the Schools in Northern Wisconsin.

We are asking that the State Legislature support this Legislation to stop large land owners from taking advantage of the Closed MFL program and forcing rural residents to carry a larger burden of taxation. This type of corporate greed must be stopped.

Respectfully submitted on behalf of the Taxpayers of the Town of Goodman.



Steve Gostisha  
Supervisor,  
Town of Goodman



Testimony in Support of Senate Bill 300  
State Senator Jim Holperin  
September 30, 2009

Senate Bill 300 helps accomplish current legislative intent that no more than 160 acres of land under one ownership be closed to the public when it is enrolled in the state's Managed Forest Law.

Most of you are familiar with the state's Managed Forest Law, but for those who are not, the state decades ago understood the need to make it affordable for landowners to grow a crop that would not be harvested every year, but only every 50 years.

Therefore in the 1920s, the state agreed to defer property taxes on land used for tree production until the time the trees were harvested. Under today's Managed Forest Law, landowners are allowed to pay \$1.67 per acre per year in property taxes while trees are growing, and then a lump sum of the harvest proceeds when the trees go to market. The average property tax on productive forest land this year is \$33.34 per acre...so you can see the \$1.67 per acre is quite a nice financial incentive to landowners to grow trees on their property.



In return for the tax deferral, state taxpayers get a guaranteed supply of timber headed to paper and forest products mills across the state, they get the erosion control and carbon sequestration and clean air and scenic vistas that forests provide, and they get to go on that land to hunt and hike and recreate because, generally speaking, Managed Forest Law acreage must be open to the public.

Some years ago, the legislature decided that, because some landowners objected to having their land open to public access, that a limited number of acres could be closed to access...if the owners paid a little more than the \$1.67 per acre per year in property taxes.

So, the legislature limited the amount of land that could be closed to 160 acres per owner, and set the per acre payment at 20% of the statewide average property tax for productive forestland. This year that 20% amounts to \$8.34 per acre.

The Coleman Lake Club is a private hunting and fishing club which owns nearly 9,000 acres of forest land in the Town of Goodman in Marinette County.

Earlier this year, the Coleman Lake Club hired an attorney and formed 56 Limited Liability Corporations. Each LLC was deeded 160 acres of Coleman Lake Club property. The registered agent for each LLC is Robert West, manager of the Coleman Lake Club.

In July, the Coleman Lake Club's attorney applied to enroll the 56 parcels of 160 acres each into the state's Managed Forest Law. If approved, the effect will be to close over 8,500 contiguous acres of forest land which, though now legally under separate "ownerships" is clearly under the control of a single property owner.

This legal maneuver is a clear violation of the spirit of the managed forest law and, clearly an attempt to "end run" legislative intent that only 160 acres per forest owner be allowed to be closed to the public.

The Town of Goodman has challenged the Coleman Lake Club's enrollment application, and the DNR is currently reviewing the challenge.

Senate Bill 300 is pretty simple. It says no land owner may close a parcel of any size if that parcel was, before January 1, 2009, part of a single ownership that exceeds 8,000 acres in size.

The measure may cause some “collateral damage”...that is there may be a few forest land owners who purchase a 40 or 80 acre parcel from a large timber company holding of 8,000 acres or more, but there aren't many parcels of that size anymore and I believe the bill will affect only a few land owners over time.





## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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### Senate Bill 300

Senate Committee on Transportation, Tourism, Forestry, and Natural Resources

Department of Natural Resources Testimony  
Kathryn J. Nelson, Forest Tax Section Chief  
Division of Forestry  
Bureau of Forest Management  
September 30, 2009

Mr. Chairman and Committee Members:

Good morning. My name is Kathy Nelson and I am the Forest Tax Section Chief within the DNR's Bureau of Forest Management. I appreciate this opportunity to appear before you to discuss Senate Bill 300.

SB 300 attempts to restrict the ability of individual private landowners to divide their landownership into smaller ownerships and then to enter those ownerships into the Managed Forest Law (MFL) program as closed to public recreation.

As you know, the MFL program was enacted in 1985 to provide an incentive for private landowners to practice sustainable forestry on their lands. MFL struck a balance between private landowners' interest in entering the MFL program and the public's desire to support the program. Landowners were allowed to pay an acreage share tax instead of regular ad valorem property taxes and were given in depth assistance in forest management practices. Landowners paid their deferred property taxes when timber was harvested.

Private forests provide an array of benefits to the public. These benefits include clean air, clean water, wood products, settings for recreation and tourism, wildlife habitat, carbon sequestration and scenic beauty. Our forests generate jobs throughout Wisconsin and contribute billions in value to Wisconsin's economy. Forests are an essential element of Wisconsin's landscape and the places where millions of us live, work and recreate. MFL is a key tool in keeping forested land in forest and providing these benefits to both present and future generations.

One major public benefit that MFL provides is access to private lands for hunting, fishing, hiking, sight-seeing and cross-country skiing. Landowners are allowed to close up to 160 acres of land to public access, with the intent that the remaining lands would be left open to public access. Owners can be an individual person, a group of people, or entities, such as corporations or partnerships. The drafters of MFL worked to strike a balance between the desires of the public for land on which to recreate, and the interests of landowners to restrict who can recreate on their properties. The size limitation was an effective approach to balance those interests.

Through the course of time, landowners have learned to divide their properties so that they may take advantage of the MFL program's closed acreage limits. Small landowners have divided their properties so that a husband and wife can have 3 properties, his, hers and theirs. Large landowners have divided their properties so that they can have any number of ownerships

through the creation of limited liability corporations. The department recognizes that these actions violate the intent of the MFL as enacted by the legislature.

SB 300 would prevent landowners from entering their lands into MFL as closed to public access if their lands were a part of a larger parcel under a single ownership that exceeded 8,000 acres in size as of January 1, 2009. In essence, landowners who meet the criteria of SB 300 may only enter their lands into MFL as open to public access. The incentive to subdivide property into small units for the purpose of entering the entire ownership into MFL as closed to public access would be eliminated.

This bill in its present form generates several issues that need to be addressed.

1. The statute uses the term "parcel," yet there is no definition of parcel in statute. The department has a definition of "parcel" in NR 46 that is used to determine eligibility of lands for designation as MFL, and this definition is "the acreage of contiguous lands that are described in a petition, or application, and that is under the same ownership." It would appear that the SB 300 definition may be broader, or encompass a wider range of situations, than the definition of parcel in NR 46. Would a parcel be a contiguous block of 8,000 acres or all lands owned in the county or a township? Would lands need to be contiguous? The department asks that an amendment be made to SB 300 to provide a clear definition of a parcel or of the legislative intent to help the department to fulfill its duty in carrying out new MFL provisions if this bill is enacted.
2. The department would need the tools to carry out SB 300. Reviews of deeds and tax statements occur during the entry process; however the review is done solely for the purpose of determining current ownership. SB 300 would require the department to determine past ownership of lands as well. Title searches may be required on future MFL entries and transfers. These title searches may be relatively easy at first, but would become more difficult with time since the trend is to subdivide ownerships into smaller, more fragmented units.

It is unclear if the department can efficiently and effectively determine past ownership of lands if these ownerships have been purchased under separate deeds. A title search may or may not show a relationship to other lands not associated the lands listed in any particular deed. A permanent record or map of land ownership as of January 1, 2009 may be required in county offices to assist the department in this determination. The department asks that the legislature amend SB 300 to provide for tools to help the department fulfill its duty in carrying out new MFL provisions if this bill is enacted.

3. SB 300 would prohibit small landowners who purchase forested lands from large owners, including industrial forests from entering into the MFL program as closed, even if they purchased 160 acres of land or less. The incentive for small private landowners to enter the MFL program and sustainably manage their properties may be reduced if landowners are not given the choice to open or close lands open to public access. SB 300 would also impact those landowners who purchase existing MFL lands.

SB 300 provides opportunities for further discussion to solve the larger public access issues associated with MFL. The department is well aware of the concerns presented by the public in accessing private lands for recreational activities and has discussed proposed solutions, yet we understand that there are many ways in which the issues can be resolved with some of the issues being resolved easier than others. The department is ready to work with you as you work through these issues.

**Issue #1: MFL lands are designated as "open" when the landowner has no legal access to the property.**

There are MFL properties where the landowner has no legal access to their lands, yet have enrolled it as open to public recreation. Hunters and recreational users must ask permission of the adjacent landowner for permission to cross lands to access the open MFL lands. If the adjacent landowner denies permission to cross his or her lands, the MFL landowner is effectively paying the open acreage share tax rate for lands that cannot be accessed by the general public.

A similar situation occurs when landowners create a number of LLCs and deny permission for hunters to cross one LLC that is closed to public access in order to gain access to another LLC that is open to public access. This behavior appears to disregard the Intent of the MFL program to allow access to open MFL lands and effectively prevents the public from accessing open MFL lands.

A possible solution may be to require that landowners must provide proof of legal access to open MFL lands as a condition to MFL entry. Landowners who lose legal access to their lands would no longer be allowed to have the open tax status.

**Issue #2: Landowners maximize the amount of closed acreage through the creation of multiple combinations of owners and exceed the 160 acre closed limitation for an individual owner.**

The ability of landowners to create ownerships with any combination of multiple people so that the maximum amount of lands can be closed to public access appears to disregard the intent of the MFL program. An example would be a husband and wife, where the husband has 160 acres, the wife has 160 acres and together they own 160 acres. These two people could have 480 acres of land closed to public access because three separate ownerships occur.

A possible solution may be to link landowners and MFL lands so that if a landowner is listed on one MFL and has his or her maximum of 160 acres closed he or she will not be able to be listed on another deed or ownership unless that land is entered into MFL as open to public access. In the case of a husband and wife, a minimum of 160 acres would be left open to public access or left on the regular ad valorem property tax rolls.

**Issue #3: Landowners maximize the amount of closed acreage through the creation of limited liability corporations (LLCs).**

Landowners have taken advantage of ch. 183, Wis. Stats. and have created many limited liability corporations (LLCs). These LLCs are considered separate ownerships for tax law purposes because each entity created under ch. 183 is recognized as a separate LLC under state law.

There are a multitude of reasons why people create LLCs and other similar entities, like trusts. Some of these reasons are for tax and succession planning. The ability of landowners to create a multitude of LLCs of which no one LLC exceeds 160 acres in size, and then to enter those lands into the MFL program appears to disregard the intent of the MFL program to close the maximum of 160 acres and to leave the remaining lands open to public access.

Possible solutions to this situation are difficult and warrant careful consideration. Arguments can be made that since people, and not companies, recreate on lands, only individual people should be allowed to close lands to public access. Should a bill such as this occur any ownership that is a corporation, trust or some other entity would be required to leave lands open to public access.

There are a multitude of options that could be developed to change the behavior of landowners so that more lands are accessible to the public for recreational activities. The department looks forward to working with you and your staff to identify these options.

It is important that the options that are developed and introduced as bills continue to provide enough incentive for landowners to enter the MFL program to practice sustainable forestry on their lands, and provide enough return on investment for the public to support the MFL program.

I appreciate this opportunity to share with you the department's review of SB 300 and would be glad to answer any questions you might have.