



2019 ASSEMBLY BILL 856

February 3, 2020 - Introduced by Representative MURSAU. Referred to Committee on Forestry, Parks and Outdoor Recreation.

1 **AN ACT to repeal** 77.82 (1) (bp) 2. g., 77.83 (2) (ar) and 77.88 (3m); **to renumber**
2 **and amend** 77.82 (11); **to amend** 70.365, 77.82 (1) (a) 1., 77.82 (4), 77.84 (1),
3 77.88 (2) (ac) 3., 77.88 (2) (c), 77.88 (3) (am), 77.88 (3) (b) (intro.), 77.88 (3j) (title),
4 77.88 (3j) (a) 1., 77.88 (3k), 77.88 (3L) and 77.88 (5m); and **to create** 77.82 (1)
5 (bp) 4. and 77.82 (3) (h) of the statutes; **relating to:** the managed forest land
6 program.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the managed forest land (MFL) program administered by the Department of Natural Resources.

Introduction

Under current law, certain forested land may be designated as MFL under a program administered by DNR. Under this program, the owner of land designated as MFL makes an annual acreage share payment that is lower than, and in lieu of, the property taxes that normally would be payable. In exchange, the owner must comply with certain forestry practices and have a management plan prepared for the land. The owner must also open the MFL to the public for hunting, fishing, hiking, sight-seeing, and cross-country skiing, but may designate up to a certain number of acres as being closed to the public. For MFL that is designated as closed, the owner must pay an additional closed acreage fee. An owner seeking to have land designated

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as MFL submits an application to DNR that contains a management plan for the land. If the MFL meets the eligibility requirements under the program, which include minimum acreage requirements and requirements as to how much merchantable timber can be produced on the land, DNR approves the application and issues an order designating the land as MFL. An owner may choose to have the order last 25 or 50 years.

Eligibility

Under current law, a parcel of land is eligible for designation as MFL only if it consists of at least 20 contiguous acres. This was increased from a minimum of ten acres under 2015 Wisconsin Act 358. Under current law, the fact that a lake, river, stream, or flowage, a public or private road, or a railroad or utility right-of-way separates any part of the parcel from any other part does not render it noncontiguous. Under this bill, land in a parcel may be composed of individual portions no smaller than ten contiguous acres each that are not contiguous to each other as long as all such portions are contained within a tract of contiguous land of 20 acres or more that is under the same ownership. Under the bill, the fact that a lake, river, stream, or flowage, a public or private road, or a railroad or utility right-of-way separates any part of the land from any other part does not render a parcel noncontiguous and does not render ownership of the land noncontiguous. These changes first apply to land designated as MFL by an order issued on July 1, 2016, which is the date on which the minimum acreage change and other eligibility changes under Act 358 first applied.

Under current law, land is not eligible for designation as MFL if a building or an improvement associated with a building is located on it. Current law specifies that an improvement includes any accessory building, structure, or fixture that is built or placed on the parcel for its benefit, but does not include, among other things, a structure or fixture needed for sound forestry practices. The bill eliminates this exception to an improvement, but more broadly provides that the prohibition on buildings and improvements does not apply to a building used exclusively for storage. This change also first applies to land designated as MFL by an order issued on July 1, 2016.

Under current law, an owner of land that is designated as MFL may file an application with DNR to designate an additional parcel of land as MFL if the additional parcel is at least three acres in size and is contiguous to any of that designated land. Under this bill, such an additional parcel may be any size and must only be contiguous to land under the same ownership that contains the designated land as long as any portion not contiguous to the designated land meets the ten-acre minimum requirements under the bill. The bill specifies that the eligibility requirements applicable to such an addition are the eligibility requirements under the order that designated the parcel to which the land is being added.

Material change to law

Under current law, if a statute is enacted or a rule is promulgated during the period of the order that materially changes the terms of the order, the landowner must elect between acceptance of modifications to the contract consistent with the provisions of the statute or rule or voluntary withdrawal of the land without penalty.

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This bill adds that a statutory change does not constitute a material change to an order unless, in the act that makes the change, the legislature states that the act or a provision in the act makes a material change to orders entered into under prior law. Under the bill, this first applies to this bill, itself, which does not contain such a statement. Further, under the bill, a promulgated rule does not constitute a material change to an order unless the rule includes a statement that the rule constitutes a material change to orders entered into under prior rules and DNR includes in its report to the legislature on the proposed rule a statement that the rule constitutes a material change to orders entered into under prior rules and an analysis of this determination.

Withdrawal taxes and fees

This bill reinstates a requirement that DNR assess a withdrawal tax and fee against an owner of MFL who voluntarily withdraws part or all of a parcel, which was eliminated under Act 358.

Current law allows an owner of MFL to sell or otherwise transfer all or part of the owner's parcel of MFL, and the transferred land continues to be designated as MFL if it meets eligibility requirements and the transferee certifies to DNR an intent to comply with the existing management plan for the land and any amendments to the plan. If the transferee does not provide this certification to DNR, current law requires DNR to issue an order withdrawing the land and to assess against the transferee the withdrawal tax and fee. Similarly, after a transfer if the remaining land in the parcel does not meet eligibility requirements, current law requires DNR to issue an order withdrawing the land and to assess against the owner the withdrawal tax and fee. Under this bill, in both of these circumstances DNR may, but is not required to, assess the withdrawal tax and fee.

Under current law, an owner of MFL may request to withdraw part of a parcel and DNR must issue an order of withdrawal if DNR determines that the parcel is either unable to produce merchantable timber in the amount required by law or unsuitable, due to environmental, ecological, or economic concerns or factors, for the production of merchantable timber. Current law requires that the order withdraw only the number of acres necessary for the parcel to resume its ability to produce the required amount or to resume its sustainability to produce merchantable timber, and prohibits the assessment of a withdrawal tax or fee for the withdrawal. This bill adds that, if the land remaining in the parcel after the withdrawal will not meet eligibility requirements under the order designating the MFL, the order must withdraw the entire parcel, and may not assess a withdrawal tax or fee.

Small land sales

Under current law, generally an owner of MFL may voluntarily withdraw part of a parcel of the owner's land once per 25-year order and twice per 50-year order if the purpose for which the owner requests the withdrawal is for the sale of one to five acres of the land or for a construction site. Current law separately allows an owner of MFL to sell or transfer ownership of all or part of the owner's land an unlimited number of times per order. This bill harmonizes these provisions by removing the sale of land as a purpose for a voluntary withdrawal under the former.

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The bill authorizes DNR to promulgate rules that subject large ownerships, meaning 1,000 or more acres of land designated as MFL under the same owner, to management plan requirements that deviate from the requirements that apply under statute.

Taxation of buildings

The bill removes a current law provision stating that a building on MFL is taxed as personal property, and eliminates the current law penalty that applies for failure to pay such personal property tax, which is withdrawal of the land from MFL and assessment of the withdrawal tax and fee.

Leasing

This bill eliminates a provision authorizing an owner of MFL that is designated as closed to enter into a lease or other agreement for consideration that permits persons to engage in a recreational activity on the land. Under the bill, there are no prohibitions on leasing land under the MFL program.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 70.365 of the statutes, as affected by 2019 Wisconsin Act 2, is
2 amended to read:

3 **70.365 Notice of changed assessment.** When the assessor assesses any
4 taxable real property, ~~or any improvements taxed as personal property under s. 77.84~~
5 ~~(1)~~, and arrives at a different total than the assessment of it for the previous year,
6 the assessor shall notify the person assessed if the address of the person is known
7 to the assessor, otherwise the occupant of the property. However, the assessor is not
8 required to provide notice under this section if land is classified as agricultural land,
9 as defined in s. 70.32 (2) (c) 1g., for the current year and previous year and the
10 difference between the assessments is \$500 or less. If the assessor determines that
11 land assessed under s. 70.32 (2r) for the previous year is no longer eligible to be
12 assessed under s. 70.32 (2r), and the current classification under s. 70.32 (2) (a) is not

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1 undeveloped, agricultural forest, productive forest land, or other, the assessor shall
2 notify the person assessed if the assessor knows the person's address, or otherwise
3 the occupant of the property, that the person assessed may be subject to a conversion
4 charge under s. 74.485. Any notice issued under this section shall be in writing and
5 shall be sent by ordinary mail at least 15 days before the meeting of the board of
6 review or before the meeting of the board of assessors in 1st class cities and in 2nd
7 class cities that have a board of assessors under s. 70.075, except that, in any year
8 in which the taxation district conducts a revaluation under s. 70.05, the notice shall
9 be sent at least 30 days before the meeting of the board of review or board of
10 assessors. The notice shall contain the amount of the changed assessment and the
11 time, date, and place of the meeting of the local board of review or of the board of
12 assessors. However, if the assessment roll is not complete, the notice shall be sent
13 by ordinary mail at least 15 days prior to the date to which the board of review or
14 board of assessors has adjourned, except that, in any year in which the taxation
15 district conducts a revaluation under s. 70.05, the notice shall be sent at least 30 days
16 prior to the date to which the board of review or board of assessors has adjourned.
17 The assessor shall attach to the assessment roll a statement that the notices required
18 by this section have been mailed and failure to receive the notice shall not affect the
19 validity of the changed assessment, the resulting changed tax, the procedures of the
20 board of review or of the board of assessors or the enforcement of delinquent taxes
21 by statutory means. After the person assessed or the occupant of the property
22 receives notice under this section, if the assessor changes the assessment as a result
23 of the examination of the rolls as provided in s. 70.45 and the person assessed waives,
24 in writing and on a form prescribed or approved by the department of revenue, the
25 person's right to the notice of the changed assessment under this section, no

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1 additional notice is required under this section. The secretary of revenue shall
2 prescribe the form of the notice required under this section. The form shall include
3 information notifying the taxpayer of the procedures to be used to object to the
4 assessment. The form shall also indicate whether the person assessed may be
5 subject to a conversion charge under s. 74.485.

6 **SECTION 2.** 77.82 (1) (a) 1. of the statutes is amended to read:

7 77.82 (1) (a) 1. It consists of at least 20 ~~contiguous~~ acres, which may be
8 composed of individual portions, no smaller than 10 contiguous acres each, that are
9 not contiguous with each other if all individual portions are contained within a tract
10 of contiguous land of 20 acres or more that is under the same ownership, except as
11 provided in this subdivision. The fact that a lake, river, stream, or flowage, a public
12 or private road, or a railroad or utility right-of-way separates any part of the land
13 from any other part does not render a parcel of land noncontiguous. ~~If a part of a~~
14 ~~parcel of at least 20 contiguous acres is separated from another part of that parcel~~
15 ~~by a public road, that part of the parcel may be enrolled in the program, even if that~~
16 ~~part is less than 20 acres, if that part meets the requirement under subd. 2. and is~~
17 ~~not ineligible under par. (b) and does not render ownership of land noncontiguous.~~

18 The owner of a parcel of less than 20 acres that is subject to a managed forest land
19 order before April 16, 2016, may apply one time for a renewal of the order under sub.
20 (12) without meeting the 20-acre requirement.

21 **SECTION 3.** 77.82 (1) (bp) 2. g. of the statutes is repealed.

22 **SECTION 4.** 77.82 (1) (bp) 4. of the statutes is created to read:

23 77.82 (1) (bp) 4. Notwithstanding par. (b) 3., a building used exclusively for
24 storage that is located on a parcel does not make that parcel ineligible for designation
25 as managed forest land.

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1 **SECTION 5.** 77.82 (3) (h) of the statutes is created to read:

2 77.82 (3) (h) 1. Under this paragraph, “large ownership” means 1,000 or more
3 acres of land designated as managed forest land that has the same owner.

4 2. The department may promulgate rules that subject large ownerships to
5 management plan requirements that deviate from the requirements under pars. (ag)
6 to (g).

7 **SECTION 6.** 77.82 (4) of the statutes is amended to read:

8 77.82 (4) ADDITIONS TO MANAGED FOREST LAND. An owner of land that is
9 designated as managed forest land may file an application with the department to
10 designate as managed forest land an additional parcel of land if the additional parcel
11 is at least 3 acres in size and is contiguous to any of land under the same ownership
12 that contains that designated land and any portion not contiguous to that designated
13 land meets the requirements under sub. (1) (a) 1. The application shall be
14 accompanied by a nonrefundable \$20 application recording fee unless a different
15 amount for the fee is established by the department by rule at an amount equal to
16 the average expense to the department of recording an order issued under this
17 subchapter. The fee shall be deposited in the conservation fund and credited to the
18 appropriation under s. 20.370 (2) (cr). The application shall be filed on a department
19 form and shall contain any additional information required by the department. The
20 tax rate applicable to an addition under this subsection shall be the tax rate currently
21 applicable to the parcel to which the land is being added. The eligibility
22 requirements applicable to an addition under this subsection are the eligibility
23 requirements under the order that designated the parcel to which the land is being
24 added.

ASSEMBLY BILL 856**SECTION 7**

1 **SECTION 7.** 77.82 (11) of the statutes is renumbered 77.82 (11) (a) and amended
2 to read:

3 **77.82 (11) (a)** An order issued under this subchapter shall constitute a contract
4 between the state and the owner and shall remain in effect for the period specified
5 in the application unless the land is withdrawn under s. 77.84 (3) (b) or 77.88. Except
6 as provided in subs. (3) (f) and (11m), the department may not amend or otherwise
7 change the terms of an order or management plan to conform with changes made to
8 any provision of this subchapter subsequent to the date on which the order was
9 entered or the plan was approved.

10 **(b)** If a statute is enacted or a rule is promulgated during the period of the order
11 that materially changes the terms of the order as provided under this paragraph, the
12 landowner shall elect between acceptance of modifications to the contract consistent
13 with the provisions of the statute or rule or voluntary withdrawal of the land without
14 penalty. A statutory change does not constitute a material change to an order unless,
15 in the act that makes the change, the legislature states that the act or a provision
16 in the act makes a material change to orders entered into under prior law. A
17 promulgated rule does not constitute a material change to an order unless the rule
18 includes a statement that the rule constitutes a material change to orders entered
19 into under prior rules and the department includes in its report to the legislature
20 under s. 227.19 (2) a statement that the rule constitutes a material change to orders
21 entered into under prior rules and an analysis of this determination.

22 **SECTION 8.** 77.83 (2) (ar) of the statutes is repealed.

23 **SECTION 9.** 77.84 (1) of the statutes is amended to read:

24 **77.84 (1) TAX ROLL.** Each clerk of a municipality in which the land is located
25 shall enter in a special column or other appropriate place on the tax roll the

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1 description of each parcel of land designated as managed forest land, and shall
2 specify, by the designation “MFL-O” or “MFL-C”, the acreage of each parcel that is
3 designated open or closed under s. 77.83. The land shall be assessed and is subject
4 to review under ch. 70. Except as provided in this subchapter, no tax may be levied
5 on managed forest land, ~~except that any building on managed forest land is subject~~
6 ~~to taxation as personal property under ch. 70.~~

7 **SECTION 10.** 77.88 (2) (ac) 3. of the statutes is amended to read:

8 77.88 (2) (ac) 3. If the transferee does not provide the department with the
9 certification required under subd. 1., the department shall issue an order
10 withdrawing the land and ~~shall~~ may assess against the transferee the withdrawal
11 tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90,
12 the transferee is not entitled to a hearing on an order withdrawing land under this
13 subdivision.

14 **SECTION 11.** 77.88 (2) (c) of the statutes is amended to read:

15 77.88 (2) (c) *Remaining land; requirements not met.* If the land remaining after
16 a transfer under par. (a) does not meet the eligibility requirements under s. 77.82 (1)
17 (a) and (b), the department shall issue an order withdrawing the land and ~~shall~~ may
18 assess against the owner the withdrawal tax under sub. (5) and the withdrawal fee
19 under sub. (5m). Notwithstanding s. 77.90, the owner is not entitled to a hearing on
20 an order withdrawing land under this paragraph.

21 **SECTION 12.** 77.88 (3) (am) of the statutes is amended to read:

22 77.88 (3) (am) *Entire parcels.* Upon request of an owner of managed forest land
23 to withdraw an entire parcel of managed forest land, the department shall issue an
24 order withdrawing the land and assess against the owner the withdrawal tax under
25 sub. (5) and the withdrawal fee under sub. (5m).

ASSEMBLY BILL 856**SECTION 13**

1 **SECTION 13.** 77.88 (3) (b) (intro.) of the statutes is amended to read:

2 77.88 (3) (b) *Parts of parcels.* (intro.) Upon request of an owner of managed
3 forest land to withdraw part of a parcel of managed forest land, the department shall
4 issue an order withdrawing the land subject to the request and assess against the
5 owner the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m) if
6 all of the following apply:

7 **SECTION 14.** 77.88 (3j) (title) of the statutes is amended to read:

8 77.88 (3j) (title) VOLUNTARY WITHDRAWAL; OTHER CONSTRUCTION; ~~SMALL LAND~~
9 SALES.

10 **SECTION 15.** 77.88 (3j) (a) 1. of the statutes is amended to read:

11 77.88 (3j) (a) 1. The purpose for which the owner requests that the department
12 withdraw the land is for ~~the sale of the land or for~~ a construction site.

13 **SECTION 16.** 77.88 (3k) of the statutes is amended to read:

14 77.88 (3k) VOLUNTARY WITHDRAWAL; PRODUCTIVITY. Upon the request of an owner
15 of managed forest land to withdraw part of a parcel of the owner's land, the
16 department shall issue an order of withdrawal if the department determines that the
17 parcel is unable to produce merchantable timber in the amount required under s.
18 77.82 (1) (a) 2. The order shall withdraw only the number of acres that is necessary
19 for the parcel to resume its ability to produce the required amount, but if the land
20 remaining after the withdrawal will not meet the eligibility requirements under the
21 order designating the managed forest land, the order shall withdraw the entire
22 parcel. No withdrawal tax under sub. (5) or withdrawal fee under sub. (5m) may be
23 assessed.

24 **SECTION 17.** 77.88 (3L) of the statutes is amended to read:

