

2005 ASSEMBLY BILL 254

March 18, 2005 – Introduced by Representatives FRISKE, GARD, AINSWORTH, MEYER, MURSAU, M. WILLIAMS, GRONEMUS, KAUFERT, GUNDERSON, WIECKERT, BIES, FREESE, GUNDRUM, HAHN, KESTELL, KRAWCZYK, MCCORMICK, MONTGOMERY, MUSSER, OTT, OWENS, PETROWSKI, SUDER, TOWNSEND, UNDERHEIM, VAN ROY and SCHNEIDER, cosponsored by Senators KANAVAS, BRESKE and ZIEN. Referred to Committee on Forestry.

1 **AN ACT** *to renumber and amend* 60.61 (2) (a); *to amend* 28.04 (2) (a), 28.04 (2)
 2 (b), 28.04 (2) (c), 28.04 (3) (a), 28.04 (3) (b), 59.69 (4) (a) and 62.23 (7) (b); and
 3 **to create** 23.114, 23.135, 28.025, 28.04 (1) (br), 28.05 (3), 94.025 and 823.075
 4 of the statutes; **relating to:** managing state forest lands, harvesting of timber
 5 from state forest lands, emergencies on state forest lands, actions against
 6 forestry operations, providing an exemption from emergency rule procedures,
 7 and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the laws relating to the management of state forest lands. Under current law, the administrator of the Division of Forestry in the Department of Natural Resources (DNR) is designated as the chief state forester. This bill provides that the chief state forester has the authority and responsibility to manage emergencies, as specified by DNR, that threaten state forest lands, other than emergencies declared by the governor as a state of emergency. The bill also specifies that the chief state forester must report directly to the secretary of DNR.

Under current law, state forest lands are generally managed by DNR. This bill specifies requires that the Division of Forestry within DNR manage state forest lands.

This bill also requires DNR to establish allowable timber harvests for every parcel of 10 or more contiguous acres of forested land owned or managed by DNR or

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managed by a person under the direction of DNR. Under the bill, if the timber harvest for any of these lands falls below 90 percent or exceeds 110 percent of the established allowable timber harvest, the Council on Forestry must prepare a report containing recommendations on methods of ensuring that the timber harvest for that state forest land is consistent with the annual allowable timber harvest established by DNR.

The bill also requires DNR to maintain an inventory of every parcel of 10 or more contiguous acres of forested land that DNR owns or manages. The bill specifies that, if DNR prohibits the use of active management techniques on any of these lands, DNR must prepare a report every 15 years containing projections of the long-term forest health effects and the economic effects that result from that prohibition.

Under current law, if a business, property, or action of a person creates a public nuisance, the party damaged by that nuisance can bring an action for the damages caused by the nuisance or to abate the nuisance. A county or municipality may bring an action to abate a public nuisance. A “nuisance” is generally defined as an activity that annoys or disturbs a person in possession of his or her property and makes the use or occupation of that property physically uncomfortable. Currently, nuisances are defined to include dilapidated buildings, drug houses, and criminal gang houses.

This bill provides that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Under the bill, forestry operations include removal of vegetation or dead trees, noise from forestry equipment, and use of chemicals that are normally used in forestry operations. In addition, the bill provides that a forestry operation that conforms to generally accepted forestry management practices is not a nuisance regardless of any of the following:

1. Change in ownership or size of a forest.
2. Interruption of forestry operations.
3. Enrollment of part or all of the forest in governmental forestry programs.
4. Adoption of new forestry technology.

The bill also allows a person who is alleged to have committed the nuisance to receive his or her costs, including attorney fees, if he or she prevails in the action alleging a nuisance.

Under current law, cities, villages, towns that are authorized to exercise village powers, certain other towns, and counties (political subdivisions) are authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, the location and use of buildings, structures, and land for various purposes, and the areas within which activities such as agriculture, forestry, and mining may be conducted.

Under this bill, no political subdivision may enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices.

This bill also requires DNR to establish a program that allows private cooperating foresters to assist the state in the harvesting and sale of timber from

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state forest lands. The bill requires DNR to appoint cooperating foresters as agents of DNR for the purpose of harvesting and selling timber from state forest lands and to allow those foresters to receive a portion of the proceeds from each timber sale.

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.** 23.114 of the statutes is created to read:

2 **23.114 Duties of the chief state forester. (1)** (a) In this section, “state forest
3 land” means all forested lands owned or managed by the department or managed by
4 a person under the direction of the department.

5 (b) Except as provided in par. (c), the chief state forester shall manage
6 emergencies that threaten state forest lands. The department shall promulgate
7 rules specifying those emergencies over which the chief state forester shall have
8 management responsibility. The emergencies specified in the rules shall include
9 invasive species or pest infestation, disease, and damage to timber from fire, snow,
10 hail, ice, or wind.

11 (c) Paragraph (b) does not apply to a state of emergency declared by the
12 governor under s. 166.03.

13 **(2)** The chief state forester shall report directly to the secretary of the
14 department.

15 **SECTION 2.** 23.135 of the statutes is created to read:

16 **23.135 Forest land inventory and report. (1)** In this section, “state forest
17 land” means any parcel of 10 or more contiguous acres of forested land owned or
18 managed by the department or managed by a person under the direction of the
19 department.

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1 (2) The department shall undertake and maintain a current inventory of state
2 forest lands.

3 (3) If the department prohibits the use of active management techniques on
4 any state forest land, the department shall prepare a report that contains a
5 projection of the long-term forest health effects and a projection of the economic
6 effects that result from that prohibition.

7 (4) The department shall prepare each report required under sub. (3) once
8 every 15 years.

9 (5) The department shall submit the report required under sub. (3) to the
10 council on forestry and to the appropriate standing committee in each house of the
11 legislature under s. 13.172 (3).

12 **SECTION 3.** 28.025 of the statutes is created to read:

13 **28.025 Annual allowable timber harvests.** The department shall establish
14 annual allowable timber harvests for every parcel of 10 or more contiguous acres of
15 forested land owned or managed by the department or managed by a person under
16 the direction of the department. Annually, by January 1, the department shall
17 submit a report to the council on forestry specifying the total timber harvest on each
18 of those parcels for the previous year. If the timber harvest for any of these parcels
19 in any year is less than 90 percent, or more than 110 percent, of the allowable timber
20 harvest established parcel, the council on forestry shall prepare a report containing
21 recommendations on methods of ensuring that the timber harvest for that parcel is
22 consistent with the annual allowable timber harvest established by the department.
23 The council on forestry shall submit the report to the governor and to the appropriate
24 standing committees of the legislature under s. 13.172 (3).

25 **SECTION 4.** 28.04 (1) (br) of the statutes is created to read:

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1 28.04 (1) (br) “Division” means the division of forestry in the department.

2 **SECTION 5.** 28.04 (2) (a) of the statutes is amended to read:

3 28.04 (2) (a) The department division shall manage the state forests forest to
4 benefit the present and future generations of residents of this state, recognizing that
5 the state forests forest lands contribute to local and statewide economies and to a
6 healthy natural environment. The department division shall assure the practice of
7 sustainable forestry and use it to assure that state forests forest lands can provide
8 a full range of benefits for present and future generations. The department division
9 shall also assure that the management of state forests is consistent with the
10 ecological capability of the state forest land and with the long-term maintenance of
11 sustainable forest communities and ecosystems. These benefits include soil
12 protection, public hunting, protection of water quality, production of recurring forest
13 products, outdoor recreation, native biological diversity, aquatic and terrestrial
14 wildlife, and aesthetics. The range of benefits provided by the department division
15 in each state forest shall reflect its unique character and position in the regional
16 landscape.

17 **SECTION 6.** 28.04 (2) (b) of the statutes is amended to read:

18 28.04 (2) (b) In managing the state forests, the department division shall
19 recognize that not all benefits under par. (a) can or should be provided in every area
20 of a state forest.

21 **SECTION 7.** 28.04 (2) (c) of the statutes is amended to read:

22 28.04 (2) (c) In managing the state forests, the department division shall
23 recognize that management may consist of both active and passive techniques.

24 **SECTION 8.** 28.04 (3) (a) of the statutes is amended to read:

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1 28.04 (3) (a) The ~~department~~ division shall prepare a plan for each state forest
2 that describes how the state forest will be managed. The ~~department~~ division shall
3 work with the public to identify property goals and objectives that are consistent with
4 the purposes under sub. (2). The ~~department~~ division shall identify in each plan the
5 objectives of management for distinct areas of the state forest.

6 **SECTION 9.** 28.04 (3) (b) of the statutes is amended to read:

7 28.04 (3) (b) The ~~department~~ division shall establish procedures for the
8 preparation and modification of these plans, including procedures for public
9 participation. In preparing and modifying plans under this subsection, the
10 ~~department~~ division shall use the best available information regarding the purposes
11 and benefits of the state forests that the ~~department~~ division acquires through
12 inventories, evaluations, monitoring and research. In evaluating such information,
13 the ~~department~~ division shall consider both regional and local scales, including the
14 impact on local economies. As new information becomes available, the ~~department~~
15 division shall adapt its management of the state forest and, if necessary, the plan for
16 the state forest.

17 **SECTION 10.** 28.05 (3) of the statutes is created to read:

18 28.05 (3) COOPERATING FORESTERS. (a) The department shall, by rule, establish
19 a program that allows private cooperating foresters to assist the state in the
20 harvesting and sale of timber from state forest lands to meet the annual timber
21 harvest goals established under s. 28.025. The rule shall include provisions
22 authorizing the department to appoint cooperating foresters as agents of the
23 department for the purpose of harvesting and selling timber from state forest lands
24 and authorizing cooperating foresters to receive a portion of the proceeds from each
25 timber sale. The department shall establish in the rule a method for determining

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1 what portion of the proceeds received from each timber sale shall be paid to the
2 private cooperating foresters for their services in assisting the division in the
3 harvesting and sale of timber from state forest lands. The division shall ask the
4 council on forestry to recommend a method for determining what portion of the
5 proceeds received from each timber sale shall be paid to private cooperating foresters
6 under the rule.

7 (b) Each private cooperating forester appointed as an agent under par. (a) to
8 harvest and sell timber from state forest lands shall be entitled to receive a portion
9 of the proceeds from the sale of such timber in the amount determined by the
10 department under par. (a).

11 **SECTION 11.** 59.69 (4) (a) of the statutes is amended to read:

12 59.69 (4) (a) The areas within which agriculture, forestry, industry, mining,
13 trades, business and recreation may be conducted, except that no ordinance enacted
14 under this subsection may prohibit forestry operations that are in accordance with
15 generally accepted forestry management practices, as defined under s. 823.075 (1)
16 (c).

17 **SECTION 12.** 60.61 (2) (a) of the statutes is renumbered 60.61 (2) (a) (intro.) and
18 amended to read:

19 60.61 (2) (a) (intro.) Regulate, restrict and determine: the all of the following:

20 1. The areas within which agriculture, forestry, mining and recreation may be
21 conducted; the, except that no ordinance enacted under this subsection may prohibit
22 forestry operations that are in accordance with generally accepted forestry
23 management practices, as defined under s. 823.075 (1) (c).

24 2. The location of roads, schools, trades and industries; the,

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1 3. The location, height, bulk, number of stories and size of buildings and other
2 structures; ~~the.~~

3 4. The percentage of a lot which may be occupied; ~~the.~~

4 5. The size of yards, courts and other open spaces; ~~the.~~

5 6. The density and distribution of population; ~~the.~~

6 7. The location of buildings designed for specified uses; ~~the.~~

7 8. The trades, industries or purposes that may be engaged in or subject to
8 regulation; ~~and the.~~

9 9. The uses for which buildings may not be erected or altered.

10 **SECTION 13.** 62.23 (7) (b) of the statutes is amended to read:

11 62.23 (7) (b) *Districts.* For any and all of said purposes the council may divide
12 the city into districts of such number, shape, and area as may be deemed best suited
13 to carry out the purposes of this section; and within such districts it may regulate and
14 restrict the erection, construction, reconstruction, alteration or use of buildings,
15 structures or land. All such regulations shall be uniform for each class or kind of
16 buildings and for the use of land throughout each district, but the regulations in one
17 district may differ from those in other districts. No ordinance enacted or regulation
18 adopted under this subsection may prohibit forestry operations that are in
19 accordance with generally accepted forestry management practices, as defined
20 under s. 823.075 (1) (c). The council may with the consent of the owners establish
21 special districts, to be called planned development districts, with regulations in each,
22 which in addition to those provided in par. (c), will over a period of time tend to
23 promote the maximum benefit from coordinated area site planning, diversified
24 location of structures and mixed compatible uses. Such regulations shall provide for
25 a safe and efficient system for pedestrian and vehicular traffic, attractive recreation

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1 and landscaped open spaces, economic design and location of public and private
2 utilities and community facilities and insure adequate standards of construction and
3 planning. Such regulations may also provide for the development of the land in such
4 districts with one or more principal structures and related accessory uses, and in
5 such districts the regulations need not be uniform.

6 **SECTION 14.** 94.025 of the statutes is created to read:

7 **94.025 Emergencies on state forest lands.** Notwithstanding ss. 94.01 and
8 94.02, the chief state forester shall be the person with the authority and
9 responsibility to manage invasive species or pest infestations that threaten state
10 forest lands as provided under s. 23.114.

11 **SECTION 15.** 823.075 of the statutes is created to read:

12 **823.075 Actions against forestry operations. (1)** In this section:

13 (a) “Department” means the department of natural resources.

14 (b) “Forest” means a parcel of land in which at least 80 percent of the parcel is
15 producing or is capable of producing at least 20 cubic feet of merchantable timber,
16 as defined in s. 77.81 (3), per acre per year.

17 (c) “Generally accepted forestry management practices” means forestry
18 management practices that maximize sound management of a forest, as determined
19 by the department by rule.

20 **(2)** A forestry operation is not a nuisance if the forestry operation alleged to be
21 a nuisance conforms to generally accepted forestry management practices. Any of
22 the following are examples of forestry operations that are not a nuisance if conducted
23 in conformance with generally accepted forestry management practices:

24 (a) Removal of vegetation, dead or live trees, bark, foliage, or wood resulting
25 in visual changes in a forest.

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1 (b) Noise from forestry equipment.

2 (c) Removal of vegetation, dead or live trees, bark, foliage, or wood from a forest
3 adjoining the property of another person.

4 (d) Use of chemicals that are normally used in forestry operations.

5 **(3)** A forestry operation that conforms to generally accepted forestry
6 management practices is not a nuisance regardless of any of the following:

7 (a) A change in ownership or size of a forest.

8 (b) Cessation or interruption of forestry operations.

9 (c) Enrollment of all or part of the forest in governmental forestry or
10 conservation programs.

11 (d) Adoption of new forestry technology.

12 **(4)** In any action in which a forestry operation is alleged to be a nuisance, if the
13 party who was alleged to commit the nuisance prevails, the court may award that
14 party the actual and necessary costs incurred in the action and, notwithstanding s.
15 814.04 (1), reasonable attorney fees.

16 **SECTION 16. Nonstatutory provisions.**

17 (1) The department of natural resources shall submit in proposed form the
18 rules required under sections 23.114 (1) (b) and 28.05 (3) of the statutes, as created
19 by this act, to the legislative council staff under section 227.15 (1) of the statutes no
20 later than the first day of the 6th month beginning after the effective date of this
21 subsection, unless the secretary of administration requires the department of
22 natural resources to prepare an economic impact report under section 227.137 of the
23 statutes for the proposed rules.

24 (2) Using the procedure under section 227.24 of the statutes, the department
25 of natural resources shall promulgate rules required under sections 23.114 (1) (b)

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1 and 28.05 (3) of the statutes, as created by this act, for the period before the effective
2 date of the permanent rules submitted under subsection (1). Notwithstanding
3 section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
4 subsection remain in effect until the date on which permanent rules take effect.
5 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not
6 required to provide a finding of emergency for a rule promulgated under this
7 subsection.

8 **SECTION 17. Effective dates.** This act takes effect on the day after publication,
9 except as follows:

10 (1) The treatment of sections 23.135 and 28.025 of the statutes takes effect on
11 the first day of the 13th month beginning after publication.

12 (2) The treatment of sections 23.114 (1) (b) and 28.05 (3) of the statutes takes
13 effect on the first day of the 4th month beginning after publication.

14 (END)