

2005 DRAFTING REQUEST

Bill

Received: **09/14/2004**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Donald Friske (608) 266-7694**

By/Representing: **Tim Gary**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters: **rnelson2**

Subject: **Nat. Res. - parks and forestry**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Friske@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Management of state forest lands

Instructions:

Same as 2003 LRB-4543/2

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 10/12/2004	chanaman 10/21/2004		_____			S&L
/1			rschlue 10/22/2004	_____	sbasford 10/22/2004		S&L
/2	rkite 12/03/2004	jdye 12/03/2004	jfrantze 12/03/2004	_____	lnorthro 12/03/2004		S&L
/3	rkite	jdye	rschlue	_____	sbasford	lnorthro	

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	02/08/2005	02/09/2005	02/11/2005	_____	02/11/2005	03/17/2005	

FE Sent For:

↳ At
Intro.

<END>

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/2	rkite	jdyer 12/2/04 jld	jfrantze pb		lnorthro		

LRB-0195

12/03/2004 01:52:11 PM

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10/12/3 *10/12/3*
12/3

LRB-0195

10/22/2004 10:35:00 AM

Page 2

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/?	rkite						

FE Sent For:

10
24
<END>

2005

2003 BILL

D-Note

LPS
Please Proof with Folio

regen.
cat.

1 AN ACT *to renumber and amend* 60.61 (2) (a); *to amend* 28.02 (title), 28.02 (1),
 2 28.04 (2) (a), 28.04 (2) (b), 28.04 (2) (c), 28.04 (3) (a), 28.04 (3) (b), 59.69 (4) (a),
 3 62.23 (7) (b) and 70.114 (1) (c); and *to create* 23.114, 28.02 (7), 28.025, 28.04 (1)
 4 (br), 28.04 (3) (am), 28.04 (4), 28.05 (3), 94.025 and 823.075 of the statutes;
 5 **relating to:** managing state forest lands, harvesting of timber from state forest
 6 lands, actions against forestry operations, and requiring the exercise of
 7 rule-making authority.

as specified by DNR,
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 requires the chief state forester to be the person responsible for managing all emergencies 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, DNR is required to manage state forest lands. Those lands include lands granted to the state by a certain act of congress, lands donated to the state by the Nebagamon Lumber Company, and all lands acquired under various state laws. This bill specifies that state forest lands also include all other forested *are*

BILL

lands managed by DNR. It also requires that the Division of Forestry within DNR manage these state forest lands.

Under current law, certain well-blocked areas of state-owned lands are designated as state forests. DNR is required to prepare a plan for each state forest that describes how the state forest will be managed. This bill requires that DNR prepare such a plan for all state forest lands. Under the bill, if the plan covers more than 10 acres of state forest land and if the plan requires the use of passive management techniques, the plan must include projections of the long-term forest health effects and the economic effects of using these techniques.

This bill also requires DNR to establish allowable timber harvests for each state forest land. 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 the department. *DNR*

The bill creates a rebuttable presumption that DNR complies with state laws that require DNR to manage the state forest lands in a manner that benefits the present and future generations of residents of this state and to prepare a state plan for each state forest that describes how the state forest will be managed. Under this bill, if a person brings an action alleging that DNR is not managing the forests as required or has not prepared a proper plan, that person has the burden of rebutting that presumption by clear and convincing evidence.

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, such as a place where a controlled substance is illegally distributed, sold, or manufactured. A "nuisance" is generally defined as an action 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 include places where illegal gambling occurs, 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.

action

place where

are defined to include

have

BILL

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 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 retain 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) Except as provided in par.

3 (b), the chief state forester shall be the person responsible for managing ^{manage} all
4 emergencies that threaten state forest lands. The department shall promulgate
5 rules specifying those emergencies over which the chief state forester shall have
6 management responsibility. The emergencies specified in the rules shall include
7 invasive species or pest infestation, disease, and damage to timber from fire, snow,
8 hail, ice, or wind.

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

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

13 **SECTION 2.** 28.02 (title) of the statutes is amended to read:

BILL**28.02** (title) **State forests forest lands.**

SECTION 3. 28.02 (1) of the statutes is amended to read:

28.02 (1) DEFINED. State ~~forests~~ forest lands include all lands granted to the state by an act of congress entitled, "An act granting lands to the state of Wisconsin for forestry purposes," approved June 27, 1906; all lands donated to the state by the Nebagamon Lumber Company for forestry purposes; all lands acquired pursuant to chapter 450, laws of 1903, chapter 264, laws of 1905, chapter 638, laws of 1911, and chapter 639, laws of 1911, or under ss. 1494-41 to 1494-62, 1915 stats., ~~and~~ all lands subsequently acquired for forestry purposes, and all other forested lands managed by the department. Unless an island is designated as state forest land by the department, state forest lands do not include lands granted to the state by an act of congress entitled, "An act granting unsurveyed and unattached islands to the state of Wisconsin for forestry purposes," approved August 22, 1912. The department may designate as state forest lands any lands within state forest boundaries which were purchased with other conservation funds and where forestry would not conflict with a more intensive use.

SECTION 4. 28.02 (7) of the statutes is created to read:

28.02 (7) INVENTORY. The department shall undertake and maintain a current inventory of all state forest lands described under sub. (1).

SECTION 5. 28.025 of the statutes is created to read:

28.025 Annual allowable timber harvests. The department shall establish annual allowable timber harvests for each state forest land described under s. 28.02 (1). Annually, by January 1, the department shall submit a report to the council on forestry specifying the total timber harvest on each state forest land described under s. 28.02 (1) for the previous year. If the timber harvest for any of these state forest

BILL

1 lands in any year is less than 90 percent, or more than 110 percent, of the allowable
2 timber harvest established for that state forest land, the council on forestry shall
3 prepare a report containing recommendations on methods of ensuring that the
4 timber harvest for that state forest land is consistent with the annual allowable
5 timber harvest established by the department. The council on forestry shall submit
6 the report to the governor and to the appropriate standing committees of the
7 legislature under s. 13.172 (3).

8 **SECTION 6.** 28.04 (1) (br) of the statutes is created to read:

9 28.04 (1) (br) "Division" means the division of forestry in the department.

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

11 28.04 (2) (a) The ~~department~~ division shall manage ~~the those~~ state forests
12 forest lands described under s. 28.02 (1) to benefit the present and future generations
13 of residents of this state, recognizing that ~~the state forests~~ forest lands contribute to
14 local and statewide economies and to a healthy natural environment. The
15 ~~department~~ division shall assure the practice of sustainable forestry and use it to
16 assure that state forests forest lands can provide a full range of benefits for present
17 and future generations. The ~~department~~ division shall also assure that the
18 management of state forests forest lands is consistent with the ecological capability
19 of the state forest land and with the long-term maintenance of sustainable forest
20 communities and ecosystems. These benefits include soil protection, public hunting,
21 protection of water quality, production of recurring forest products, outdoor
22 recreation, native biological diversity, aquatic and terrestrial wildlife, and
23 aesthetics. The range of benefits provided by the ~~department~~ division in each state
24 forest shall reflect its unique character and position in the regional landscape.

25 **SECTION 8.** 28.04 (2) (b) of the statutes is amended to read:

BILL

1 28.04 (2) (b) In managing the state forests forest land, the department division
2 shall recognize that not all benefits under par. (a) can or should be provided in every
3 area acre of ~~a~~ state forest land.

4 **SECTION 9.** 28.04 (2) (c) of the statutes is amended to read:

5 28.04 (2) (c) In managing the state forests forest lands, the department division
6 shall recognize that management may consist of both active and passive techniques.

7 **SECTION 10.** 28.04 (3) (a) of the statutes is amended to read:

8 28.04 (3) (a) The department division shall prepare a plan for each of the state
9 forest lands described under s. 28.02 (1) that describes how ~~the~~ that state forest land
10 will be managed. The department division shall work with the public to identify
11 property goals and objectives that are consistent with the purposes under sub. (2).
12 The department division shall identify in each plan the objectives of management for
13 distinct areas of the state forest land.

14 **SECTION 11.** 28.04 (3) (am) of the statutes is created to read:

15 28.04 (3) (am) Every plan prepared under par. (a) on or after the effective date
16 of this paragraph [revisor inserts date] that covers a parcel of state forest land that
17 exceeds 10 acres and that requires the use of passive management techniques shall
18 include all of the following:

19 1. A projection of the long-term forest health effects of using passive techniques
20 in managing that state forest land.

21 2. A projection of the economic effects of using passive techniques in managing
22 that state forest land.

23 **SECTION 12.** 28.04 (3) (b) of the statutes is amended to read:

24 28.04 (3) (b) The department division shall establish procedures for the
25 preparation and modification of these plans, including procedures for public

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1 participation. In preparing and modifying plans under this subsection, the
2 ~~department~~ division shall use the best available information regarding the purposes
3 and benefits of the state forests that the ~~department~~ division acquires through
4 inventories, evaluations, monitoring and research. In evaluating such information,
5 the ~~department~~ division shall consider both regional and local scales, including the
6 impact on local economies. As new information becomes available, the ~~department~~
7 division shall adapt its management of ~~the~~ state forest lands and, if necessary, the
8 plan for ~~the~~ state forest lands.

9 **SECTION 13.** 28.04 (4) of the statutes is created to read:

10 28.04 (4) REBUTTABLE PRESUMPTION. In an action brought against the
11 department for failure to manage a state forest as required under sub. (2) or to
12 prepare a plan as required under sub. (3), it is presumed that the department has
13 complied with the requirements of sub. (2) or (3). To prevail in the action, the person
14 claiming that the department has failed to comply with sub. (2) or (3) has the burden
15 of rebutting that presumption by clear and convincing evidence that the department
16 has not complied with sub. (2) or (3).

17 **SECTION 14.** 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 retain 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 retain a portion
9 of the proceeds from the sale of such timber in the amount determined by the
10 department under par. (a). The private cooperating forester shall remit the balance
11 of the proceeds from that sale to the department.

12 **SECTION 15.** 59.69 (4) (a) of the statutes is amended to read:

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

18 **SECTION 16.** 60.61 (2) (a) of the statutes is renumbered 60.61 (2) (a) (intro.) and
19 amended to read:

20 60.61 (2) (a) (intro.) Regulate, restrict and determine: ~~the~~ all of the following:

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

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

BILL

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 17.** 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

BILL

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 18.** 70.114 (1) (c) of the statutes is amended to read:

7 70.114 (1) (c) "Land" means state forests forest lands, as defined in s. 28.02 (1),
8 that are acquired after December 31, 1991, state parks that are acquired after
9 December 31, 1991, under s. 27.01 and other areas that are acquired after
10 December 31, 1991, under s. 23.09 (2) (d), 23.091, 23.27, 23.29, 23.293, 23.31 or
11 29.749 (1).

12 **SECTION 19.** 94.025 of the statutes is created to read:

13 **94.025 Emergencies on state forest lands.** Notwithstanding ss. 94.01 and
14 94.02, the chief state forester shall be the person responsible for managing all
15 invasive species or pest infestations that threaten state forest lands as provided
16 under s. 23.114.

17 **SECTION 20.** 823.075 of the statutes is created to read:

18 **823.075 Actions against forestry operations. (1)** In this section:

19 (a) "Department" means the department of natural resources.

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

23 (c) "Generally accepted forestry management practices" means forestry
24 management practices that maximize sound management of a forest, as determined
25 by the department by rule.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0195/1dn
RNK:.....

This is a redraft of 2003 LRB-4543/3. The draft contains some minor changes, principally in the analysis and in s. 23.114, as created in the draft, for purposes of clarity. Please review the draft in its entirety to ensure that it is consistent with your intent.

As I explained in last session's drafter's note, the terms "state forest" and "state forest lands" are not used consistently throughout the statutes. Consequently, it is unclear to me whether a reference in the statutes to "state forests" means the same thing as a reference to "state forest lands". I have not attempted to address this inconsistency throughout the statutes because I am unable to know with certainty the intent of each reference. I have, however, assumed for the purposes of this draft that you intended the draft to cover all state forest lands and not only those state forests designated by DNR. I recommend that you have someone at DNR review this draft to ensure that the changes to current law made in the draft, specifically the broadening of the scope of s. 28.03 (2), do not result in unintended consequences.

Please feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0195/1dn
RNK:cmh:rs

October 21, 2004

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Please feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Kite, Robin

To: Gary, Tim
Subject: RE: LRB-0195

Tim,

I will redraft the bill.

Robin

-----Original Message-----

From: Gary, Tim
Sent: Thursday, December 02, 2004 11:57 AM
To: Kite, Robin
Subject: RE: LRB-0195

Robin,

Rep. Friske would like to have the word authority in addition to the word responsibility in the bill.

Thank you for help on this.

Tim

-----Original Message-----

From: Kite, Robin
Sent: Friday, November 19, 2004 9:52 AM
To: Gary, Tim
Subject: LRB-0195

Tim,

This is in response to your telephone message concerning LRB-0195. You asked whether Section 19 of the draft gives the chief forester the authority, as well as the responsibility, to manage pest infestations that threaten state forests. I think that by giving the chief forester responsibility to manage pest infestations, this also means that the forester has the authority to manage these infestations. But if you prefer that I use the word "authority" in the draft, I would be happy to prepare a redraft.

If you have any other questions or concerns, please feel free to contact me.

Robin

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