

(soon)  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0195/1  
RNK&RPN:jld&cmh:rs

## 2005 BILL

Regen

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.

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

*has the authority and responsibility to manage* ✓

**BILL**

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 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. 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

**BILL**

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 manage emergencies that threaten state forest  
4           lands. The department shall promulgate rules specifying those emergencies over  
5           which the chief state forester shall have management responsibility. The  
6           emergencies specified in the rules shall include invasive species or pest infestation,  
7           disease, and damage to timber from fire, snow, hail, ice, or wind.

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

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

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

13          **28.02 (title) State forests forest lands.**

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

**BILL**

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

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

16           28.02 (7) INVENTORY. The department shall undertake and maintain a current  
17 inventory of all state forest lands described under sub. (1).

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

19           **28.025 Annual allowable timber harvests.** The department shall establish  
20 annual allowable timber harvests for each state forest land described under s. 28.02  
21 (1). Annually, by January 1, the department shall submit a report to the council on  
22 forestry specifying the total timber harvest on each state forest land described under  
23 s. 28.02 (1) for the previous year. If the timber harvest for any of these state forest  
24 lands in any year is less than 90 percent, or more than 110 percent, of the allowable  
25 timber harvest established for that state forest land, the council on forestry shall

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1 prepare a report containing recommendations on methods of ensuring that the  
2 timber harvest for that state forest land is consistent with the annual allowable  
3 timber harvest established by the department. The council on forestry shall submit  
4 the report to the governor and to the appropriate standing committees of the  
5 legislature under s. 13.172 (3).

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

7 28.04 (1) (br) “Division” means the division of forestry in the department.

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

9 28.04 (2) (a) The ~~department~~ division shall manage the those state forests  
10 forest lands described under s. 28.02 (1) to benefit the present and future generations  
11 of residents of this state, recognizing that ~~the state forests~~ forest lands contribute to  
12 local and statewide economies and to a healthy natural environment. The  
13 ~~department~~ division shall assure the practice of sustainable forestry and use it to  
14 assure that state forests forest lands can provide a full range of benefits for present  
15 and future generations. The ~~department~~ division shall also assure that the  
16 management of state forests forest lands is consistent with the ecological capability  
17 of the state forest land and with the long-term maintenance of sustainable forest  
18 communities and ecosystems. These benefits include soil protection, public hunting,  
19 protection of water quality, production of recurring forest products, outdoor  
20 recreation, native biological diversity, aquatic and terrestrial wildlife, and  
21 aesthetics. The range of benefits provided by the ~~department~~ division in each state  
22 forest shall reflect its unique character and position in the regional landscape.

23 **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 <sup>✓</sup>responsible for managing invasive  
15 species or pest infestations that threaten state forest lands as provided under s.  
16 23.114. *(with the authority and responsibility to manage)*

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.



12-5-04

Per Rep. Fricke -

Re: plans (proposed 5.28.04 (3)(am) -  
this is to apply to forested natural  
resources areas - not to all forested  
areas -

give DNR 12 months (del. eff. date)  
also wants draft to ensure the chief  
forester can manage forest emergencies  
on all state forest lands

1-14-05

Re: LRB-0195/2 - Redraft instructions  
per Tim in Fricke's office

Please redraft to remove language  
re: rebuttable presumptions

RIV ✓

1-25-05

Per Tim Gary

Scheduled meeting w/ Rep Fricke

1:00 2/1/05 - Fricke's office

Rachel Kitzing can attend

Rebecca Holynski will get back to me  
to confirm

Tim said that I can give Reg. Council +  
AFB a copy of the draft provided that  
they keep it confidential

Eric Ebersberger called (LFB)  
wanted to tell me that certain state  
natural areas are managed by  
others such as municipalities or nonprofits -  
that is - language giving forester authority  
over dept. lands managed by the dept.  
might exclude certain natural areas -

## Kite, Robin

---

**From:** Gary, Tim  
**Sent:** Monday, December 27, 2004 11:44 AM  
**To:** Kite, Robin  
**Cc:** Letzing, Rachel  
**Subject:** LRB 0195/2

**Importance:** High

Robin,

Don and I were going over the bill draft, after speaking with some folks, and we found some areas where we can improve it prior to introduction.

Given the small detail we are getting at, I am confident that we are close to having it perfected. Hopefully we won't have any more slashes added beyond 3.

As always, please know my gratitude and my pleasure in the work you have done so far. And please feel free to call on me should you have any questions.

Tim  
Cc: Rachel Letzing



ForestryTaskForceB  
ill.pdf

*Per Tim -  
Talk to Mark P.*

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### **Notes:**

On page 5. Section 7.

Representative Friske wants to ensure that 28.02 (1), when combined with 28.04 (2) will not change the existing master plans for state properties. This may not require any changes ... but he wants you to speak with Rachel Letzing at Legislative Council to ensure this.

On Page 6. Section 11. Line 17.

Delete and redraft as, "exceeds 10 acres and prohibits or excludes active forest management techniques shall include all of the following:"

On Page 6. Line 19.

Delete and redraft as, "1. A projection of the long-term forest health effects on that state forest land."

On page 6. Line 21.

Delete and redraft as, "2. A projection of the economic effects on that state forest land."

On page 8. Line 8.

Delete the word "retain" and insert the word "receive"

*D-note  
changes*

*effect  
exclusion of  
active management  
as it pertains  
to forest*

Meeting 2/1/05 - Rep. Frieske, Tim Gary, Rachel Fetzing, Rebecca H. and Eric E.

of emergencies -

all lands managed by dept.

state owned land - not county forests or  
community forests -

include state natural areas to cover

dept. lands managed by others -

forest land managed by the dept -

O.K that this is left vague

don't include DNR rule

State forest plans -

same lands as above

28.04 -

include additional requirements as  
in draft in plan

all other lands as above -

10 acres or greater of forested lands  
managed by the dept

submit to council on Forestry & standing  
committees - every 15 years -

every parcel of 10 or more contiguous

acres of forested land - owned or

managed by the dept, when dept decides to passively

if the dept decides to ~~use~~ prohibit the use of <sup>manage</sup>

active techniques - then report is required

i.e. - decision must have been made

by dept.



for all lands - including state forests -  
make this a report -  
due in 12 months



D-Note

2005 BILL

LPS -  
please  
check auto  
refs

emergencies on state  
forest lands NO  
A

generally managed  
by DNR

regen

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 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),  
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 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, <sup>plain</sup> and requiring the exercise of  
 7 rule-making authority <sup>providing an exemption from emergency rule procedures</sup>

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

**BILL**

*forested state parks and recreation areas (state forest land)*

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.

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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.

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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

*every parcel of 10 or more contiguous acres of forested land owned or managed by ~~the~~ DNR or managed by a person under the direction of DNR*

✓  
insert  
Analysis

**BILL**

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~~ <sup>receive</sup> 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)~~ <sup>Insert 1-2</sup> Except as provided in par.

3 ~~(b)~~ <sup>(c)</sup> the chief state forester shall manage emergencies that threaten state forest  
4 lands. The department shall promulgate rules specifying those emergencies over  
5 which the chief state forester shall have management responsibility. The  
6 emergencies specified in the rules shall include invasive species or pest infestation,  
7 disease, and damage to timber from fire, snow, hail, ice, or wind.

8 ~~(b)~~ <sup>(c)</sup> Paragraph ~~(a)~~ <sup>(b)</sup> does not apply to a state of emergency declared by the  
9 governor under s. 166.03.

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

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

13 **28.02 (title) State forests forest lands.**

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

*the forested lands described under s. 28.02(1) and all other forested lands owned or managed by a person under the direction of the department*

**BILL**

**SECTION 3**

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

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

16           28.02 (7) INVENTORY. The department shall undertake and maintain a current  
 17 inventory of ~~all state forest lands described under sub. (1).~~ *insert 4-17*

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

19           **28.025 Annual allowable timber harvests.** The department shall establish  
 20 annual allowable timber harvests for ~~each state forest land described under s. 28.02~~ *insert 4-20*

21 ~~Annually, by January 1, the department shall submit a report to the council on~~  
 22 ~~forestry specifying the total timber harvest on each state forest land described under~~  
 23 ~~s. 28.02(1) for the previous year. If the timber harvest for any of these state forest~~ *of those parcels*  
 24 ~~lands~~ *parcels* in any year is less than 90 percent, or more than 110 percent, of the allowable  
 25 timber harvest established for that ~~state forest land,~~ *parcel* the council on forestry shall

**BILL**

insert 5/5  
insert 5/7

1 prepare a report containing recommendations on methods of ensuring that the  
2 timber harvest for that state forest <sup>parcel</sup> land is consistent with the annual allowable  
3 timber harvest established by the department. The council on forestry shall submit  
4 the report to the governor and to the appropriate standing committees of the  
5 legislature under s. 13.172 (3). ✓

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

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

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

9 28.04 (2) (a) The department division shall manage ~~the~~ <sup>no strike</sup> ~~those~~ state forests <sup>plain</sup>  
10 ~~forest lands~~ described under s. 28.02 (1) to benefit the present and future generations  
11 of residents of this state, recognizing that the state forests forest lands contribute to  
12 local and statewide economies and to a healthy natural environment. The  
13 department division shall assure the practice of sustainable forestry and use it to  
14 assure that state forests forest lands can provide a full range of benefits for present  
15 and future generations. The department division shall also assure that the  
16 management of state ~~forests~~ <sup>no strike</sup> forest lands <sup>plain</sup> is consistent with the ecological capability  
17 of the state forest land and with the long-term maintenance of sustainable forest  
18 communities and ecosystems. These benefits include soil protection, public hunting,  
19 protection of water quality, production of recurring forest products, outdoor  
20 recreation, native biological diversity, aquatic and terrestrial wildlife, and  
21 aesthetics. The range of benefits provided by the department division in each state  
22 forest shall reflect its unique character and position in the regional landscape.

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

*and all other forested lands <sup>owned or</sup> managed by the department*

**BILL**

*plain  
no strike*

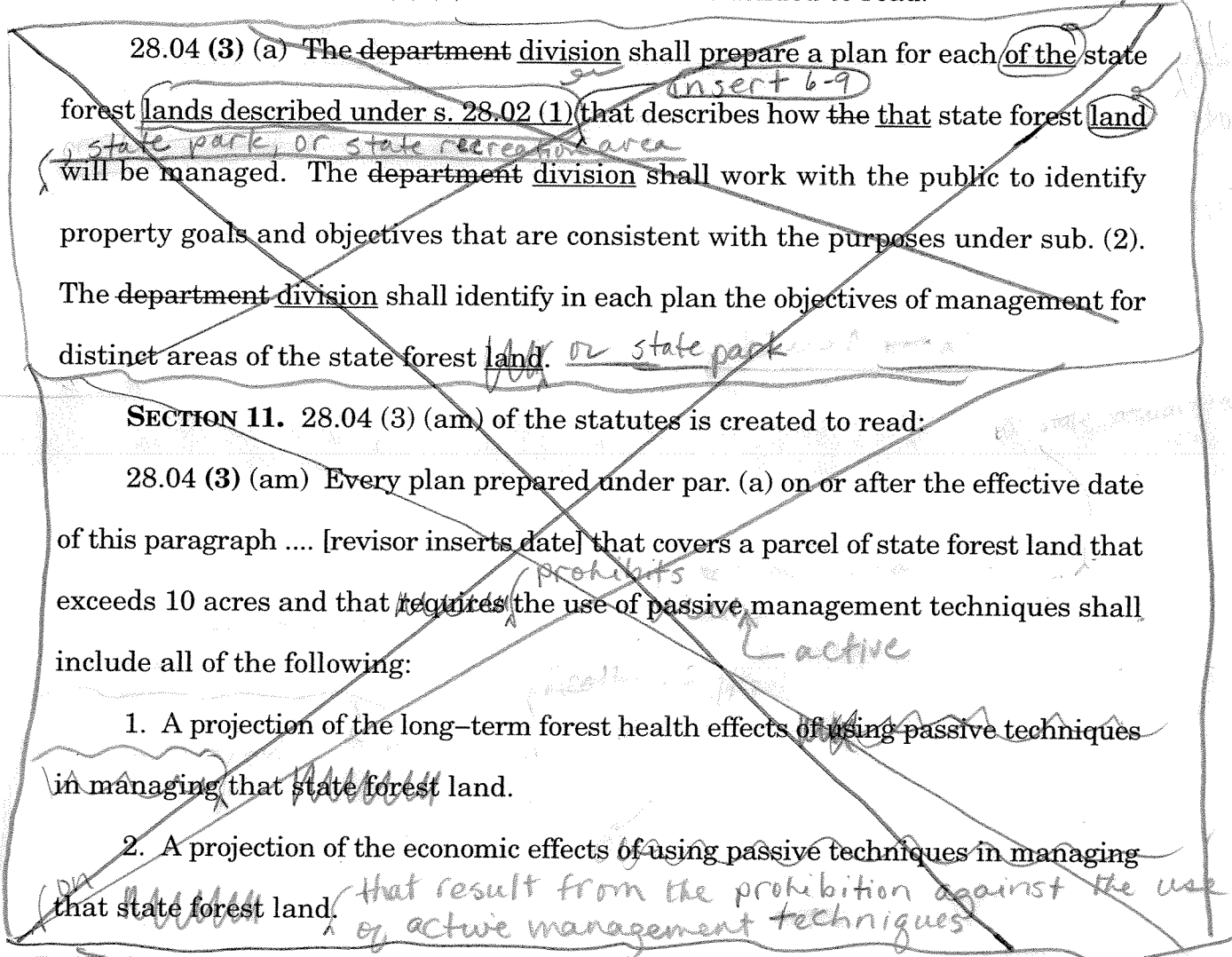
1 28.04 (2) (b) In managing the state forests forest land, the department division  
2 shall recognize that not all benefits under par. (a) can or should be provided in every  
3 area acre of a state forest land.

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.

*insert  
6-23*

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

**BILL**

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 <sup>receive</sup> retain a portion of the proceeds from each  
 25 timber sale. The department shall establish in the rule a method for determining



**BILL****SECTION 14**

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~~<sup>receive</sup> 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 with the authority and  
15 responsibility to manage invasive species or pest infestations that threaten state  
16 forest lands as provided 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.

**BILL**

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

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

7           (b) Noise from forestry equipment.

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

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

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

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

14          (b) Cessation or interruption of forestry operations.

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

17          (d) Adoption of new forestry technology.

18          (4) In any action in which a forestry operation is alleged to be a nuisance, if the  
19 party who was alleged to commit the nuisance prevails, the court may award that  
20 party the actual and necessary costs incurred in the action and, notwithstanding s.

21 814.04 (1), reasonable attorney fees.

insert  
11-21 →  
22

(END)

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0195/3ins.  
RNK:.....

INSERT ANALYSIS

~~4~~ 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.

INSERT 1-2

~~NO 4~~ (a) In this section, "state forest land" means all forested lands owned or managed by the department or managed by a person under the direction of the department.

INSERT 4-17

SECTION 1. 23.135 of the statutes is created to read:

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

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

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

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

↓

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

INSERT 4-20

<sup>no</sup> every parcel of 10 or more contiguous acres of forested land owned or managed by the department or managed by a person under the direction of the department <sub>426</sub>

INSERT 6-22

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

History: 1995 a. 257.

INSERT 11-21

**SECTION 2. Nonstatutory provisions.**

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

(2) Using the procedure under section 227.24 of the statutes, the department of natural resources shall promulgate rules required under <sup>sections</sup> ~~s.~~ 23.114 (1) (b) and 28.05 (3) of the statutes, as created by this act for the period before the effective date of the

\*

↓

subsection

permanent rules submitted under sub (1). Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until the date on which permanent rules take effect. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection.

**SECTION 3. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The ~~creation~~<sup>treatment</sup> of sections 23.135 and 28.025 takes effect on the first day of the 13th month beginning after publication.

(2) The ~~creation~~<sup>treatment</sup> of sections 23.114 (1) (b) and 28.05 (3) of the statutes takes effect on the first day of the 4th month beginning after publication.

(end ins)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0195/3dn

RNK:.....

Jed

Please review this draft very closely to ensure that I have fully captured your intent as expressed at our recent meeting.

I have included a nonstatutory provision that contains a deadline for the submission to the legislative council staff of proposed rules under sections 23.114 (1) (b) and 28.05 (3), as created in the draft . You will note, however, that the draft provides that this deadline does not apply if, under s. 227.137, stats., the secretary of administration requires DNR to prepare an economic impact report for a proposed rule. This is because the requirement to submit an economic impact report may prevent DNR from submitting the proposed rules by the specified date. To ensure that a delay in the promulgation of rules does not prevent sections 23.114 (1) (b) and 28.05 (3) from taking effect, the draft also requires DNR to promulgate emergency rules for the period before permanent rules take effect. Does this nonstatutory provision meet your intent?

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

created ss.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0195/3dn  
RNK:jld:rs

February 11, 2005

Please review this draft very closely to ensure that I have fully captured your intent as expressed at our recent meeting.

I have included a nonstatutory provision that contains a deadline for the submission to the legislative council staff of proposed rules under ss. 23.114 (1) (b) and 28.05 (3), as created in the draft. You will note, however, that the draft provides that this deadline does not apply if, under s. 227.137, stats., the secretary of administration requires DNR to prepare an economic impact report for a proposed rule. This is because the requirement to submit an economic impact report may prevent DNR from submitting the proposed rules by the specified date. To ensure that a delay in the promulgation of rules does not prevent created ss. 23.114 (1) (b) and 28.05 (3) from taking effect, the draft also requires DNR to promulgate emergency rules for the period before permanent rules take effect. Does this nonstatutory provision meet your intent?

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

**Northrop, Lori**

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**From:** Gary, Tim  
**Sent:** Thursday, March 17, 2005 3:23 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0195/3 Topic: Management of state forest lands

It has been requested by <Gary, Tim> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0195/3 Topic: Management of state forest lands