

2007 DRAFTING REQUEST

Bill

Received: 09/05/2007

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Eugene Hahn (608) 266-3404

By/Representing: Michael Austin

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Adl. Drafters:

Subject: Nat. Res. - parks and forestry

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hahn@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Wind turbines on managed forest land

Instructions:

See Attached

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>
/?							
/P1	rkite 09/14/2007	bkraft 09/14/2007	jfrantze 09/14/2007	_____	sbasford 09/14/2007		
/1	rkite 11/06/2007	bkraft 11/08/2007	rschluet 11/08/2007	_____	sbasford 11/08/2007	sbasford 11/14/2007	

FE Sent For: N/A

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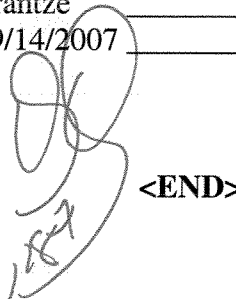
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/P1	rkite 09/14/2007	bkraft 09/14/2007	jfrantze 09/14/2007		sbasford 09/14/2007		

FE Sent For:

1 bjk 11/8



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/?	rkite	/PI bjk 9/14					

FE Sent For:

<END>

**Kite, Robin**

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**From:** Austin, Michael  
**Sent:** Wednesday, September 05, 2007 11:25 AM  
**To:** Kite, Robin  
**Subject:** FW: MFL and Wind Turbines  
**Attachments:** Wind Turbines.doc

Robin,

Attached is a memo from the DNR on allowing wind turbines on Managed Forest Lands. If you could please draft a bill for Rep. Hahn that would allow for the DNR to accept wind turbines on MFL lands. I don't think we would want to outright allow the landowners the ability but maybe allow the DNR to set standards for which they can be eligible.

Let me know if you have any questions. Thanks.

**Michael Austin**  
**Office of Rep. Eugene Hahn**  
**(608) 266-3404**

---

**From:** DeLong, Paul J - DNR  
**Sent:** Wednesday, September 05, 2007 8:08 AM  
**To:** Austin, Michael  
**Cc:** Williams, Quinn L - DNR; Mather, Robert J - DNR; Nelson, Kathryn J - DNR  
**Subject:** MFL and Wind Turbines

Attached is a memo I received from legal counsel on the issue you raised regarding the allowance of wind turbines on MFL lands. Please give me a call if you and/or Rep. Hahn wish to discuss.

Thanks.

Paul

<<Wind Turbines.doc>>

---

**Paul DeLong**

Administrator, Division of Forestry  
Chief State Forester  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707  
phone: (608) 264-9224  
fax: (608) 266-8576  
e-mail: paul.delong@wisconsin.gov  
Visit our website at <http://dnr.wi.gov/forestry>

09/05/2007

DATE: August 20, 2007  
TO: Paul DeLong  
FROM: Kathy Nelson and Quinn Williams  
SUBJECT: Mike Austin Wind Turbine Request

### **Introduction**

Wind turbines are not allowed on Managed Forest Law ("MFL") lands. These, along with similar structures and improvements, have consistently been prohibited by the Department in exercising its statutory authority and deference, based on conflicts with the overall purpose of the MFL program, and for specific statutory and rule based prohibitions on development for industry and uses inconsistent with the practice of forestry.

### **1) Purpose of the Managed Forest Law Program**

The purpose of the MFL program, under Wis. Stats. s. 77.80, is to "encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices." Under Wis. Stats. s. 77.88(1)(a)4., the Department may withdraw land entered into the MFL program if "[t]he owner's development or use of any part of the parcel [is] for a purpose [that] is incompatible with the purposes specified in s. 77.80."

The Department receives periodic requests from industries and individuals to allow them to place cable relay stations, cell towers, wind generators, advertisement signs, highway debris, equipment storage, rabbit pens, pheasant farms, ropes courses, green burials, trailhead, and other incompatible uses, on MFL lands without being required to remove the lands from the MFL program.

While some of these requests may have some public benefit, the Department has consistently determined that none of these uses meet the underlying purpose of the MFL program for encouraging sustainable forest crop production.

Each one of the examples occupies lands under the MFL program that could and must be used for the production of forest crops, or for the narrow set of exceptions provided for in the sound practice of forestry. As a result, none, including wind turbines, meet the underlying purpose of the MFL program.

### **2) Developed for a Use Inconsistent with the Practice of Forestry**

Under Wis. Stats. s. 77.82(1)(b)2., MFL lands that are "determined by the department to be incompatible with the sound practice of forestry" are ineligible for entry into the program, and under Wis. Stats. s. 77.88(1)(b)2, can be withdrawn from the MFL program.

Wind turbines, as well as the other examples mentioned above, do not fit the definition of "sound forestry practices", defined under Wis. Admin. Code NR 46.15(29) as;

[m]eans timber cutting, transporting and forest cultural methods recommended or approved by

the department for the effective propagation and improvement of the various timber types common to Wisconsin. "Sound forestry practices" also may include, where consistent with landowner objectives and approved by the department, the management of forest resources other than trees including wildlife habitat, watersheds, aesthetics and endangered and threatened plant and animal species.

As noted above, all of the uses, including wind turbines, take up land within the program that should and could be used for "the effective propagation and improvement of the various timber types common to Wisconsin." *Id.* Additionally, none of the uses, would be considered management of "wildlife habitat, watersheds, aesthetics [or] endangered and threatened plant and animal species." *Id.*

### 3) Developed for Industry

Finally, wind turbines, no matter how large or small their footprint on the landscape, are developed for industrial purposes, which is not allowed under Wis. Stats. s. 77.82(1)(b)2., and so may also be withdrawn from the MFL program under Wis. Stats. s. 77.88(1)(b)2.

"Developed for industry" is defined under Wis. Admin. Code NR 46.15(10) as "the alteration or use of the land for the purpose of conducting trade, **production** or manufacturing activities **other than forest products production.**" (emphasis added).

The Department has consistently held that the development of wind turbines for the production of energy, and thus developed for industry, is ineligible under Wis. Stats. s. 77.82(1)(b)2.

### Conclusion

Wind turbines are an unacceptable use and development on MFL lands, and have been consistently denied by the Department, along with a host of other proposed developments. Wind turbines do not meet the purpose of the MFL program, defined in statute and consistently interpreted by the Department. Wind turbines are not consistent with the sound practice of forestry, as established in statute and code, nor do they meet any of the qualified exceptions to forest resource production. Wind turbines are an impermissible development for industry, directly prohibited by statute and code. Finally, the Department has consistently interpreted its statutes and administrative code to prohibit the development of wind turbines on MFL lands, and would receive considerable deference in the courts should this issue ever be challenged.



State of Wisconsin  
2007 - 2008 LEGISLATURE

RM run  
PI  
LRB-3134  
RNK:.....  
bjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

SA ✓  
X-ref ✓

D-Note

gen. cat.

- 1 AN ACT ...; relating to: wind turbines located on land designated as managed
- 2 forest land and granting rule-making authority. ✓

**Analysis by the Legislative Reference Bureau**

Under the managed forest land (MFL) program, the owner of land that meets certain requirements as to size and the amount of timber on the land may apply to have DNR designate the land as MFL. The owner of such land then makes an annual payment that is lower than, and in lieu of, the property taxes that normally would be payable on the land. In exchange, the owner must comply with certain forestry practices and may keep a specific area closed to public access; the remainder of the land must be kept open for recreational activities consisting of hunting, fishing, hiking, sightseeing, and cross-country skiing. For land that the owner keeps closed to public access, the owner must pay a supplemental amount that is in addition to the annual payment described above (closed-land payment). ✓

Among the forestry practices prohibited on land under the MFL program is development of the land for commercial recreation, for industry, or for any other use determined by the department to be incompatible with the practice of forestry. This bill creates an exception to these restrictions by requiring DNR to allow land on which wind turbines are located to be eligible for designation as MFL. The bill specifies that the exception applies only if the wind turbines do not interfere with

\*  
The Department of  
Natural  
Resources

DNR





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

LRB-3134<sup>P12</sup>dn  
RNK:.....

Lbjk

Date

✓ This draft requires the Department of Natural Resources (DNR) to allow wind turbines on managed forest lands as long as the wind turbines do not interfere with sound forestry practices. ✓ It requires DNR to promulgate rules establishing standards for such wind turbines. ✓ As drafted, the rule requirement does not give guidance to DNR on what the rule should address. For example, should the rule specify the size of allowable wind turbines, the number of wind turbines that would be allowed, the type of wind turbine allowed, etc.? rules rules

\* Because the draft depends for its administration on DNR to promulgate rules, the draft should have a delayed effective date to give DNR sufficient time to promulgate rules. ✓ And because the rule-making process can take considerable time, you might want to establish a deadline by which DNR must submit its proposed rules to the Legislative Council staff and allow DNR to promulgate emergency rules to apply before the final rules take effect. ✓ rules rules

✓ I have prepared this draft in preliminary form to provide you with an opportunity to revise the draft, if desired, based on the issues discussed above. If you would like to discuss these issues in more detail, please feel free to contact me. ✓

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

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

LRB-3134/P1dn  
RNK:bjk:jf

September 14, 2007

This draft requires the Department of Natural Resources (DNR) to allow wind turbines on managed forest lands as long as the wind turbines do not interfere with sound forestry practices. It requires DNR to promulgate rules establishing standards for such wind turbines. As drafted, the rules requirement does not give guidance to DNR on what the rules should address. For example, should the rules specify the size of allowable wind turbines, the number of wind turbines that would be allowed, the type of wind turbine allowed, etc.?

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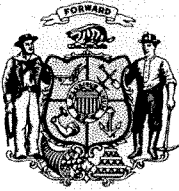
Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

11/6/07

Per Mike in Rep. Hoba's office

add 1 year delayed eff. date  
require rules to be submitted w/in 6 months

do not specify in the bill what kinds of  
standards the rules must contain



(soon) ←  
State of Wisconsin  
2007 - 2008 LEGISLATURE

RM run  
le  
le  
LRB-3134/21

RNK:bjk:ff  
Stays

Insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 Bill

SA ✓

regen. cat.

- 1 AN ACT to create 77.82 (1) (bg) of the statutes; relating to: wind turbines located
- 2 on land designated as managed forest land and granting rule-making
- 3 authority.

**Analysis by the Legislative Reference Bureau**

Under the Managed Forest Land (MFL) Program, the owner of land that meets certain requirements as to size and the amount of timber on the land may apply to have the Department of Natural Resources (DNR) designate the land as MFL. The owner of such land then makes an annual payment that is lower than, and in lieu of, the property taxes that normally would be payable on the land. In exchange, the owner must comply with certain forestry practices and may keep a specific area closed to public access; the remainder of the land must be kept open for recreational activities consisting of hunting, fishing, hiking, sightseeing, and cross-country skiing. For land that the owner keeps closed to public access, the owner must pay a supplemental amount that is in addition to the annual payment described above (closed-land payment).

Among the forestry practices prohibited on land under the MFL program is development of the land for commercial recreation, for industry, or for any other use determined by DNR to be incompatible with the practice of forestry. This bill creates an exception to these restrictions by requiring DNR to allow land on which wind turbines are located to be eligible for designation as MFL. The bill specifies that the exception applies only if the wind turbines do not interfere with sound forestry

practices on that land. The bill requires DNR to promulgate rules that establish standards for wind turbines that may be allowed on MFL.

---

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

1           **SECTION 1.** 77.82 (1) (bg) of the statutes is created to read:

2           77.82 (1) (bg) Notwithstanding the restrictions under par. (b) 2., a parcel on  
3           which one or more wind turbines are located is eligible for designation as managed  
4           forest land provided that the wind turbines do not interfere with sound forestry  
5           practices on that parcel. The department shall promulgate rules establishing  
6           standards for wind turbines that are acceptable under this paragraph on land  
7           designated as managed forest.

(END)

✓  
insert  
2-7  
8 →

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3134/1ins.  
RNK:.....

Lbjk

INSERT 2-7

**SECTION 1. Nonstatutory provisions.**

(1) The department of natural resources shall submit in proposed form the rules required under section 77.82 (1) (bg) 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 7th month beginning after the effective date of this subsection.

**SECTION 2. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 77.82 (1) (bg) of the statutes takes effect on the first day of the 13th month beginning after publication.

end of insert

**Duerst, Christina**

---

**From:** Austin, Michael

**Sent:** Wednesday, November 14, 2007 12:33 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 07-3134/1 Topic: Wind turbines on managed forest land

Please Jacket LRB 07-3134/1 for the ASSEMBLY.

11/14/2007