



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 358
[2015 Senate Bill 434]

Managed Forest Law

2015 Wisconsin Act 358 makes various changes to Wisconsin's Managed Forest Law (MFL) program.

PROGRAM ELIGIBILITY

Minimum Acres

Under prior law, a parcel was required to consist of at least 10 contiguous acres to be eligible for the MFL program. The Act increases the minimum acreage required to 20 acres. That change applies prospectively, with a one-time opportunity for currently enrolled parcels to renew their enrollment in the program without satisfying the 20-acre requirement.

Buildings and Improvements

Under prior law, a parcel developed for a human residence was not eligible to be enrolled in the program. The Act prohibits the enrollment of a parcel if there is any building or improvement associated with a building located on the parcel, beginning with enrollments after the Act takes effect.

Accessibility

Prior law did not expressly require MFL land to be accessible by the public by foot. As a criteria for program eligibility, the Act requires MFL land to be accessible to the public on foot by public road or from other land open to public access. That requirement does not apply to an MFL parcel or part of a parcel that is closed to public access.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

TAXATION

Yield and Severance Taxes

Under prior law, the harvest of timber was subject to a severance tax (if in the forest cropland [FCL] program) or a yield tax (if in the MFL program). Those tax proceeds were distributed to counties (20%) and municipalities (80%). The Act repeals severance and yield taxes for timber harvesting in Wisconsin.

Tax for Withdrawal

In general, a withdrawal tax is assessed if managed forest land is withdrawn from the program before the end of an MFL order. Under prior law, the withdrawal tax, as calculated by the Department of Revenue, was generally the higher of either:

- The MFL owner's past tax liability (calculated using the assessed value of the property and net tax rate in the municipality in the year prior to withdrawal multiplied by the years the land was designated as MFL).
- Five percent of the stumpage value of merchantable timber on the land (minus any acreage share and yield taxes paid by the owner).

The Act applies this tax formula to MFL land that is part of a "large property," defined to mean one or more separate MFL (or FCL) parcels of land under the same ownership that collectively are greater than 1,000 acres in size. For other parcels, the Act taxes land withdrawn from the program at a rate equal to the property tax rate applicable to the land in the previous year, multiplied times the number of years the land was enrolled in the program, or 10 years, whichever is less.

MFL ORDERS

The Department of Natural Resources (DNR) issues an "order" enrolling property in the MFL program.

The Act clarifies that such an order constitutes a contract between the state and the owner. Under the Act, the DNR is prohibited from amending or otherwise changing the terms of an existing order or forest management plan to conform with changes made to the MFL statute after the order was entered or the plan was approved. If a new statute is enacted or rule is promulgated during the term of the order that materially changes the terms of the order, then the owner must elect to either accept the modified contract or to voluntarily withdraw from the MFL program without penalty.

OPPORTUNITIES TO WITHDRAW LAND

An owner of MFL land may voluntarily withdraw the land from the program, but the owner generally must pay specified taxes and a fee as a result of the withdrawal. In general, under prior law, such withdrawals generally applied to the entire parcel enrolled in the program.

The Act authorizes an owner to request to withdraw part of a parcel of the owner's land without paying withdrawal taxes or fees, and requires the DNR to issue an order of withdrawal for such land, if the DNR determines that the parcel is unsuitable, due to environmental, ecological, or economic concerns or factors, for the production of merchantable timber. The order must withdraw only the number of acres that is necessary for the parcel to resume its sustainability to produce merchantable timber.

In addition, the Act authorizes an MFL owner to voluntarily withdraw part of an MFL parcel (one to five acres) for the purpose of selling or using the withdrawn portion of the parcel as a construction site. Such withdrawals are authorized one time during a 25-year order and two times during a 50-year order. An owner must pay withdrawal taxes and the fee for withdrawal of the land.

NATURAL DISASTERS

Prior law did not make special accommodations for MFL land following a natural disaster. The Act authorizes the DNR to provide an MFL owner a period of time to restore the productivity of MFL land following a "natural disaster," defined to mean fire, ice, snow, wind, flooding, insects, drought, or disease, before the owner must satisfy program requirements.

CUTTING NOTICES

Limited Review Based on Forester Credentials

Before an MFL owner may cut timber on his or her MFL land, the owner must file a notice of intent to cut and request approval of the proposed cutting from the DNR. As amended by 2015 Wisconsin Act 55 (the Biennial Budget Act), current law prohibits the DNR from prescribing the amount of forest products to be removed if the notice was provided by a cooperating forester or by a forester accredited by one of several, specified organizations.

In addition to cooperating foresters and foresters accredited by the organizations specified under current law, the Act also prohibits the DNR from prescribing the amount of forest products to be removed if a notice of intention to cut was provided by a person who has: (1) five years of experience engaged in the full-time profession of managing forests, including timber harvesting, wildlife, water quality, and recreation to maintain a healthy and productive forest; (2) this experience plus a bachelor's degree from an accredited higher education institution; and (3) this experience plus a degree or diploma from a two-year forestry program provided by an accredited technical or vocational school.

Review Based on Natural Heritage Inventory Standards

The Act prohibits the DNR from restricting an approved cutting based on standards established as part of the natural heritage inventory.

Timeline for DNR Decision

The Act requires the DNR to send a notice to a person who filed a notice of intention to cut by certified letter or electronic mail no later than the end of the next business day of the DNR's decision to deny the notice, and the reason for the denial.

CLOSED LAND

Number of Acres

Unless an MFL owner designates land enrolled in the program as “closed” or the MFL land is within a proposed ferrous mining site that meets certain conditions, the owner generally must permit public access to the land for hunting, fishing, hiking, sight-seeing, and cross-country skiing.

Under prior law, in general, an MFL owner could designate up to 160 acres in a single municipality as closed. The Act increases the number of acres that may be closed to 320 acres within each municipality.

Distribution of Closed Acreage Fees

Under prior law, fees paid by owners who close their MFL land to public access were deposited in the conservation fund.

Under the Act, the DNR must distribute certain proceeds from closed acreage fees to municipalities in which closed MFL land is located, in an amount that is proportional to the amount of closed MFL land in the municipality. The Act authorizes \$4.6 million for that purpose in fiscal year 2016-17; \$6 million in fiscal year 2017-18; and \$7 million in fiscal year 2018-19.

In addition, the Act requires the DNR to determine whether the amount in closed acreage fees payable to each county and municipality in 2016 is less than the amount each received in severance and yield taxes in 2015, and for each county and municipality that will receive less in 2016 than it received in 2015, requires the DNR to pay each county and municipality an amount equal to the difference between the two amounts, and must do so no later than December 1, 2016. The Act creates a \$6 million appropriation in fiscal year 2016-17 for distribution of closed acreage fees and payments to municipalities and counties to make up for the difference between closed acreage fees received in 2016 and severance and yield taxes received in 2015.

LEASING

Prior law generally prohibited an owner from leasing MFL land to another person for the purpose of allowing them to engage in a recreational activity on the MFL land.

The Act authorizes an owner of MFL land to do either or both of the following:

- Permit a person who performs land management activities on the land to access the land to conduct recreational activities.
- Enter into a lease or other agreement for consideration that permits persons to engage in a recreational activity on the land.

WILDLIFE ACTION PLAN

Under federal law, states must have an approved state wildlife action plan before they may receive grants through the state wildlife grants program for the wildlife conservation and

restoration program, which are administered by the U.S. Fish and Wildlife Service. The DNR is currently in the process of revising the state's wildlife action plan.

The Act authorizes the DNR to prepare a state wildlife action plan. The Act also prohibits the plan from requiring any action by property owners or the DNR, and it prohibits the DNR from using the plan as guidance on official department forms.

VARIANCE FOR 75% "FOREST PRODUCTION AREA"

The Biennial Budget Act required the DNR to propose a variance to the master plans of specified state forests so that 75% of all the land in those state forests combined is classified as a forest production area. As enrolled, the budget bill included a deadline for completion of the variance, but the Governor vetoed the deadline.

The Act requires the same variance as the budget act, and it requires that the DNR must propose the variance before May 1, 2017.

Effective date: Generally, April 16, 2016. The minimum acreage requirement first applies to MFL orders issued on the effective date and the restrictions on buildings and improvements allowed on MFL land first applies to land designated as MFL under an order issued or renewed on the effective date. Certain yield and severance tax changes first apply on the effective date, while other changes take effect on July 1, 2016.

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