



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2015 Assembly Bill 561

**Assembly Substitute
Amendment 2**

Memo published: February 17, 2016

Contact: Rachel E. Letzing, Principal Attorney (266-3370)

2015 ASSEMBLY BILL 561

2015 Assembly Bill 561 and Assembly Substitute Amendment 2 make various changes to Wisconsin’s Managed Forest Law (MFL) program.

ASSEMBLY SUBSTITUTE AMENDMENT 2

Assembly Substitute Amendment 2 includes provisions that do all of the following:

Program Eligibility

Minimum Acres

Under **current law**, a parcel must consist of at least 10 contiguous acres to be eligible for the MFL program. [s. 77.82 (1), Stats.] The **substitute amendment** 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 **current law**, a parcel developed for a human residence is not eligible to be enrolled in the program. [s. 77.82 (1), Stats.] The **substitute amendment** 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 substitute amendment takes effect. An “improvement” is any accessory building, structure, or fixture that is built or placed on the parcel for its benefit or landscaping done on the parcel. “Improvement” does not include: a public or private road; a railroad or utility right-of-way; a fence, unless the fence prevents the free and open movement

of wild animals; culverts; bridges; certain hunting blinds; or structures and fixtures needed for sound forestry practices.

Accessibility

Current law does not expressly require MFL land to be accessible by the public by foot. As a criteria for program eligibility, the **substitute amendment** 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.

Taxation

Yield and Severance Taxes

Under **current law**, the harvest of timber is subject to a severance tax (if in the managed forest cropland program) or a yield tax (if in the MFL program). [s. 77.87 (3), Stats.] Those tax proceeds are distributed to counties (20%) and municipalities (80%). The **substitute amendment** repeals severance and yield taxes for timber harvesting in Wisconsin.

Tax for Withdrawal

Under **current law**, in general, a withdrawal tax is assessed on managed forest land withdrawn from the program before the end of an MFL order. The withdrawal tax, as calculated by the Department of Revenue (DOR), is 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).

[s. 77.88 (5) (a), Stats.]

The **substitute amendment** applies the tax formula under current law to MFL land that is part of a "large property," defined to mean one or more separate MFL [or forest cropland (FCL)] parcels of land under the same ownership that collectively are greater than 1,000 acres in size. For other parcels, the substitute amendment 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

Under **current law**, the Department of Natural Resources (DNR) issues an "order" enrolling property in the MFL program. An MFL applicant must choose whether his or her MFL order will be in effect for 25 or 50 years. An order remains in effect for the period specified in the application unless the land is withdrawn from the program. [s. 77.82 (11), Stats.]

The **substitute amendment** clarifies that such an order constitutes a contract between the state and the owner. Under the substitute amendment, 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

Current law authorizes an owner of MFL land to 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 current law, such withdrawals generally apply to the entire parcel enrolled in the program. [s. 77.88, Stats.]

The **substitute amendment** 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 **substitute amendment** 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

Current law does not make special accommodations for MFL land following a natural disaster. The **substitute amendment** 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. [s. 77.06 (1) (b) 2., Stats.]

In addition to cooperating foresters and foresters accredited by the organizations specified under current law, the **substitute amendment** 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 **substitute amendment** prohibits the DNR from restricting an approved cutting based on standards established as part of the natural heritage inventory.

Timeline for DNR Decision

The **substitute amendment** 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 approve or deny the notice. If the notice is denied, the DNR must include the reason for the denial in its notice.

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. [s. 77.83 (2) (a) and (2m), Stats.]

Under **current law**, in general, an MFL owner may designate up to 160 acres in a single municipality as closed. An MFL owner is allowed to modify a designation of open or closed land two times during the term of the MFL order. [s. 77.83 (1) and (1m), Stats.]

The **substitute amendment** increases the number of acres that may be closed to 320 acres within each municipality.

Leasing

Current law generally prohibits 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. [s. 77.83 (2) (am), Stats.]

The **substitute amendment** 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.

Distribution of Closed Acreage Fees

Under **current law**, fees paid by owners who close their MFL land to public access are deposited in the conservation fund. [s. 77.89 (2) (b), Stats.]

Under the **substitute amendment**, 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 substitute amendment 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 **substitute amendment** 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 **substitute amendment** 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.

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 state plans must be revised at least every 10 years. Wisconsin's wildlife action plan was first published in 2005. The DNR is currently in the process of revising the state's wildlife action plan.

The **substitute amendment** authorizes the DNR to prepare a state wildlife action plan. The substitute amendment 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"

2015 Wisconsin Act 55 (the Biennial Budget Act) requires 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 **substitute amendment** requires the same variance as the budget act, and it requires that the DNR must propose the variance before May 1, 2017.

BILL HISTORY

Assembly Substitute Amendment 2 was offered by the Joint Committee on Finance on February 4, 2016.

On the same date, the committee recommended adoption of the substitute amendment on a vote of Ayes, 12; Noes, 3, and recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 3.

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