



## 2021 ASSEMBLY BILL 909

January 25, 2022 - Introduced by Representatives MURSAU, PENTERMAN, KNODL, SKOWRONSKI, SNODGRASS and WICHGERS, cosponsored by Senators FELZKOWSKI, BALLWEG and MARKLEIN. Referred to Committee on Forestry, Parks and Outdoor Recreation.

1     **AN ACT** *to repeal* 77.83 (2) (ar); *to renumber and amend* 77.82 (11) and 77.88  
2           (3k); *to amend* 77.82 (1) (a) (intro.), 77.82 (1) (a) 1., 77.82 (1) (b) 3., 77.82 (1) (bp)  
3           1. (intro.), 77.82 (1) (bp) 1. a., 77.82 (1) (c), 77.82 (4), 77.88 (2) (ac) 1., 77.88 (2)  
4           (am), 77.88 (2) (b), 77.88 (2) (c), 77.88 (3) (am), 77.88 (3) (b) (intro.), 77.88 (3j)  
5           (title), 77.88 (3j) (a) 1., 77.88 (3j) (a) 4., 77.88 (3L) and 77.88 (8) (b); and *to create*  
6           77.82 (1) (ag), (am) and (ar), 77.82 (1) (b) 3m., 77.82 (1) (bp) 4., 77.82 (3) (h), 77.86  
7           (1) (am), 77.88 (2) (d), 77.88 (3k) (a) and (b), 77.88 (3L) (a) and (b) and 77.88 (8)  
8           (a) 4. of the statutes; **relating to:** the managed forest land program.

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### ***Analysis by the Legislative Reference Bureau***

This bill makes numerous changes to the managed forest land (MFL) program administered by the Department of Natural Resources.

#### ***Introduction***

Under current law, certain forested land may be designated as MFL under a program administered by DNR. Under this program, the owner of land designated as MFL makes an annual acreage share payment that is lower than, and in lieu of, the property taxes that normally would be payable. In exchange, the owner must comply with certain forestry practices and have a management plan prepared for the land. The owner must also open the MFL to the public for hunting, fishing, hiking,

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sight-seeing, and cross-country skiing, but may designate up to a certain number of acres as being closed to the public. For MFL that is designated as closed, the owner must pay an additional closed acreage fee. An owner seeking to have land designated as MFL submits an application to DNR that contains a management plan for the land. If the MFL meets the eligibility requirements under the program, which include minimum acreage requirements and requirements as to how much merchantable timber can be produced on the land, DNR approves the application and issues an order designating the land as MFL. An owner may choose to have the order last 25 or 50 years.

***Eligibility***

Under current law, a parcel of land is eligible for designation as MFL only if it consists of at least 20 contiguous acres. This was increased from a minimum of 10 acres under 2015 Wisconsin Act 358. Under current law, the fact that a lake, river, stream, or flowage, a public or private road, or a railroad or utility right-of-way separates any part of the parcel from any other part does not render it noncontiguous. Under the bill, a parcel of land is eligible if it either consists of at least 20 contiguous acres or it consists of at least 10 contiguous acres and is located in a tract of land under the same ownership that contains at least one other parcel of at least 10 contiguous acres that meets the other eligibility requirements and for which designation under a single managed forest land order is sought. The bill requires that the owner of such a tract of land notify DNR of any sale or transfer of land not enrolled in MFL from the tract, as it may impact eligibility of the MFL parcels. Under the bill, the fact that a lake, river, stream, or flowage, a public or private road, or a railroad or utility right-of-way separates any part of the land from any other part does not render a parcel noncontiguous and does not render ownership of the land noncontiguous. These changes only apply to land designated as MFL by an order issued or renewed on or after April 16, 2016, which is the date on which the minimum acreage change and other eligibility changes under Act 358 first applied.

Under current law, land is not eligible for designation as MFL if a building or an improvement associated with a building is located on it. Current law specifies that an improvement includes any accessory building, structure, or fixture that is built or placed on the parcel for its benefit. The bill eliminates reference to an accessory building in the description of an improvement. The bill provides that the prohibition on buildings and improvements does not apply to a building used exclusively for storage. This change also only applies to land designated as MFL by an order issued or renewed on or after April 16, 2016.

Under current law, an owner of land that is designated as MFL may file an application with DNR to designate an additional parcel of land as MFL if the additional parcel is at least three acres in size and is contiguous to any of that designated land. Under the bill, such an additional parcel may be any size if contiguous to designated land under the same ownership, or not contiguous if it meets the minimum acreage requirements under the bill. The bill specifies that the eligibility requirements applicable to such an addition are the eligibility requirements under the order that designated the parcel to which the land is being added.

**ASSEMBLY BILL 909*****Material change to law***

Under current law, if a statute is enacted or a rule is promulgated during the period of an MFL order that materially changes the terms of the order, the landowner must elect between acceptance of modifications to the contract consistent with the provisions of the statute or rule or voluntary withdrawal of the land without penalty. The bill adds that a statutory change does not constitute a material change to an order unless, in the act that makes the change, the legislature states that the act or a provision in the act makes a material change to orders entered into under prior law. Under the bill, this first applies to the enactment of this bill, itself, which does not contain such a statement. Further, under the bill, a promulgated rule does not constitute a material change to an order unless the rule includes a statement that the rule constitutes a material change to orders entered into under prior rules and DNR includes in its report to the legislature on the proposed rule a statement that the rule constitutes a material change to orders entered into under prior rules and an analysis of this determination.

***Withdrawal taxes and fees***

The bill clarifies that DNR is required to assess a withdrawal tax and fee against an owner of MFL who voluntarily withdraws part or all of a parcel, which was made unclear under Act 358.

Current law allows an owner of MFL to sell or otherwise transfer all or part of the owner's parcel of MFL, and the transferred land continues to be designated as MFL if it meets eligibility requirements and the transferee certifies to DNR an intent to comply with the existing management plan for the land and any amendments to the plan. If the transferred land does not meet eligibility requirements, current law requires DNR to issue an order withdrawing the land and to assess against the owner the withdrawal tax and fee. Under the bill, in this circumstance DNR may, but is not required to, assess the withdrawal tax and fee.

Under current law, an owner of MFL may request to withdraw part of a parcel and DNR must issue an order of withdrawal if DNR determines that the parcel is either unable to produce merchantable timber in the amount required by law or unsuitable, due to environmental, ecological, or economic concerns or factors, for the production of merchantable timber. Current law requires that the order withdraw only the number of acres necessary for the parcel to resume its ability to produce the required amount or to resume its sustainability to produce merchantable timber, and prohibits the assessment of a withdrawal tax or fee for the withdrawal. The bill adds that, if the land remaining in the parcel after the withdrawal does not meet eligibility requirements under the order designating the MFL, the order must withdraw the entire parcel, and if the land subject to the MFL order after the withdrawal does not meet the eligibility requirements under the MFL order, all land under the MFL order must be withdrawn. The bill maintains that the withdrawal order may not assess a withdrawal tax or fee.

Current law exempts certain transfers of MFL from the imposition of withdrawal taxes and fees, such as transfers for a public road or railroad or utility right-of-way. The bill adds such an exemption for transfers for a public purpose to a city, village, town, or county that is authorized to levy property taxes on the land.

**ASSEMBLY BILL 909*****Small land sales***

Under current law, generally an owner of MFL may voluntarily withdraw part of a parcel of the owner's land once per 25-year order and twice per 50-year order if the purpose for which the owner requests the withdrawal is for the sale of one to five acres of the land or for a construction site. Current law separately allows an owner of MFL to sell or transfer ownership of all or part of the owner's land an unlimited number of times per order. The bill harmonizes these provisions by removing the sale of land as a purpose for a voluntary withdrawal under the former.

***Large ownerships***

The bill authorizes DNR to promulgate rules that subject large ownerships, meaning 1,000 or more acres of land designated as MFL under the same owner, to management plan requirements that deviate from the requirements that apply under statute.

***Leasing***

The bill eliminates a provision authorizing an owner of MFL that is designated as closed to enter into a lease or other agreement for consideration that permits persons to engage in a recreational activity on the land. Under the bill, there are no prohibitions on leasing land under the MFL program.

***Cutting***

Current law requires that a land owner who intends to cut merchantable timber on MFL to file with DNR a notice of intent to cut and request DNR's approval of the cutting. Current law requires DNR to approve such a cutting notice if the proposed cutting conforms to the management plan and is consistent with sound forestry practices. If not, current law requires DNR to help the owner to develop an acceptable proposal before approving the request. The bill specifies that cutting merchantable timber on MFL in a manner that is contrary to a management plan or a cutting notice is prohibited and that a violator may be subject to a forfeiture equal to 20 percent of the current value of the merchantable timber cut, based on the stumpage value, as well as withdrawal of all or a part of the MFL parcel.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 77.82 (1) (a) (intro.) of the statutes is amended to read:
- 2           77.82 (1) (a) (intro.) A parcel of land that is subject to a managed forest land
- 3 order issued or renewed before April 16, 2016, is eligible for designation as managed
- 4 forest land only if it fulfills the following requirements:

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1           **SECTION 2.** 77.82 (1) (a) 1. of the statutes is amended to read:

2           77.82 (1) (a) 1. It consists of at least ~~20~~ 10 contiguous acres, except as provided  
3 in this subdivision. The fact that a lake, river, stream, or flowage, a public or private  
4 road, or a railroad or utility right-of-way separates any part of the land from any  
5 other part does not render a parcel of land noncontiguous. If a part of a parcel of at  
6 least ~~20~~ 10 contiguous acres is separated from another part of that parcel by a public  
7 road, that part of the parcel may be enrolled in the program, even if that part is less  
8 than ~~20~~ 10 acres, if that part meets the requirement under subd. 2. and is not  
9 ineligible under par. (b). ~~The owner of a parcel of less than 20 acres that is subject~~  
10 ~~to a managed forest land order before April 16, 2016, may apply one time for a~~  
11 ~~renewal of the order under sub. (12) without meeting the 20-acre requirement.~~

12           **SECTION 3.** 77.82 (1) (ag), (am) and (ar) of the statutes are created to read:

13           77.82 (1) (ag) A parcel of land that is or will be subject to a managed forest land  
14 order issued or renewed on or after April 16, 2016, is eligible for designation as  
15 managed forest land only if it fulfills all of the following requirements:

16           1. Subject to par. (am), the parcel either consists of at least 20 contiguous acres  
17 or meets all of the following acreage requirements:

18           a. The parcel consists of at least 10 contiguous acres.

19           b. The parcel is located in a tract of land under the same ownership that  
20 contains at least one other parcel of at least 10 acres that meets the requirements  
21 under subd. 2. and for which designation under the same managed forest land order  
22 is sought.

23           2. At least 80 percent of the parcel is producing or capable of producing a  
24 minimum of 20 cubic feet of merchantable timber per acre per year.

**ASSEMBLY BILL 909****SECTION 3**

1 (am) The fact that a lake, river, stream, or flowage, a public or private road, or  
2 a railroad or utility right-of-way separates any part of the land from any other part  
3 does not render a parcel of land noncontiguous and does not render ownership of land  
4 noncontiguous.

5 (ar) The owner of a parcel that does not meet the acreage requirements in par.  
6 (ag) 1. and that is subject to a managed forest land order issued before April 16, 2016,  
7 may apply one time for a renewal of the order under sub. (12) on or after April 16,  
8 2016, without meeting the acreage requirements under par. (ag) 1.

9 **SECTION 4.** 77.82 (1) (b) 3. of the statutes is amended to read:

10 77.82 (1) (b) 3. A parcel on which a building or an improvement associated with  
11 a building is located, that is developed for a human residence. This subdivision  
12 applies only to a parcel of land subject to a managed forest land order issued or  
13 renewed before April 16, 2016.

14 **SECTION 5.** 77.82 (1) (b) 3m. of the statutes is created to read:

15 77.82 (1) (b) 3m. A parcel on which a building or an improvement associated  
16 with a building is located. This subdivision applies only to a parcel of land subject  
17 to a managed forest land order issued or renewed on or after April 16, 2016.

18 **SECTION 6.** 77.82 (1) (bp) 1. (intro.) of the statutes is amended to read:

19 77.82 (1) (bp) 1. (intro.) For purposes of par. (b) ~~3.~~ 3m., and except as provided  
20 in subd. 2., an improvement is any of the following:

21 **SECTION 7.** 77.82 (1) (bp) 1. a. of the statutes is amended to read:

22 77.82 (1) (bp) 1. a. Any ~~accessory building,~~ structure, or fixture that is built or  
23 placed on the parcel for its benefit.

24 **SECTION 8.** 77.82 (1) (bp) 4. of the statutes is created to read:

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1           77.82 (1) (bp) 4. Notwithstanding par. (b) 3., a building used exclusively for  
2 storage that is located on a parcel does not make that parcel ineligible for designation  
3 as managed forest land.

4           **SECTION 9.** 77.82 (1) (c) of the statutes is amended to read:

5           77.82 (1) (c) In addition to the requirements under pars. (a) ~~and, (ag), and~~ (b),  
6 for land subject to an application under sub. (4m), all forest croplands owned by the  
7 applicant on the date on which the application is filed that are located in the  
8 municipality or municipalities for which the application is filed shall be included in  
9 the application.

10          **SECTION 10.** 77.82 (3) (h) of the statutes is created to read:

11          77.82 (3) (h) 1. Under this paragraph, “large ownership” means 1,000 or more  
12 acres of land designated as managed forest land that has the same owner.

13          2. The department may promulgate rules that subject large ownerships to  
14 management plan requirements that deviate from the requirements under pars. (ag)  
15 to (g).

16          **SECTION 11.** 77.82 (4) of the statutes is amended to read:

17          77.82 (4) ADDITIONS TO MANAGED FOREST LAND. An owner of land that is  
18 designated as managed forest land may file an application with the department to  
19 designate as managed forest land an additional parcel of land if the additional parcel  
20 is ~~at least 3 acres in size and is~~ contiguous to any of that designated land or is not  
21 contiguous to that designated land but meets the requirements under sub. (1) (ag).

22          The application shall be accompanied by a nonrefundable \$20 application recording  
23 fee unless a different amount for the fee is established by the department by rule at  
24 an amount equal to the average expense to the department of recording an order  
25 issued under this subchapter. The fee shall be deposited in the conservation fund and

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1 credited to the appropriation under s. 20.370 (2) (cr). The application shall be filed  
2 on a department form and shall contain any additional information required by the  
3 department. The tax rate applicable to an addition under this subsection shall be  
4 the tax rate currently applicable to the ~~parcel~~ managed forest land order to which the  
5 land is being added. Except for the minimum acreage requirements under sub. (1)  
6 (ag) 1. b. that apply to a noncontiguous addition, the eligibility requirements  
7 applicable to an addition under this subsection are the eligibility requirements  
8 under the order that designated the parcel to which the land is being added.

9 **SECTION 12.** 77.82 (11) of the statutes is renumbered 77.82 (11) (a) and  
10 amended to read:

11 77.82 (11) (a) An order issued under this subchapter shall constitute a contract  
12 between the state and the owner and shall remain in effect for the period specified  
13 in the application unless the land is withdrawn under s. 77.84 (3) (b) or 77.88. Except  
14 as provided in subs. (3) (f) and (11m), the department may not amend or otherwise  
15 change the terms of an order or management plan to conform with changes made to  
16 any provision of this subchapter subsequent to the date on which the order was  
17 entered or the plan was approved.

18 (b) If a statute is enacted or a rule is promulgated during the period of the order  
19 that materially changes the terms of the order as provided under this paragraph, the  
20 landowner shall elect between acceptance of modifications to the contract consistent  
21 with the provisions of the statute or rule or voluntary withdrawal of the land without  
22 penalty. A statutory change does not constitute a material change to an order unless,  
23 in the act that makes the change, the legislature states that the act or a provision  
24 in the act makes a material change to orders entered into under prior law. A  
25 promulgated rule does not constitute a material change to an order unless the rule



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1 includes a statement that the rule constitutes a material change to orders entered  
2 into under prior rules and the department includes in its report to the legislature  
3 under s. 227.19 (2) a statement that the rule constitutes a material change to orders  
4 entered into under prior rules and an analysis of this determination.

5 **SECTION 13.** 77.83 (2) (ar) of the statutes is repealed.

6 **SECTION 14.** 77.86 (1) (am) of the statutes is created to read:

7 77.86 (1) (am) Except as provided under sub. (6), no person may cut  
8 merchantable timber on managed forest land in a manner that is contrary to an  
9 approved management plan under s. 77.82 (3) or an approved notice of intent to cut  
10 under par. (b).

11 **SECTION 15.** 77.88 (2) (ac) 1. of the statutes is amended to read:

12 77.88 (2) (ac) 1. If the land transferred under par. (a) meets the eligibility  
13 requirements under s. 77.82 (1) (a) ~~and, (ag), and (b)~~, the land shall continue to be  
14 designated as managed forest land if the transferee, within 30 days after a transfer  
15 of ownership, files a form provided by the department signed by the transferee. By  
16 signing the form, the transferee certifies to the department an intent to comply with  
17 the existing management plan for the land and any amendments to the plan. The  
18 transferee shall provide proof that each person holding any encumbrance on the land  
19 agrees to the designation. The transferee may designate an area of the transferred  
20 land closed to public access as provided under s. 77.83. The department shall issue  
21 an order continuing the designation of the land as managed forest land under the  
22 new ownership. The transferee shall pay a \$100 fee that will accompany the report.  
23 The fee shall be deposited in the conservation fund. Twenty dollars of the fee or a  
24 different amount of the fee as may be established under subd. 2. shall be credited to

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1 the appropriation under s. 20.370 (2) (cr). The department shall immediately notify  
2 each person entitled to notice under s. 77.82 (8).

3 **SECTION 16.** 77.88 (2) (am) of the statutes is amended to read:

4 77.88 (2) (am) *Transferred land; requirements not met.* If the land transferred  
5 under par. (a) does not meet the eligibility requirements under s. 77.82 (1) (a) and,  
6 (ag), and (b), the department shall issue an order withdrawing the land from  
7 managed forest land designation and shall may assess against the owner a  
8 withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m).

9 **SECTION 17.** 77.88 (2) (b) of the statutes is amended to read:

10 77.88 (2) (b) *Remaining land; requirements met.* If the land remaining after  
11 a transfer under par. (a) meets the eligibility requirements under s. 77.82 (1) (a) and,  
12 (ag), and (b), the remaining land shall continue to be designated as managed forest  
13 land.

14 **SECTION 18.** 77.88 (2) (c) of the statutes is amended to read:

15 77.88 (2) (c) *Remaining land; requirements not met.* If the land remaining after  
16 a transfer under par. (a) does not meet the eligibility requirements under s. 77.82 (1)  
17 (a) and, (ag), and (b), the department shall issue an order withdrawing the land and  
18 shall may assess against the owner the withdrawal tax under sub. (5) and the  
19 withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the owner is not entitled  
20 to a hearing on an order withdrawing land under this paragraph.

21 **SECTION 19.** 77.88 (2) (d) of the statutes is created to read:

22 77.88 (2) (d) *Transfer of unenrolled land.* If the owner of a tract of land under  
23 s. 77.82 (1) (ag) 1. b. sells or otherwise transfers land within the tract that is not  
24 subject to a managed forest land order, the transferee shall notify the department of  
25 the transfer.

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1           **SECTION 20.** 77.88 (3) (am) of the statutes is amended to read:

2           77.88 (3) (am) *Entire parcels.* Upon request of an owner of managed forest land  
3 to withdraw an entire parcel of managed forest land, the department shall issue an  
4 order withdrawing the land and shall assess against the owner the withdrawal tax  
5 under sub. (5) and the withdrawal fee under sub. (5m).

6           **SECTION 21.** 77.88 (3) (b) (intro.) of the statutes is amended to read:

7           77.88 (3) (b) *Parts of parcels.* (intro.) Upon request of an owner of managed  
8 forest land to withdraw part of a parcel of managed forest land, the department shall  
9 issue an order withdrawing the land subject to the request and shall assess against  
10 the owner the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m)  
11 if all of the following apply:

12           **SECTION 22.** 77.88 (3j) (title) of the statutes is amended to read:

13           77.88 (3j) (title) VOLUNTARY WITHDRAWAL; OTHER CONSTRUCTION; ~~SMALL LAND~~  
14 SALES.

15           **SECTION 23.** 77.88 (3j) (a) 1. of the statutes is amended to read:

16           77.88 (3j) (a) 1. The purpose for which the owner requests that the department  
17 withdraw the land is for ~~the sale of the land or for~~ a construction site.

18           **SECTION 24.** 77.88 (3j) (a) 4. of the statutes is amended to read:

19           77.88 (3j) (a) 4. The land remaining after withdrawal meets the eligibility  
20 requirements under s. 77.82 (1) (a) ~~and, (ag), and~~ (b).

21           **SECTION 25.** 77.88 (3k) of the statutes is renumbered 77.88 (3k) (intro.) and  
22 amended to read:

23           77.88 (3k) VOLUNTARY WITHDRAWAL; PRODUCTIVITY. (intro.) Upon the request of  
24 an owner of managed forest land to withdraw part of a parcel of the owner's land, the  
25 department shall issue an order of withdrawal if the department determines that the

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1 parcel is unable to produce merchantable timber in the amount required under s.  
2 77.82 (1) (a) 2. ~~or (ag) 2.~~ The order shall withdraw only the number of acres that is  
3 necessary for the parcel to resume its ability to produce the required amount. No  
4 withdrawal tax under sub. (5) or withdrawal fee under sub. (5m) may be assessed.  
5 The order shall withdraw only the number of acres that is necessary for the parcel  
6 to resume its ability to produce the required amount, except that all of the following  
7 apply:

8 **SECTION 26.** 77.88 (3k) (a) and (b) of the statutes are created to read:

9 77.88 **(3k)** (a) If the land remaining in the parcel after the requested  
10 withdrawal does not meet the eligibility requirements under the order designating  
11 the managed forest land, the withdrawal order shall withdraw the entire parcel.

12 (b) If the land subject to a managed forest land order after the requested  
13 withdrawal does not meet the eligibility requirements under that managed forest  
14 land order, the withdrawal order shall withdraw all land under that managed forest  
15 land order.

16 **SECTION 27.** 77.88 (3L) of the statutes is amended to read:

17 77.88 **(3L)** VOLUNTARY WITHDRAWAL; SUSTAINABILITY. Upon the request of an  
18 owner of managed forest land to withdraw part of a parcel of the owner's land, the  
19 department shall issue an order of withdrawal if the department determines that the  
20 parcel is unsuitable, due to environmental, ecological, or economic concerns or  
21 factors, for the production of merchantable timber. ~~The order shall withdraw only~~  
22 ~~the number of acres that is necessary for the parcel to resume its sustainability to~~  
23 ~~produce merchantable timber.~~ No withdrawal tax under sub. (5) or withdrawal fee  
24 under sub. (5m) may be assessed. The order shall withdraw only the number of acres

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1 that is necessary for the parcel to resume its sustainability to produce merchantable  
2 timber, except that all of the following apply:

3 **SECTION 28.** 77.88 (3L) (a) and (b) of the statutes are created to read:

4 77.88 **(3L)** (a) If the land remaining in the parcel after the requested  
5 withdrawal does not meet the eligibility requirements under the order designating  
6 the managed forest land, the withdrawal order shall withdraw the entire parcel.

7 (b) If the land subject to a managed forest land order after the requested  
8 withdrawal does not meet the eligibility requirements under that managed forest  
9 land order, the withdrawal order shall withdraw all land under that managed forest  
10 land order.

11 **SECTION 29.** 77.88 (8) (a) 4. of the statutes is created to read:

12 77.88 **(8)** (a) 4. Transfers ownership of managed forest land for a public purpose  
13 to a city, village, town, or county that is a taxing jurisdiction, as defined under s.  
14 70.114 (1) (f), for the land.

15 **SECTION 30.** 77.88 (8) (b) of the statutes is amended to read:

16 77.88 **(8)** (b) The department may not order withdrawal of land remaining after  
17 a transfer of ownership is made under par. (a) ~~1., 2., or 3.~~ or after a lease is entered  
18 into under par. (a) 3. unless the remainder fails to meet the eligibility requirements  
19 under s. 77.82 (1).

20 **SECTION 31. Initial applicability.**

21 (1) BUILDINGS ON PARCELS. The treatment of s. 77.82 (1) (bp) 1. a. and 4. first  
22 applies to land designated as managed forest land under an order issued or renewed  
23 on April 16, 2016.

