



Legislative Fiscal Bureau

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May 19, 2011

Joint Committee on Finance

Paper #468

Public Access (DNR -- Stewardship Program)

[LFB 2011-13 Budget Summary: Page 306, #3]

CURRENT LAW

Under 2007 Act 20, land acquired by DNR or acquired through a stewardship program grant in fee simple, or acquired by an easement or other conveyance on land that was withdrawn from the managed forest law program beginning on October 27, 2007, must be open to the public for hunting, fishing, trapping, hiking, cross-country skiing, and any other nature-based outdoor recreation as defined in administrative rule, *unless* the Natural Resources Board determines that a closure is necessary to: (a) protect public safety; (b) protect a unique animal or plant community; or (c) to accommodate usership patterns, as defined by administrative rule. Exceptions to the public access requirements include fish, game, and wildlife refuges, fish hatcheries, state parks, and locations within close proximity to hospitals and schools where certain types of public access and/or hunting may be prohibited.

GOVERNOR

Specify that public access for one or more nature-based outdoor activities may be prohibited on land acquired by DNR or acquired through a stewardship program grant in fee simple, or acquired by an easement or other conveyance on land that was withdrawn from the managed forest law program on or after the effective date of the budget act, only if the Natural Resources Board determines that it is necessary to do so to: (a) protect public safety; or (b) protect a unique animal or plant community. However, if the property acquired was an easement on managed forest lands for a state trail or the Ice Age Trail, access could also be restricted to accommodate usership patterns.

DISCUSSION POINTS

1. Chapter NR 52 of the administrative code was developed to address the 2007 Act 20 access requirements. The rule defines a nature based outdoor activity (NBOA) as "the nature based public outdoor activity of hunting, fishing, trapping, hiking, or cross-country skiing as described in s. 23.0916(1)(b) of the statutes". The rule specifies that decisions to prohibit public access for these activities will be reviewed by the Department of Natural Resources staff using "professional judgment and will be based on sound science, legitimate safety issues, factual data, and relevant information." The rule also specifies that a restriction of a nature based outdoor activity may be considered a prohibition if the restriction prevents a major or a significant amount of the nature based activity from occurring.

2. NR 52 does not directly define "usership patterns". Instead, the rule specifies that to "accommodate usership patterns" means to consider the factors found in s. NR 52.05(1)(c) when making a determination to prohibit an NBOA. Under s. NR 52.05(1)(c), the factors that Department staff should consider when evaluating a proposal to prohibit an NBOA to accommodate usership patterns include: (a) the primary purpose for the project; (b) user incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed; (c) the complexity, feasibility, practicality, and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement; (d) the size, shape, and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds (the use of adjacent lands may not be used as the sole factor in making a determination to prohibit an NBOA to accommodate usership patterns); and (e) the mix of NBOAs at the location of the property that, to the extent practicable will provide a quality experience for all compatible users and uses. It could be argued that "usership patterns" is an ambiguous term, and it may not be possible to adequately define the term for it to be useful as a justification for the prohibition of recreational activities on stewardship lands.

3. Under current law, DNR is required to submit a biennial report to the Joint Committee on Finance and standing Committees on Natural Resources by November 15, of even numbered years, identifying each property acquired in the previous two fiscal years that is not open for one or more of the required nature-based outdoor recreational activities (NBOAs) (hunting, fishing, trapping, hiking, and cross-country skiing) and the reason for the closure (either to protect public safety, protect unique plant and animal communities, or to accommodate usership patterns). In the November, 2010, report, DNR identified one acquisition out of 148 acquired by DNR during fiscal years 2008-09 and 2009-10 where public access is restricted, and 45 grant projects acquired using stewardship funds out of a total of 276 awarded, where public access for one or more of the required nature-based outdoor activities was restricted (55% of the grant projects identified as projects with NBOA prohibitions were five acres or less). The DNR acquired property was acquired for use by Department fisheries and law enforcement staff to store equipment, and will not be open to the public for any of the required recreational activities. Of the 45 grant projects where access was restricted, 20 involved prohibitions on both hunting and trapping, while eight involved prohibitions on only hunting and seven involved prohibitions on only trapping (none of the projects involved prohibitions on cross country skiing, fishing, or hiking). The majority of these restrictions were related to protecting public safety, while some of the trapping restrictions were related to the

protection of a unique plant or animal community and some of the prohibitions of hunting and trapping were related to accommodating usership patterns. Of the 10 grants with prohibitions related to usership patterns, only one grant involved usership patterns as the only reason for a prohibition. The grant of \$55,800 was awarded to the Waukesha County Land Conservancy for a 40 acre parcel where trapping is prohibited.

4. From July 1, 2010, through April 1, 2011, the Department reports that 10 stewardship grants were awarded where an NBOA was prohibited. All 10 involved the prohibition of hunting and eight involved the prohibition of trapping as well as hunting. Further, all 10 were related to protecting public safety, with one project involving usership patterns as well as public safety. DNR also identified one Department land acquisition utilizing stewardship funds where NBOAs are prohibited and where the sole reason for the prohibition was to accommodate usership patterns. The property, known as the "Hall Farm" was the site of a Portage County deer farm operation which was closed in 2006 due to an outbreak of chronic wasting disease (CWD). According to DNR, the site had the highest prevalence of CWD positive deer recorded at any deer farm in North America. The Department plans to prohibit all public use of the property in order to ensure confinement and control of contaminated soils and limit any potential spread of CWD from the property to surrounding lands and wild deer populations and to allow for research of prions and prion related diseases such as CWD. While the cited reason for the prohibition of NBOAs on the property was to accommodate usership patterns, the Department also argues that the prohibition could have fit under the category of protecting public safety. However, it may be argued that retaining the "usership patterns" as an allowable reason for prohibiting public access would allow the Department greater flexibility to prohibit access in special cases, such as the concerns related to the Hall Farm property. Further, DNR stewardship grant staff indicate they have been instructed to review grant projects first for public safety and unique plant or animal community exceptions, before considering usership patterns.

ALTERNATIVES

1. Adopt the Governor's recommendation to specify that public access for one or more nature-based outdoor activities may be prohibited on land acquired by DNR or acquired through a stewardship program grant in fee simple, or acquired by an easement or other conveyance on land that was withdrawn from the managed forest law program on or after the effective date of the budget act, only if the Natural Resources Board determines that it is necessary to do so to: (a) protect public safety; or (b) protect a unique animal or plant community. However, if the property acquired was an easement on managed forest lands for a state trail or the Ice Age Trail, access could also be restricted to accommodate usership patterns.

2. Delete provision. (Usership patterns would remain an allowable justification for prohibition of a nature-based outdoor recreational activity on stewardship lands).

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