



Legislative Fiscal Bureau

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November 6, 2003

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 323: Modifications to the Managed Forest Law Program

Assembly Bill 323 would implement certain changes to the managed forest law (MFL) program administered by the Department of Natural Resources (DNR). The bill was introduced on May 13, 2003, and referred to the Assembly Committee on Forestry. On October 14, 2003, Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1 were each adopted by the Assembly Committee on Forestry by a vote of Ayes, 5; Noes, 0. Assembly Substitute Amendment 1, as amended, was then adopted and recommended for passage by the Assembly Committee on Forestry at that same meeting by a vote of Ayes, 5; Noes, 0. On October 27, 2003, the bill was referred to the Joint Committee on Finance.

CURRENT LAW

Under current law, beginning in 1986, the owner of at least ten contiguous acres of forest land in a town or village may petition DNR to enroll the land under MFL. Landowners enrolled in the MFL program make an annual acreage share payment in lieu of property taxes. As a condition of participation in the MFL program, owners are required to submit and follow management plans intended to result in sound forestry practices.

SUMMARY OF SUBSTITUTE AMENDMENT

Under ASA 1, a five-member Managed Forest Land Board is established. Four members of the board would be appointed by the Governor. Members would include: (a) the chief state forester or designee; (b) one member appointed from a list of five nominees submitted by the Wisconsin Counties Association (who would serve as chairperson); (c) one member appointed from a list of

five nominees submitted by the Wisconsin Towns Association; (d) one member appointed from a list of five nominees submitted by an association that represents the interests of counties that have county forests within their boundaries; and (e) one member appointed from a list of five nominees submitted by the Governor's Council on Forestry.

The Managed Forest Land Board is directed to establish a program to award grants to local units of government, DNR, and non-profit conservation organizations (NCOs) to acquire land to be used for hunting, fishing, hiking, sight-seeing, and cross-country skiing. Land acquired with these grants may be used for purposes in addition to those specified under ASA 1, provided the uses are compatible. Under Assembly Amendment 2 to ASA 1, the recreational use of all-terrain vehicles and snowmobiles would be included as eligible purposes as well.

The board would be directed to promulgate rules establishing requirements for awarding grants, including: (a) a requirement that the board give higher priority to counties over other grant applicants; (b) when awarding grants to counties, the board give higher priority to counties that have higher numbers of acres designated as closed to public access under MFL; (c) a requirement that when awarding grants to towns, the board give higher priority to towns that have higher numbers of acres designated as closed to public access under MFL; (d) a requirement that no grant may be awarded without it being approved by the board of each county in which the land to be acquired is located; and (e) a requirement that sound forestry practices be used on land acquired through grants from this program. These grants for land acquisition would be funded by the additional fees paid by landowners enrolled in MFL to maintain closed acreage under the program. Under current law, closed acreage fees are deposited as general revenues to the forestry account of the conservation fund.

Two new SEG continuing appropriations would be created under ASA 1, both from the forestry account of the conservation fund. One appropriation would receive MFL application fees for proposals that are submitted without timber management plans, with all revenues collected to be used to contract for MFL plans by DNR with outside sources. The second would receive funds generated by the closed acreage payments to fund the MFL Board grants.

The bill would also specify that state forest rangers have enforcement authority regarding violations of the provisions of the MFL program. This power would include: (a) the authority to arrest a person committing, or for whom reason exists to believe has committed, a violation under the managed forest law program; and (b) to serve warrants. Current law authorizes conservation wardens to enforce MFL violations; however, the language is ambiguous as to whether state forest rangers have this authority as well.

The bill would expand eligibility for participation in MFL to land located in cities as well as towns and villages currently. In addition, the maximum number of acres of managed forest land within a municipality that may be closed to public access would increase from 80 acres to 160 acres. Of the 160 acres designated as closed, not more than 80 acres may be land that was designated as managed forest land before the effective date of the bill. Under current law, the owner of land enrolled in MFL may modify the designation of a closed or open area one time during the

term of the agreement. Under ASA 1, this would remain in effect for orders that take effect on or after the effective date of the bill. However, landowners who were already enrolled in the program would be permitted to modify the designation of a closed or open area one time before the expiration of the existing MFL agreement, regardless of whether the owner has previously modified the designation. Under Assembly Amendment 1 to ASA 1, any owner of land enrolled in MFL (either existing or after the effective date of the bill) would be permitted to modify the designation of a closed or open area two times.

Under current law, an annual yield tax of 5% is imposed on the value of merchantable timber harvested on land enrolled in MFL. Under ASA 1, land owners enrolling in the program on or after the effective date of the bill would be exempted from this requirement for the first five years of their MFL agreement. Further, ASA 1 would change the distribution of withdrawal tax and yield tax revenues. Under current law, DNR retains 50% of both withdrawal and yield tax revenues, which are deposited to the forestry account. The municipality where the property is located receives 40% of yield tax revenues and the county receives 10%. Under the bill, yield tax revenues would be divided entirely between the municipality (80%) and the county (20%).

Fees associated with enrollment in MFL would increase under ASA 1. The fee for filing a petition to enroll in the program without providing a management plan prepared by a certified plan writer (or DNR) would increase from \$100 to \$300. In addition, renewal requests that did not contain forest management plans prepared by either a certified plan writer or DNR would also be subject to the \$300 fee. The portion of this fee that is deposited to a DNR appropriation to pay recording fees would increase from \$10 to \$20. DNR would be allowed to establish a different recording fee by administrative rule, provided that the alternative fee is equal to the average expense to the Department of recording an MFL order. The remaining portion of the fee (\$280 under the bill) would be deposited to a new, DNR continuing appropriation with all revenues received to be used to contract for MFL plans prepared for DNR by outside sources. The fee to transfer ownership of MFL land would increase from \$20 to \$100 under ASA 1. Finally, a withdrawal fee of \$300 would be created under the bill, to be paid in addition to any withdrawal taxes that would be required for removal of forest land from the program before the end of the MFL contract. The withdrawal fee would be remitted to the municipality under ASA 1.

The bill would also require that a copy of the legal document that has been recorded with the county register of deeds that shows the ownership of the proposed managed forest land parcel be included with the petition to enroll in the program. Currently, a legal description of the land is required, but the form is not specified.

Under ASA 1, forest management plans submitted in conjunction with MFL applications are required to be prepared by a plan writer certified by DNR, or by DNR itself. The Department is directed under the bill to promulgate rules specifying the qualifications that an individual must satisfy to become a certified plan writer. This provision would become effective the first day of the 19th month following the effective date of the ASA 1.

Submitted plans must include a description of forestry practices, including harvesting, thinning, and reforestation that will take place under the MFL agreement, as well as a specified period of time in which the practices will be completed. The bill also creates a non-compliance assessment of \$250. DNR would certify any noncompliance and the fee would be imposed by the municipality for each practice not completed within the stipulated time frame. The municipality is then directed to distribute 20% of the non-compliance assessment to the county. An unpaid assessment would become a lien against timber cut from the parcel and, if it continues unpaid, would become a special charge on the owner's property tax bill.

The bill would create a process for withdrawal of managed forest land if the owner has not paid the personal property tax due for a building on land enrolled under MFL. Under ASA 1, if the municipality in which the land is located certifies to DNR that such a tax delinquency exists, DNR must then issue an order withdrawing the land from the MFL program. The Department must also assess both the withdrawal tax and the withdrawal fee against the owner of the property.

Under current law, an individual owning property that is enrolled in MFL may petition DNR to include additional acreage under their agreement if the additional parcel of land to be added is within the same municipality, is at least three acres in size, and is contiguous to the owner's land. Under ASA 1, these provisions would still apply to landowners with property enrolled under MFL on or after the effective date of the bill.

Landowners with property enrolled in MFL prior to the bill's passage would have the option of using an alternative procedure for adding land. Under this procedure, if an owner of land under an existing MFL agreement wants to add an additional parcel of land that is at least 10 acres in size and that satisfies the eligibility requirements for MFL designation under current law, the owner may petition the DNR for a new order covering the additional land. Per acre annual payments for the additional land would be calculated using the new rates established under the bill. However, if the additional land is: (a) in the same municipality as the owner's designated land; (b) is at least three acres in size; (c) does not satisfy MFL eligibility requirements; and (d) is contiguous to the owner's designated land, the owner may withdraw the designated land (covered by an existing MFL agreement) from the program and petition DNR for a new order that would cover both the withdrawn land as well as the additional land. Under this procedure, the withdrawal tax and withdrawal fee that would normally be assessed would not apply. As the entire parcel (including the added acres) would be re-entered under MFL as a new contract, the per acre annual payments for the entire parcel would be calculated using the new rates established under the bill.

Under the bill, the deadlines for application, approval, and renewal of MFL petitions would also be changed. Under current law, if an MFL petition is received on or before January 31 from a landowner requesting to enroll less than 1,000 acres, or on or before March 31 from a petitioner seeking to enroll 1,000 acres or more, DNR must approve or deny the petition on or before the following November 21. Under the bill, this schedule would remain effective for landowners seeking to enroll 1,000 acres or more. However, for petitioners seeking to enroll less than 1,000 acres, applications received on or before July 1 must be approved or denied before November 21 of the year following the year in which the petition was received. This adjustment would provide

almost 17 months (or seven months longer than current law) for DNR to process these applications. However, beginning the first day of the 19th month after publication, the bill provides an exception to the longer timeframe for certain petitions with less than 1,000 acres. If a draft management plan prepared by a certified plan writer is submitted before the deadline established by DNR, and the petition for enrollment of a parcel including less than 1,000 acres is received on or before May 15 and includes a completed management plan, DNR must either approve or deny the petition before the following November 21.

Plan renewals must be filed no later than the March 31 before the expiration date of the MFL agreement under current law. Under ASA 1, renewal petitions from landowners with 1,000 acres or more are still subject to this provision. Landowners with less than 1,000 acres in the program must file renewal requests no later than the second July 1 before the expiration of the MFL agreement. However, this timeframe would change beginning the first day of the 19th month after publication for certain renewal applications relating to parcels of less than 1,000 acres. If a draft management plan prepared by a certified plan writer is submitted before the deadline established by DNR, and the petition for the renewal for a parcel including less than 1,000 acres is received on or before May 15 and includes a completed management plan, DNR must either approve or deny the petition before the following November 21.

Under current law, owners of land enrolled in MFL do not pay property taxes. Instead, landowners make an annual acreage payment, the amount of which is adjusted every five years by multiplying a base amount of 74¢ per acre by the ratio of the current statewide average tax per acre of agricultural land, swamp and waste land, and productive forest land and the statewide average tax per acre of the same classes of land in 1986. Landowners may elect to close a portion of the land enrolled in MFL to public access. However, an additional per acre payment for the closure of land is assessed. The payment for closed land, which is in addition to the acreage share payment, is adjusted every five years by multiplying a base amount of \$1 per acre by the same ratio applied to the base acreage payment calculation. Currently, these calculations have produced per acre rates of 83¢ for the acreage share payments and \$1.12 per acre for payments for closed land (for a total rate of \$1.95 per acre for closed land). This payment formula would remain in effect for land enrolled in MFL prior to the effective date of the bill.

Payments made by landowners who enroll land in MFL after the effective date of the bill would be calculated by a different formula. The annual acreage payment would be equal to 5% of the average statewide property tax per acre of property assessed as productive forest land. This figure would be calculated every five years by the Department of Revenue using the statewide average equalized value per acre for productive forest land and the statewide average property tax rate, net of the school levy credit (this tax rate includes taxes levied in towns, villages, and cities, even though most productive forest land is in towns). The additional payment for each acre of land closed to the public would be equal to 20% of the average statewide property tax per acre of property assessed as productive forest land. As noted previously, revenues generated by these closed-acreage payments would no longer be deposited as general revenues to the forestry account of the conservation fund under ASA 1. Rather, revenues would be used to award grants to local

units of government, DNR, or NCOs for the acquisition of land to be used for certain recreational activities.

AMENDMENTS

Assembly Amendment 1 to the substitute amendment would allow any owner of land enrolled in MFL (either existing or after the effective date of the bill) to be permitted to modify the designation of a closed or open area two times. Under current law, the owner of land enrolled in MFL may modify the designation of a closed or open area one time during the term of the agreement. Under ASA 1, this would remain in effect for orders that take effect on or after the effective date of the bill. However, landowners who were already enrolled in the program would be permitted to modify the designation of a closed or open area one time before the expiration of the existing MFL agreement, regardless of whether the owner has previously modified the designation.

Assembly Amendment 2 to the substitute amendment would broaden the recreational priorities for which the Managed Forest Land Board may award grants to local units of government, DNR, and non-profit conservation organizations (NCOs) to acquire land to specifically include the recreational use of all-terrain vehicles and snowmobiles.

FISCAL EFFECT

A number of the provisions included in ASA 1 would have state and local fiscal effects. Both the Department of Revenue (DOR) and DNR submitted fiscal notes relating to AB 323 as introduced. However, no subsequent fiscal notes were submitted by the agencies in response to changes included in ASA 1. There are several key differences between AB 323 as introduced and the substitute amendment that would affect fiscal estimates as previously submitted by DNR and DOR. Under AB 323, the formula for calculating the per acre payments was specified to be a percentage of the statewide average tax per acre of swamp and waste land and productive forest land. Under the substitute amendment, this would be changed to a percentage of the statewide average tax per acre of productive forest land. Excluding swamp and wasteland from the calculation would increase the expected per acre payments. In addition, under AB 323 all land under MFL agreements would be subject to the new formula for calculating per acre payments. Under the substitute amendment, the increased payments would only be applied to contracts that became effective after the enactment of the bill.

Local units of government, which currently receive 83¢ per acre for all lands enrolled in MFL within their jurisdictions, would receive higher payments from new program enrollees under the bill. Beginning with the effective date of the bill, new enrollees would pay \$1.28 per acre for open MFL land (or 45¢ per acre more than current law), and an additional \$5.14 per acre for lands kept closed under the program (\$6.42 total, or \$4.47 per acre more than current law). These payments represent 5% and 20%, respectively, of the average statewide property tax per acre of property assessed as productive forest land. These figures are based on a statewide average equalized value per acre of \$1,249 and a statewide average net tax rate (including taxes levied in

towns, villages, and cities) of \$20.56 per \$1,000 of value. Assuming that approximately 4,000 applications (each including an average of 70 acres) are approved annually, local units of government may receive an increase in acreage payments totaling approximately \$126,000 the first full year after the enactment of the bill. This figure would increase each year as additional acreage is enrolled in the program.

Under ASA 1, it is estimated that local units of government would also receive approximately \$80,100 annually from the newly created \$300 withdrawal fee (the author has indicated that the intent was for this payment to be retained by DNR to offset costs of processing the withdrawal); \$1,050,000 from the provision in the bill that would require 100% of all withdrawal and yield taxes to be paid to municipalities (80%, rather than the 40% specified under current law) and counties (20%, rather than the 10% specified under current law); and approximately \$3,000 annually from the assessment of non-compliance assessments. In addition, the bill specifies that DNR withdraw land from MFL if notified by a municipality that the owner is delinquent on certain personal property taxes. The provision would be expected to increase local revenues by encouraging prompt payments from some landowners rather than face MFL withdrawal. However, an estimate of the potential revenue is not available. Municipalities and counties would be expected to lose perhaps \$274,000 annually due to the provision in ASA 1 that would exempt new MFL applicants and landowners converting from forest crop law (FCL) agreements to new MFL contracts from paying the 5% yield tax for the first five years. In total, with the gain in acreage payments, fees, and the redistribution of withdrawal and yield taxes, local units of government are anticipated to receive increased annual revenues of almost \$1.0 million under ASA 1 as shown in the following table.

TABLE 1

Annual Change in Revenues to Local Units of Government Under ASA 1

Per Acre Payments	\$126,000
Withdrawal and Yield Tax	1,050,000
Withdrawal Fee	80,100
5-Year Exemption from Yield Tax	-274,000
Non-compliance Assessments	<u>3,000</u>
Total	\$985,100

The closed acre payment, which is deposited in the forestry account of the conservation fund, would also increase under ASA 1. However, rather than becoming available for general forestry account expenditures (as is the case under current law), all revenues from closed acre payments would be made available for land acquisition grants awarded by the MFL Board. In fiscal year 2002-03, DNR received approximately \$1.38 million in revenue from closed acreage payments. Assuming that approximately 4,000 applications (each including an average of 70 acres, 90% of which are closed) are approved annually, DNR could expect additional revenues of approximately \$1,013,000 in excess of what had been anticipated for the first full year after implementation under

the bill. However, expenditure authority for these funds would increase accordingly. Almost \$2.7 million in total would be expected to be available for MFL board grants after the first full year of implementation.

The increases in application and recording fees would generate additional revenues to DNR. However, expenditure authority for these funds would increase accordingly. So, for example, while increasing the application fee from \$100 to \$300 would generate approximately \$760,000 in new revenue for the purpose of contracting for plans, expenditure authority would be increased to \$1.12 million. Therefore, the actual balance of the forestry account would reflect a \$360,000 loss for budgetary purposes (previously anticipated general application fee revenues would be diverted to the assigned segregated revenue appropriation under the bill without any accompanying reduction in base-level appropriations).

The bill provides for an increase in recording fees from \$10 to \$20, with anticipated revenues of approximately \$40,000 annually. However, DNR may establish an alternative recording fee in administrative rule, provided that the new fee is equal to the average expense to the Department of recording an MFL order. If DNR establishes a different fee by rule, the fiscal effect would change accordingly.

Finally, under current law, DNR retains 50% of withdrawal and yield taxes, with the remainder being returned to municipalities (40%) and counties (10%). Under the bill, 100% of withdrawal and yield taxes would be returned to municipalities and counties, resulting in an annual loss of revenue to the forestry account of over \$1.0 million. As a result of the combined effect of the revenue and expenditure changes in the bill, it is estimated that DNR would show a decrease of almost \$3.0 million to the available balance of the forestry account of the conservation fund after the second year of implementation.

It should be noted that the effective date of the bill will impact the biennial ending balance of the forestry account. If, for example, the bill were to take effect January 1, 2004, based on approximately \$5 million in increased expenditure authority under the bill, it is anticipated that the June 30, 2005 balance of the forestry account (currently estimated at \$1.5 million) would be approximately -\$3.5 million (based on preliminary 2002-03 expenditure and revenue reports). Table 2 shows the estimated effects assuming a January 1, 2004, effective date.

TABLE 2**Change in Revenues to the Forestry Account Under ASA 1**

	<u>2003-04</u>		<u>2004-05</u>		<u>2005-06</u>	
	<u>Revenues</u>	<u>Expenditures</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Revenues</u>	<u>Expenditures</u>
Closed Acre Fee (Grants)		\$1,380,700	\$101,300	\$1,648,300	\$1,013,000	\$2,676,000
Transfer Fee	\$52,000		104,000		104,000	
Application Fee (Contracts)	570,000	840,000	760,000	1,120,000	760,000	1,120,000
Withdrawal/Yield Taxes	-525,000		-1,050,000		-1,050,000	
Recording Fees	<u>40,000</u>	<u>40,000</u>	<u>40,000</u>	<u>40,000</u>	<u>40,000</u>	<u>40,000</u>
Total	\$137,000	\$2,260,700	-\$44,700	\$2,808,300	\$867,000	\$3,836,000
Net Effect to Forestry Account		-\$2,123,700		-\$2,853,000		-\$2,969,000

The potential imbalance to the forestry account as a result of revenue and expenditure changes under the bill could be addressed in several ways. As previously noted, a new continuing appropriation funded by the increased application fees is created under the bill, with all revenues collected to be used to contract for MFL plans by DNR with outside sources. Currently, DNR uses general revenues from the forestry account to contract for MFL plans. Under 2003 Act 33 (the 2003-05 biennial budget), forestry account funding of \$800,000 annually is made available to contract for the preparation of MFL plans. This is a \$500,000 increase from the \$300,000 available in 2002-03. In order to partially address the account's imbalance, this expenditure authority could be deleted from the general balance of the forestry account and DNR could be allowed to contract for plans with the increased revenues generated by application fees under the bill. This would represent a \$320,000 annual increase in anticipated funding over current law for this purpose (\$800,000 annually under current law, compared to \$1,120,000 under the bill).

One option to address the forestry account balance would be to delay the effective date of the bill to January 1, 2005, or the effective date of the bill, whichever is later. As shown in Table 2, the fiscal effect of the alternative allocation of the closed acreage fee revenue is expected to grow significantly over time. In addition, the forestry account would lose sizable revenues from both the withdrawal and yield tax distribution changes under ASA 1. Delaying this action for a year (in conjunction with reducing existing expenditure allotments for MFL plan contracts by \$800,000 in 2004-05) would allow the forestry account to maintain a positive balance through the biennium. Under this alternative, the June 30, 2005, balance of the forestry account would be anticipated to be approximately \$200,000.

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