



Legislative Fiscal Bureau

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February 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 531/Senate Bill 408: Managed Forest Law Withdrawal for Siting a Public Safety Communications Tower

Assembly Bill 531 and Senate Bill 408 (referred to as "the bill") are identical and would create an exception to the assessment of withdrawal taxes and fees against a landowner who transfers ownership of managed forest land to a county, city, village, or town for siting a public safety communications tower if the Department of Natural Resources (DNR) orders the withdrawal on or after September 22, 2009. Assembly Bill 531 was introduced on October 29, 2009, and referred to the Assembly Committee on Forestry. On December 15, 2009, Assembly Amendment 1 to the bill was adopted by the Committee and passage was recommended on a vote of Ayes 4; Noes 0. Senate Bill 408 was introduced on November 20, 2009, and referred to the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources. Senate Amendment 1 was offered on January 15, 2010, but was not taken up by the Committee. On February 4, 2010, passage was recommended by the Committee on a vote of Ayes 6; Noes 0.

CURRENT LAW

The managed forest law (MFL) program is designed to encourage landowners to manage private forest lands for the production of future forest crops for commercial use through sound forestry practices. Under the MFL program, an owner of ten or more contiguous acres of productive forest land can petition the Department of Natural Resources (DNR) to enroll land in the program. If DNR determines that at least 80% of the parcel can produce at least 20 cubic feet of sellable timber per acre per year and approves the landowner's forestry management plan, DNR issues an order to enroll the land. MFL orders are for a period of either 25 or 50 years.

Land enrolled under the MFL program is exempt from local property taxes. Instead

landowners make payments to municipalities (which in turn pay a portion of revenues received to the counties) in amounts determined by the date that the land was entered into the program. These payments include an annual acreage share payment (currently 67¢ per acre for lands enrolled in the program from 1987 through 2004 and \$1.67 per acre for lands enrolled after 2004) and a yield (severance) tax on timber harvested on MFL land. In addition, landowners must pay a fee for each acre of MFL enrolled land closed to public access (up to a maximum of 80 acres per municipality for lands enrolled from 1987 through 2004 and up to 160 acres per municipality for lands enrolled after 2004) (currently 90¢ per acre for lands entered between 1987 and 2004 and \$6.67 for lands entered after 2004).

Under current law, DNR may, at the request of an owner of MFL land, the governing body of any municipality in which the MFL land is located, or at its own discretion, investigate to determine whether the MFL order should be withdrawn. Following an investigation, DNR may issue a withdrawal order for any part of MFL land for any of the following reasons: (a) the land failed to meet MFL eligibility criteria (productive forest land); (b) the owner failed to comply with the forestry management plan; (c) the owner cut timber on the MFL land without DNR approval; or (d) the owner developed any part of the MFL parcel for a purpose incompatible with the purpose of the MFL law (for example, development that interferes with timber production, recreational uses, watershed protection, or wildlife habitat).

In addition, an MFL landowner may request that DNR issue a withdrawal order for a portion or all of their MFL land before the expiration of the MFL order. For a portion of an owner's MFL land to be withdrawn it must be an entire legal description of either of the following types: all of an owner's managed forest land within a quarter quarter section (40 acres); or all of an owner's managed forest land within a government lot or fractional lot as determined by the U.S. government survey plat (less than or more than 40 acres depending on the lot). If the remaining land meets the MFL program eligibility requirements, it may continue to be enrolled in the MFL program.

With certain exceptions, if land is withdrawn from the MFL program before the expiration of the MFL order, the landowner must pay a withdrawal fee and withdrawal taxes. The withdrawal fee of \$300 is deposited in the forestry account of the conservation fund. The withdrawal taxes due are generally the higher of either: (a) the MFL owner's past tax liability (calculated using the assessed value of the property and the net tax rate in the municipality in the year prior to withdrawal multiplied by the years the land was designated as MFL); or (b) five percent of the stumpage value of merchantable timber on the land (less any acreage share and yield taxes paid by the owner). DNR remits all withdrawal taxes to the municipality where the land is located. The municipality retains 80% of the payment and remits 20% to the county.

Under current law, there are two exceptions to the assessment of the withdrawal fee and withdrawal taxes: (a) a landowner who transfers ownership of managed forest land for a public road or railroad or utility right-of-way; and (b) a landowner who transfers ownership of managed forest land to the federal government, the state, or a local governmental unit for a park, recreational trail, wildlife or fish habitat area, or a public forest.

SUMMARY OF BILL

Assembly Bill 531 and Senate Bill 408 ("the bill") would specify that DNR may not assess a withdrawal fee or withdrawal taxes against an owner of MFL land who transfers ownership of the MFL land to a county, city, village, or town for siting a public safety communications tower if DNR issues the withdrawal order on or after September 22, 2009. In addition, the bill would require DNR to provide a refund of any withdrawal fee and taxes paid by an owner of MFL land who transferred ownership for this purpose on or after September 22, 2009, from the general forestry operations appropriation of the forestry account of the conservation fund [s. 20.370(1)(mv)]. Further, the bill would specify that DNR may not order the withdrawal of MFL land remaining after a transfer of ownership unless the remainder fails to meet the MFL program eligibility requirements.

AMENDMENT

Assembly Amendment 1 to AB 531 was adopted by the Assembly Committee, and would add an owner of MFL land who leases MFL land to a county, city, village, or town for siting a public safety communications tower to the exemption from withdrawal fees and taxes created under the bill. Under the amendment, DNR may not order the withdrawal of the land remaining after a transfer of ownership is made or a lease is entered into, unless the remainder fails to meet the MFL program eligibility requirements. Senate Amendment 1 to SB 408 is identical to AA1 to AB 531; however, the Senate Amendment was not taken up by the Senate Committee.

FISCAL EFFECT

The Department indicates that, after September 22, 2009, one Barron County landowner requested withdrawal of a portion of their MFL land in order to lease the land to the county for siting a public safety communications tower. At the time, the landowner had 107 acres enrolled in the MFL program and requested withdrawal of an approximately five acre parcel. DNR informed the landowner that the managed forest law generally requires that an entire legal description of an owner's managed forest land (typically a quarter quarter section, or 40 acres) is the minimum that may be withdrawn. The landowner then requested withdrawal of 40 acres including the approximately five acre parcel for the communications tower. Subsequently, the Department sent the MFL landowner a bill for \$34,317 including the withdrawal fee of \$300 and withdrawal taxes of \$34,017, which was due on January 31, 2010. Upon receiving the payment, DNR would remit the withdrawal taxes to the municipality in which the MFL land is located. The municipality would retain 80% (\$27,214) and remit 20% to Barron County (\$6,803).

As of this writing, DNR had not received the payment from the MFL landowner. If DNR were to receive the payment and remit the withdrawal taxes to the municipality and the bill, as amended, were to be enacted, DNR would be required to refund the \$34,317 to the MFL landowner from its forestry general operations appropriation (the municipality and county would retain the withdrawal taxes). The Department indicates that, if the bill were to be enacted and DNR had not yet received the payment, DNR would rescind the withdrawal order and issue a withdrawal order

for the five acre parcel. In this case, local governments would not receive any withdrawal taxes as the forty acre parcel would not be withdrawn and the five acre parcel withdrawn from the MFL program would be exempt from withdrawal taxes under the bill.

The ongoing fiscal effect of the bill would depend on the number of MFL landowners who withdraw parcels in order to sell or lease them for the siting of a public safety communications tower and the size of the parcels withdrawn. According to DNR, recent certified survey maps indicate that five acres are generally needed to accommodate communication towers. Under current law, if five acres of land were withdrawn from MFL, the entire legal description (generally 40 acres), would be required to be withdrawn. In calendar year 2008, 13,626 acres were withdrawn from the MFL program with a total withdrawal tax of \$3,018,604, meaning the average withdrawal tax per acre was \$222. On average, a forty acre parcel withdrawn from the program would result in withdrawal taxes of approximately \$8,880, of which 80% (\$7,104) would be sent to the municipalities and 20% (\$1,776) would be remitted to counties. Under the bill, a landowner could withdraw a smaller parcel for a public safety communications tower and would not be required to pay a withdrawal fee (a reduction of \$300 to DNR) or withdrawal taxes on the parcel. The approximately five acres typically withdrawn from the MFL program would be placed on the property tax rolls. However, it should be noted that the actual reduction in withdrawal taxes would depend on the size of the withdrawal, the assessed value of the land, the tax rate in the municipality where the land is located, the number of years it has been enrolled in the program, and the value of the timber on the affected land. The Department estimates that, on average, there may be one such transaction per year.

In addition, the bill could have an effect on the number of closed MFL acres enrolled in the program and the resulting MFL closed acreage fees collected by DNR, depending on the year the land was enrolled in the MFL program, the number of total acres enrolled, and the number of acres closed to public access prior to withdrawal. Whereas under current law, DNR could lose up to 40 acres in closed acreage fee revenues when a parcel is withdrawn for a communications tower site; under the bill, the Department could be expected to lose approximately five acres in closed acreage fee revenues.

Therefore, the net effect of the bill would likely be to maintain some acreage in the MFL program, a potential increase in MFL closed acreage payments received by DNR, and a modest reduction in local government revenues from property and withdrawal taxes that would have resulted from larger withdrawals related to public safety communication towers under current law.

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