
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 230
[2021 Assembly Bill 909]

**The Managed Forest Land
Program**

2021 WISCONSIN ACT 230

2021 Wisconsin Act 230 makes changes to the law relating to the managed forest land (MFL) program administered by the Department of Natural Resources (DNR).

Minimum Acreage

Under state law, a parcel must consist of at least 20 contiguous acres and meet certain productivity requirements to be eligible for the MFL program. Owners of parcels enrolled before April 16, 2016, may renew their enrollment in the program one time without satisfying the 20-acre requirement.

Act 230 retains the 20-acre minimum acreage requirement, but allows the 20-acre parcel to be composed of two 10 contiguous acre portions, that are not contiguous to each other, if they are on a tract of land under the same ownership. This change applies to land designated as MFL by an order issued or renewed on or after April 16, 2016.

Buildings and Improvements

State law generally prohibits the enrollment of a parcel if there is any “building or improvement associated with a building” located on the parcel. 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.¹

Act 230 removes “accessory building” from the list of prohibited improvements. For orders issued or renewed on or after April 16, 2016, Act 230 creates an exception to that general prohibition for buildings used exclusively for storage.

Additions

An MFL owner may apply to DNR to add a parcel to an existing MFL order. Prior law required that the additional parcel must be at least three acres in size and be contiguous to an existing MFL order.

Act 230 removes the minimum three acre requirement and allows a parcel of any size to be added if it is contiguous to MFL land under the same ownership. If the additional parcel is not contiguous, it must be at least 10 acres, and must meet the eligibility criteria from the original enrollment order.

¹ However, unaffected by Act 230, “improvement” does not include: a public or private road; a railroad or utility right of way; certain fences; culverts; bridges; certain hunting blinds; or structures and fixtures needed for sound forestry practices.

Material Change

Under state law, DNR is prohibited from amending or otherwise changing the terms of an existing MFL 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 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.

Act 230 specifies that a statutory change does not constitute a material change to an MFL order unless the act that makes the change states that the act or a provision in the act makes a material change to orders entered under prior law. Similarly, the act specifies that a promulgated rule does not constitute a material change to an order unless the rule includes a statement that it constitutes a material change to orders entered under prior rules, and DNR includes in its report to the Legislature a statement that the rule constitutes a material change to orders entered into under prior rules and an analysis of this determination. This change would first apply to a statutory change in an act that takes effect on the effective date of Act 230.

Withdrawal Tax and Fee for Voluntary Withdrawals and Land Transfers

State law allows an MFL owner to voluntarily withdraw an entire parcel, or part of a parcel, from the MFL program. Act 230 clarifies that DNR is required to assess a withdrawal tax and fee under this circumstance.

Additionally, state law allows an owner to sell or otherwise transfer ownership of all or part of a parcel of MFL land. If the transferee does not provide DNR with the certification of the transferee's intent to comply with the existing management plan for the land, DNR is required to withdraw the land from the program. If land remaining after a transfer does not meet eligibility requirements, DNR must withdraw the land from the program. Prior law required DNR to assess a withdrawal tax and fee under both of these circumstances. Act 230 authorizes, rather than requires, DNR to assess a withdrawal tax and fee under these two circumstances.

Withdrawal for Productivity or Sustainability

State law authorizes an owner to request to withdraw part of the owner's MFL land without paying the withdrawal tax or fee, and requires DNR to issue an order of withdrawal for such land, if DNR determines that the parcel is unable to meet productivity requirements, or is unsuitable, due to environmental, ecological, or economical concerns or factors, for the production of merchantable timber. The order must withdraw only the number of acres necessary for the parcel to resume its productivity.

Act 230 clarifies that if the land remaining after either type of withdrawal will not meet the eligibility requirements under the owner's MFL order, DNR must withdraw the entire parcel from the program. As under prior law, no withdrawal tax or fee would be assessed.

Withdrawal for Small Land Sales

State law authorizes an MFL owner to voluntarily withdraw part of an MFL parcel (one to five acres) for specific purposes. Under prior law, an MFL owner could voluntarily withdraw part of an MFL parcel of one to five acres for purposes of (1) selling the land or (2) 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 the withdrawal tax and fee. State law, unaffected by the act, separately allows an MFL owner to sell or transfer ownership of all or part of MFL land an unlimited number of times per order.

Act 230 removed the voluntary withdrawal for the sale of land, but retains the voluntary withdrawal option for use as a construction site.

Voluntary Withdrawal for a Public Purpose

State law specifies that no withdrawal tax or withdrawal fee may be assessed against an MFL owner who transfers ownership of land enrolled in MFL for (1) a public road or railroad or utility right-of-way; or (2) a park, recreational trail, wildlife, or fish habitat area or a public forest to the federal government, the state or a local governmental unit. An MFL owner who transfers ownership of or leases not more than 10 acres of MFL to a county, city, village, or town for siting a public safety communications tower is also exempt from the assessment of a withdrawal tax and fee.

Act 230 adds an exemption from the assessment of a withdrawal tax and fee for an MFL owner who transfers ownership of MFL for a public purpose to a city, village, town, or county that is a taxing jurisdiction for the land.

Large Ownerships

Current administrative rule authorizes DNR to modify management plan requirements for ownerships exceeding 1,000 acres in size after consideration of certain factors. [s. NR 46.18 (4), Wis. Adm. Code.]

Act 230 specifically authorizes DNR to promulgate rules that subject large ownerships to management plan requirements that are different from the plan requirements in the MFL statute.

Leasing

2015 Wisconsin Act 358 repealed a broad prohibition on leasing closed MFL land and created a more specific provision allowing leasing. Specifically, prior law authorized an owner of MFL land designated as closed to enter into a lease or other agreement for consideration that permits persons to engage in recreational activity on the land, but did not specifically allow or prohibit leasing in other instances.

Act 230 repealed this provision. The effect of that change is to remove the remaining statutory restrictions on leasing land enrolled in the MFL program.

Effective date: April 10, 2022

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