CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: January 11, 2011

TO: Rep. Clark

FROM: Kathy Nelson, Forest Tax Program and Policy Chief

SUBJECT: Proposed Bills to the Managed Forest Law

The Department of Natural Resources (DNR) has reviewed the proposed bills to the Managed Forest Law (MFL) and offers these perspectives.

Leases (WLC: 0044/1)

- Eliminating the leasing prohibition will reduce the administration of this provision for the Division of Forestry and Bureau of Law Enforcement. This work load reduction will allow other high priority work to be accomplished.
- Public perception may remain the same in that people would believe that landowners are receiving a significant tax benefit and earn money from recreational activities by subdividing and closing their lands, and leasing these lands to individuals.
- Placing the right to lease in statute could create issues with vested rights for any future legislative action regarding leasing.
- Other access issues have not been addressed, including closing lands near public access points and opening lands in interior legal descriptions.
- May want to eliminate the definition of "nonprofit organization" under Wis. Stat. s. 77.81(5) since the reason for the definition will be repealed from statute.

Parcel Addition (WLC: 0050/1)

- Landowners would benefit by allowing additions to existing MFL pre-2005 entries since lands already enrolled could continue to be taxed at the lower tax rates.
- Administration of the entries will be made more difficult since certain acreages of existing MFL would have different tax rates than other acreages. Additional functionality and tracking would be needed for these additional acreages. Other impacts on additional acres are found under Taxation (WLC: 0054/1).
- Department of Revenue (DOR) would need to create another tax code for taxation of MFL lands. Lands closed to public access may need to have annual evaluations to determine the higher of the two new closed tax rates as a result of Taxation (WLC: 0054/1).

Taxation (WLC: 0054/1)

- The proposed acreage share tax will be same formula as for the 2005 and later entries, yet the taxes for closed lands will be the higher of the combined acreage share tax and closed acreage fee established for 2005 and later entries or regular property taxes based on 25% of the assessed value. There are two separate formulas used in the calculation of taxes under this proposed bill that will make administration more complex and harder to explain, including:
    - DOR, the town assessor or town clerk/treasurer will need to determine which of the two options for closed acreage taxes is higher. The DNR does not have assessed values and cannot determine the tax rate for the municipality.
    - It appears that an annual calculation for determining the higher of the two values will be needed. This is different from the other tax calculation formulas whereby new tax rates

are calculated on a 5 year interval for the pre 2005 entries and the post 2004 entries.
    - DOR must develop another tax code to be used by town assessors.
    - The acreage share tax is subtracted from a landowner's withdrawal tax payment if lands are withdrawn early from the MFL program. The proposed bill does not specify an acreage share tax if using the 25% formula. The legislature will need to specify its intentions if the 25% is an acreage share tax or closed acreage fee to guide the DNR in processing withdrawals.
    - DNR would need to annually record the acreage share taxes for lands closed to public recreation if the 25% formula is used for the life of the 25 or 50 year enrollment period for each individual MFL entry. The acreage share tax is subtracted from a landowner's tax bill if lands are withdrawn early from the MFL program. To do this work DNR would need to collect the assessed values, town tax rates and other information from the local municipalities, or collect this information from DOR. An increase in administrative cost and time is expected.
- Local municipalities will receive fewer dollars for their treasury under the proposed bill. Currently municipalities split MFL payments with the county on an 80%–20% split. The proposed bill will have a split of state (20%), county (48%), and local municipality (32%), resulting in a loss of revenue to local municipalities.
- Statutory authority for placement and use of money received by the DNR is repealed. Placement and use of the money received by the DNR may need to be re-inserted.
- Money is paid to the department by the local municipality, including 20% of yield tax, withdrawal tax, and annual aid payment (20¢ per acre). Previous legislatures had changed the MFL program to allow 100% of the yield and withdrawal tax to be sent to the local municipality, who shared these payments with the county on an 80%-20% split. DNR had never retained any portion of the annual aid payments in the past. The legislative study committee may want to confirm that its intent to have the various moneys paid to the local municipalities to be returned to the DNR.
- It is unclear who determines if counties have 40% or more of the total area consisting of public access lands. If this is role of DNR additional tracking may be needed to notify counties that they are eligible to spend their 5/6 of money received under the MFL program for resource management instead of public recreation acquisition.
- Auditing of the 5/6 of the county money may be required to ensure that the money is spent for the purpose in which it is allocated.
- There are no requirements as to the length of time that land acquired with these funds must be open to public use after acquisition, and without further rulemaking, could lead to "laundering" of funds through the acquisition of lands in fee simple for public access, then the resale of those lands in the subsequent year. Definitions for what the reserve amount may be spent on are broad. The proposed statute would likely require significant rule-making by the DNR to nail these down.
- Administration costs are difficult to determine at this time. It appears that cost and time to administer this proposed bill will increase.

Group Enrollments (WLC:0056/1)

- Landowners will benefit if groups of 1,000 acres or more are created prior to enrollment to reduce the cost of developing individual site specific management plans. Groups may include large owners who have subdivided their property for the purpose of closing lands to public recreation.
- Significant work will need to be put into developing the "group ownership" rules in the timeframe established by statute.
- Creating administrative rules will be needed to determine how groups are formed, who administers the group, how recon data is collected and updated, how auditing will occur, and what happens if groups no longer qualify for group enrollment.

- Administration of group enrollments may increase if groups are not cohesive, if landowners in the group enter and leave the MFL program, if enforcement actions against a group member impacts the ability of other group members to manage their properties, etc.

Forest Enterprise Areas (WLC: 0061/1)

- The proposed bill does not specify the rationale for the creation of forest enterprise areas or any requirement for counties or municipalities to develop forest enterprise areas through local zoning ordinances. To allow landowners the opportunity to help determine potential land use implications of the forest enterprise area, counties or municipalities should be required to develop the forest enterprises areas through normal zoning procedures prior to application to the DNR to receive funding from the forestry account of the conservation fund. We are concerned that once established, land use decisions within a forest enterprise area are consistent with the purposes of the enterprise area. Land use zoning seems to offer an established mechanism to make these decisions, although we recognize that local zoning has not been adopted in all areas of the state.
- Program provisions for municipality or county enrollment in the MFL program must be developed through administrative rule.
- A maximum of 200,000 acres is intended for entry as a forest enterprise area (no more than 75,000 acres may be enrolled as a forest enterprises zone before January 1, 2013). A tracking system would need to be developed to record MFL lands enrolled in the forest enterprise area so that payments can be made to local municipalities and counties.
- The rationale for the DNR to designate no more than 10 forest enterprise areas of not more than 75,000 acres should be specified in the bill. The rule making process generally takes up to one year to complete, so rules may be in place in 2012. The timing associated with accepting applications for the January 1, 2013 deadline and the acceptance of applications after the January 1, 2013 deadlines is close, making the deadline somewhat arbitrary and without a strong purpose. If the January 1, 2013 deadline was to replicate a pilot or trial period there should be some mechanism to evaluate the success of this pilot or trial period before additional forest enterprise areas are created.
- Auditing of the money paid to local municipalities and counties may be required to ensure that money is spent in the manner in which it is allocated.
- The proposed bill does not designate the specific account from which to pay the local municipality and county.

Annual Allowable Harvests (WLC: 0062/1)

- An annual allowable harvest has not been a requirement of the MFL program in the past. It should be noted in the draft bill the rationale for creating an annual allowable harvest for large ownerships or group ownerships since this is a change in policy.
- Landowners will benefit if groups of 1,000 acres or more are created prior to enrollment to reduce the cost of developing individual site specific management plans. Groups may include large owners who have subdivided their property for the purpose of closing lands to public recreation.
- Creating administrative rules will be needed to determine how groups are formed, who administers the group, how recon data is collected and updated, how auditing will occur, and what happens if groups no longer qualify for group enrollment.
- Administration of group enrollments may increase if groups are not cohesive, if landowners in the group enter and leave the MFL program, if enforcement actions against a group member impacts the ability of other group members to manage their properties, etc.
- Significant work will need to be put into developing the "group ownership" rules in the timeframe established by statute.
- Annual allowable harvest criteria must be determined through administrative rule. It will be difficult to determine who, how and when individual landowners are responsible to fulfill the group's annual

allowable harvest. Consequences of a group's failure to meet the annual allowable harvest must be determined. Administration time and expenses may increase to ensure compliance with this new provision.

- Statutory provisions protecting certain records from public records requests would be consistent with past concerns raised by large ownerships and requests for confidential information.

Board of Review (WLC: 0067/1)

The Department does not oppose an alternative review system, particularly where such a system can harmonized with existing appeal rights. The following issues should be addressed to ensure that the system delivers on these goals. The Department would be willing to assist in drafting potential language to address these concerns.

- The statute as written does not give any formal deference to any decision issued by the MFL Board of review in a subsequent 227.42 contested case hearing. This would likely lead to a complete "re-trying" of the facts, and require the board members to give testimony in a subsequent 227.42 hearing, since it does not appear that they have been granted any of the quasi-judicial protections afforded administrative law judges.
- It is unclear as to the scope of the board's authority where citations are issued under Wis. Stat. s. 77.86(5).
- The proposed bill requires the acceptance of all petitions for review received within 30 days. It does not allow for denials where there is no consequence to the landowner from the Department decision (a moot point), where due process is being provided under another statutory provision (duplicative due process), where the decision is one of general application (standing), or where there is no dispute of material fact (question of law). Notably, these are all provided under Wis. Stat. s. 227.42. These reasons for denial are tried and true mechanisms under the law for avoid the waste of limited judicial resources.
- It is unclear how mixed issues of sound forestry and other enforcement provisions in a withdrawal under Wis. Stat. s. 77.88 would be appealed (i.e., misses a transfer filing and harvests counter to the plan).
- The affirmative right to a Wis. Stat. s. 227.42 hearing conflicts with the 30 day timeline for judicial review of department decisions under Wis. Stat. s. 227.52. It is unclear if this extends appeal timelines, or if it will require concurrent filings with circuit courts to preserve appeal rights on the merits of specific issues.
- The proposed statute does not appear to substantively add to the current rights available to individuals wishing to challenge department decisions under Wis. Stat. s. 77.90.
- Administrative costs will increase because of increased numbers and time to prepare, conduct and report on hearings. For landowners to contest the decision made by the department these hearings will become rather formal so that a public record can be developed, effectively replicating existing Wis. Stat. s. 227.42 hearing format.
- Payment of time and expenses for the review board will be needed. Costs associated with this board have not been specified through the statute. By way of example, current Administrative Law Judges salaries for time spent attending, conducting and adjudicating administrative appeals, in addition to time spent writing opinions, are paid by the State from the Division of Hearings and Appeals in the Department of Administration.