



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF THE MANAGED FOREST LAND PROGRAM

Legislative Council Conference Room
1 East Main Street, Suite 401
Madison, WI

January 13, 2011
9:30 a.m. – 2:45 p.m.

[The following is a summary of the January 13, 2011 meeting of the Special Committee Review of the Managed Forest Land Program. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Schultz called the committee to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Dale Schultz, Chair; Rep. Fred Clark, Vice-Chair; Sens. Jim Holperin and Neal Kedzie; and Public Members Donald Friske, Alan Haney, Scott Henker, Bill Horvath, Mary Hubler, E.G. Nadeau, Dean Pelkey, Charly Ray, Mark Rickenbach, Eugene Roark, and Fred Souba, Jr.

COMMITTEE MEMBERS EXCUSED: Public Members Mark Abeles-Alison, Mike Carlson, and Richard Stadelman.

COMMITTEE MEMBER VIA
CONFERENCE CALL: Public Member Mark Abeles-Alison.

COUNCIL STAFF PRESENT: Rachel Letzing, Senior Staff Attorney, and Scott Grosz, Staff Attorney.

***ATTENTION:** This was the final meeting of the Special Committee on Review of the Managed Forest Land Program. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

Approval of the Minutes of the Committee's October 6, 2010 Meeting

The minutes of the October 6, 2010 meeting were approved by unanimous consent.

Review and Discussion of Drafts

Senator Schultz stated that although he has been appointed as the chair of the committee, Representative Clark would chair this meeting. Senator Schulz said he appreciated the work Representative Clark has done with the committee and said that both he and Representative Clark will present the bills approved by the committee today at the Joint Legislative Council meeting.

Representative Clark noted that both Representative Friske and Representative Hubler will continue to serve on the committee as public members. He also welcomed Mr. Henker and Mr. Haney to their first full committee meeting as members. Representative Clark explained that the committee would review the seven bill drafts developed by Legislative Council staff based upon input from both subcommittees. Representative Clark noted that after discussion of the bill drafts there would be an opportunity to discuss other ideas and issues. He stated that this meeting was the last full committee meeting.

WLC: 0044/1

Rachel Letzing described WLC: 0044/1, which repeals the prohibition on leasing and provides that each owner of managed forest land may enter into a lease or other agreement for consideration, including a lease or agreement that permits persons to engage in a recreational activity.

Kathy Nelson, Department of Natural Resources (DNR), said that current law specifies that the prohibition on leases and agreements related to a recreational activity do not apply if the consideration involved solely consists of reasonable membership fees charged by a nonprofit organization and the lease or agreement is approved by the DNR. She noted that since the draft repeals the leasing prohibition, the definition of "nonprofit organization" is no longer needed and should also be repealed.

The committee discussed whether removing the leasing prohibition could lead to additional acreage being placed into closed status. Senator Schultz stated this was possible, but hoped that would be offset by other bill drafts before the committee that will increase the amount of accessible land. Senator Holperin noted that "recreational activity" is defined very broadly in the draft and would allow for leasing for commercial activities.

Ms. Hubler moved, seconded by Chair Schultz, that WLC: 0044/1, relating to leasing of managed forest land be approved, as amended, on a roll call vote of Ayes, 15 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Friske, Haney, Henker, Horvath, Hubler, Nadeau, Pelkey, Ray, Rickenbach, Roark, and Souba, Jr.); Noes, 0; and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated had he been present he would have voted "Aye."

WLC: 0067/1

Ms. Letzing described WLC: 0067/1, which creates a Managed Forest Land (MFL) Board of Review, creates an optional procedure for MFL owners who are dissatisfied with a DNR decision regarding the practice of sound forestry to request review of the decision by the Board, and requires the Board to hear and review all requests. An owner who uses the procedure under the draft retains the right to a contested case hearing on those issues.

Ms. Nelson explained the DNR's concerns with the draft, as provided in the memorandum distributed to the committee. The committee discussed whether the word "issues" on page 7, line 8 was too broad, whether to authorize the Board to deny requests or to limit the number of requests that MFL owners may submit to the Board, and whether to allow MFL applicants to submit requests to the Board.

After an extensive discussion, the committee agreed that the Board should accept all requests submitted by MFL owners regarding the practice of sound forestry. The committee further agreed not to set a threshold to submit a request for review. The committee agreed that instead of requiring the Board to "hear and decide the issues included in the request" on page 3, lines 7-8, the draft should require the Board to "review and decide the issues included in the request."

Senator Holperin moved, seconded by Chair Schultz, that WLC: 0067/1, relating to the creation of a managed forest land board of review and requiring the exercise of rule-making authority be approved, as amended, on a roll call vote of Ayes, 14 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Friske, Haney, Henker, Horvath, Hubler, Pelkey, Ray, Rickenbach, Roark, and Souba, Jr.); Noes, 1 (Public Member Nadeau); and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted "Aye."

WLC: 0056/1

Scott Grosz described WLC: 0056/1, which directs the DNR to promulgate rules to permit the management plans of groups of MFL owners to be modified in a manner substantially similar to the modifications permitted for large ownerships if the aggregate group ownership of managed forest land exceeds 1,000 acres.

Representative Clark explained that the draft addresses the problem of expensive up-front costs that small MFL enrollees face and gives them a chance to share the costs of creating management plans and to cooperate on other expenses. During the committee discussion, it was noted that each person would still have to enroll in, and qualify for, the MFL program individually. Senator Holperin said that according to the DNR memorandum, the draft will make it easier to break up and close acreage, so could facilitate the subversion of the MFL program. Senator Schultz noted that by eliminating the leasing prohibition in WLC: 0044/1, the committee has already eliminated one incentive to subvert the program.

Ms. Hubler moved, seconded by Chair Schultz, that WLC: 0056/1, relating to modification of management plans for large ownerships of managed forest land and group enrollments, and requiring the exercise of rule-making authority be approved, as amended, on a roll call vote of Ayes, 15

(Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Friske, Haney, Henker, Horvath, Hubler, Nadeau, Pelkey, Ray, Rickenbach, Roark, and Souba, Jr.); Noes, 0; and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted "Aye."

WLC: 0062/1

Mr. Grosz described WLC: 0062/1, which specifies that when ownerships exceeding 1,000 acres modify their management plans, the modified management plans must include the establishment of an annual allowable timber harvest. The DNR is required to promulgate rules to establish annual allowable timber harvests in these modified management plans.

Representative Clark stated that for large block enrollments, there is no DNR authority regarding the volume of harvest, whether too large or too low, and that there are potentially not enough tools to ensure the practice of sustainable forestry. He noted there are no major problems today, but there is concern for the future ability of the state to ensure sustainable forestry and there is currently no gauge to determine what is going on.

Mr. Souba and Mr. Henker explained that large owners that are third-party certified are already required to have an annual allowable harvest and that the market ultimately dictates the flow of timber. During committee discussion, it was noted that not all large owners are certified. The committee then discussed whether to give small MFL owners more flexibility regarding harvesting instead of limiting the flexibility of large owners. Mr. Ray stated that markets and timing are real issues within the MFL program and the inequity of treatment between large and small owners is a concern. Mr. Souba noted that parcelization of private forests has made harvesting too expensive; there needs to be a way to increase peoples' interest in managing timber and MFL mandatory practices have been a good mechanism to do this. Senator Schultz suggested that language be drafted which would direct the DNR to provide a three-year window for certain management practices, including harvesting, for groups of owners that collectively own less than 1,000 acres.

The committee agreed with a suggestion made by Representative Clark that the draft be amended to specify that ownerships exceeding 1,000 acres are exempt from the establishment of an annual allowable timber harvest when their management plans are modified if the owners are certified.

Ms. Hubler moved, seconded by Chair Schultz, that WLC: 0062/1, relating to annual allowable timber harvests, modification of management plans for large ownerships of managed forest land and group enrollments, and requiring the exercise of rule-making authority be approved, as amended, on a roll call vote of Ayes, 9 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Horvath, Hubler, Nadeau, Pelkey, and Roark); Noes, 6 (Public Members Friske, Haney, Henker, Ray, Rickenbach, and Souba, Jr.); and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted "Aye."

WLC: 0061/1

Ms. Letzing described WLC: 0061/1, which directs the DNR to designate forest enterprise areas in administrative rule.

Mr. Horvath explained that the purpose of forest enterprise areas is to try to preserve larger blocks of forested land and noted that forest enterprise areas will support local zoning and comprehensive planning. Mr. Rickenbach stated that the draft will give local communities more incentive to keep larger blocks of forest intact. Mr. Grosz explained that local governments that designate forest enterprise areas only receive payments for the MFL acreage included in the forest enterprise area.

The committee discussed the meaning of the phrase “forest preservation” on page 2, line 2. In response to a suggestion by Senator Schultz, the committee agreed that this phrase should be changed to “sustainable forestry.” Mr. Haney suggested that the word “development” on page 2, line 2, should be changed to “forest-based economic development.” The committee agreed to this amendment.

Mr. Friske moved, seconded by Ms. Hubler, that WLC: 0061/1, relating to creating forest enterprise areas, requiring the exercise of rule-making authority and making an appropriation be approved, as amended, on a roll call vote of Ayes, 15 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Friske, Haney, Henker, Horvath, Hubler, Nadeau, Pelkey, Ray, Rickenbach, Roark, and Souba, Jr.); Noes, 0; and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted “Aye.”

WLC: 0054/1

Mr. Grosz described WLC: 0054/1, which changes the calculations for closed acreage share payments for MFL orders that take effect on or after the draft’s effective date and the manner in which moneys from the MFL program are distributed to local units of government.

Senator Schultz said that the draft should address concerns regarding the ability of MFL owners to close land and will provide an incentive for counties to increase public access.

Mr. Friske stated that the closed acreage fees should go back to local governments unencumbered in order to offset the property tax loss from land enrolled in the MFL program.

Representative Clark clarified that the intent of the draft is to change the distribution for closed acreage fees only, not the distribution of other MFL payments and fees. Therefore, the material on page 5, lines 5-12, should be deleted.

The committee discussed the meaning of the phrase “public recreational use” on page 6, line 3, and agreed that the draft should be amended to specify that public recreational use includes those recreational activities required on open managed forest land--hunting, fishing, hiking, sight-seeing, and cross-country skiing.

Mr. Grosz explained that under the draft, MFL owners that have their land open will pay the same amount they would pay under current law, but owners who close their land will pay the greater of their acreage share payment plus their closed acreage payment under current law or 25% of the full

value of the closed land. Ms. Nelson explained that when an MFL owner withdraws, the DNR subtracts the owner's acreage share payments from their withdrawal tax. She noted that under the new calculations in the draft, it will be harder for the DNR to track individual tax bills and to know which percentage should be subtracted from someone's withdrawal tax.

The committee agreed that the draft should be amended to modify the distribution of the 25% of the full value of the managed forest land that is closed on page 5, lines 1 to 3, to enable the DNR to subtract the acreage share payments from the withdraw tax that owners who withdraw from the MFL program are required to pay. This amendment would result in owners who withdraw under the new distribution formula in the draft being treated the same way that current withdrawing owners are treated.

Mr. Ray stated that the draft falls short of addressing the long-term issue of people not re-enrolling in the MFL program. Mr. Abeles-Alison noted that the subcommittee discussed the inequities of the current system, but agreed to keep the current formula the same.

Ms. Hubler moved, seconded by Mr. Nadeau, that WLC: 0054/1, relating to the taxation of managed forest land be approved, as amended, on a roll call vote of Ayes, 13 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Haney, Henker, Horvath, Hubler, Nadeau, Ray, Rickenbach, Roark, and Souba, Jr.); Noes, 2 (Public Members Friske and Pelkey); and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted "Aye."

WLC: 0050/1

Mr. Grosz described WLC: 0050/1, which modifies the process by which certain MFL owners may add property to their MFL orders. Senator Schultz explained that WLC: 0050/1 is intended to encourage additions to managed forest land so those lands can be managed for their best purpose. It was noted that if owners add acreage to an "old" plan, the closed acreage limit is 80 acres; however, if acreage is added to a "new" plan, the closed acreage limit is 160 acres.

Mr. Nadeau moved, seconded by Mr. Friske, that WLC: 0050/1, relating to designation of additional managed forest land be approved on a roll call vote of Ayes, 15 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Friske, Haney, Henker, Horvath, Hubler, Nadeau, Pelkey, Ray, Rickenbach, Roark, and Souba, Jr.); Noes, 0; and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted "Aye."

Other Business

Mr. Ray stated that the committee should change "recognizing" to "and" in s. 77.80, Stats., the MFL purpose statement, so that timber production will be on the same level as the other items listed in the statutes: the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

Senator Schultz said that this issue is a legitimate subject of debate and would be better served in a separate piece of legislation. He stated that the MFL program has always had a narrow scope of timber production. Senator Holperin noted that the committee has discussed this issue at previous meetings and decided that it did not have much likelihood of success, especially considering the current legislative climate. Senator Schultz stated that he wanted to ensure a fair process, so asked Mr. Ray if he would like to ask for a vote on this issue.

Mr. Ray moved, seconded by Mr. Haney, to amend s. 77.80 to equate more fully the relationship between crops for commercial use and the other uses provided in the statute. The motion failed on a roll call vote as follows, Ayes, 3 (Public Members Haney, Nadeau, and Ray); Noes, 12 (Sens. Schultz, Holperin, and Kedzie; Rep. Clark; and Public Members Friske, Henker, Horvath, Hubler, Pelkey, Rickenbach, Roark, and Souba, Jr.); and Absent, 3 (Public Members Abeles-Alison, Carlson, and Stadelman). Mr. Abeles-Alison indicated that had he been present he would have voted "Aye."

Adjournment

The meeting was adjourned at 2:45 p.m.

REL:ksm