



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF THE MANAGED  
FOREST LAND PROGRAM

FROM: Scott Grosz, Staff Attorney, and Rachel Letzing, Senior Staff Attorney

RE: Public Access Options

DATE: September 29, 2010

This memorandum outlines several options the committee may wish to consider relating to issues of public access. The Memo first describes options relating to use of closed acreage fees, then follows with options relating to the leasing of managed forest land. Finally, the Memo discusses an option relating to electronic registration and management of managed forest land, including components related to closure and leasing of managed forest land.

### **CLOSED ACREAGE FEES**

The committee has received testimony and discussed various options for the use of closed acreage fees generated under the current Managed Forest Land (MFL) program.

Current law requires that MFL landowners with closed acreage make their closed acreage payments to the municipal (town, village, or city) treasurer on or before January 31 of each year. The municipal treasurer must then pay all closed acreage amounts received to the county treasurer. The county treasurer must then, by June 30 of each year, pay all closed acreage fees received to the Department of Natural Resources (DNR). All amounts received from the DNR must be credited to the Conservation Fund and reserved for land acquisition, resource management activities, and grants for land acquisition for outdoor activities. [s. 77.89 (2) (b), Stats.]

The grant program for land acquisition for outdoor activities is described in s. 77.895, Stats. Under s. 77.895, Stats., the DNR must establish a program to award grants to nonprofit conservation organizations, to local governmental units, and to itself to acquire land to be used for hunting, fishing, hiking, sightseeing, and cross-country skiing. The MFL Board must administer the program and award the grants under the program.

Section 20.370 (5) (bz), Stats., provides the appropriation for grants for land acquisition for outdoor activities, specifying, “As a continuing appropriation [from the Conservation Fund], the amounts in the schedule for grants awarded by the managed forest law board under s. 77.895.” However, for fiscal year 2009-10 and fiscal year 2010-11, the schedule specifies zero dollars for the appropriation. As such, the grant program is not funded in the current biennium.

Composition of the MFL Board is specified under s. 15.345 (6), Stats. The board is to consist of the chief state forester, or his or her designee, and the following members appointed for three-year terms:

- One member appointed from a list of five nominees submitted by the Wisconsin Counties Association.
- One member appointed from a list of five nominees submitted by the Wisconsin Towns Association.
- 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.
- One member appointed from a list of five nominees submitted by the Council on Forestry.

#### **Closed Acreage Fees Held in Trust for Purchase of Public Access**

Under this option, the committee could recommend legislation specifying that all or a portion of the closed acreage fees generated by the MFL program could be held in trust, to be used to fund public access efforts.

This option could be structured to permit a local unit of government to direct the spending of closed acreage fees in proportion to the amount of closed acreage located in that unit of government. For example, closed acreage fees could be remitted annually to the MFL Board. In the first six months following such remission, a county could direct the board to allocate a portion of the closed acreage fees for a public access effort chosen by the county, up to the county’s proportional share of the fees. After the six-month period expires, the board could allocate any remaining acreage fees for public access efforts chosen by the board (fees would remain if a county chose not to pursue its own allocation decision; this would appear likely for counties where the proportional allocation would be very small).

#### **Closed Acreage Fees Remitted to Local Units of Government for Property Tax Relief**

Under this option, all or a portion of the closed acreage fees generated by the MFL program could be retained by the local unit of government in which it is generated to be used for local expenses and, therefore, act as a form of general property tax relief.

#### **Closed Acreage Fees Remitted to Local Units of Government and the MFL Board**

This option is included at the request of Vice-Chair Friske. Under this option, the municipality that collects the closed acreage fees would pay 20% of the money received to the DNR to fund the public access grant program administered by the MFL Board. Of the remaining closed acreage funds,

the municipality would pay 20% to the county and retain the remainder of the money. Both the municipalities and the counties that retain closed acreage fees would then be able to use the money for local purposes.

### **Policy Considerations**

In evaluating the options described above, the committee may wish to consider the following items:

- Whether closed acreage fees could be used for both public access and general local expenditures, and if so, the percentage of fees that should be apportioned to each use.
- Whether the board composition of the current MFL Board is appropriate.
- If fees are remitted to local units of government, the appropriate definition of “local unit of government.”
- If fees are used to fund public access, the extent of local control over the expenditures.

### **PUBLIC ACCESS AND LEASING OF MANAGED FOREST LAND**

The committee has received testimony and discussed various options relating to public access and the leasing of managed forest land.

#### **General Repeal of Prohibition on Leasing**

Under this option, the committee could recommend legislation to repeal the prohibition on leasing that is in place under current law.

Current law specifies that, effective January 1, 2008:

- No person may enter into a lease or other agreement for consideration if the purpose of the lease or agreement is to permit persons to engage in a recreational activity. “Recreational activities” is defined to include hunting, fishing, hiking, sight-seeing, cross-country skiing, horseback riding, and staying in cabins.
- A person who had a lease or other agreement for consideration that permitted persons to engage in a recreational activity was required to terminate the lease before January 1, 2008, in order to continue receiving the benefits of the MFL program.

The prohibitions on leases and agreements related to 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. [s. 77.83 (2) (am), Stats.]

### **Prohibition of Closure of Managed Forest Land by Certain Classes of Owners**

Under this option, the committee could recommend legislation that would prohibit the closure of managed forest land by certain classes of owners. Several bills from the 2009-10 Legislative Session related to this topic, and could be considered by the committee as useful examples.

#### ***2009 Senate Bill 300***

2009 Senate Bill 300 provided that managed forest land may not be closed to public access if the land was, on January 1, 2009, part of a parcel under single ownership that exceeded 8,000 acres in size.

Senate Substitute Amendment 1 to Senate Bill 300 modified the proposal to provide that managed forest land may not be closed to public access if the land is subject to a MFL order dated January 1, 2010, or later, and all of the following applied to the land on January 1, 2009:

- The land was part of a contiguous parcel that exceeded 8,000 acres in size.
- The parcel was located in a single municipality.
- The parcel was under single ownership.
- The parcel was not subject to a contract under the forest cropland program or the woodland tax law under subch. I of ch. 77 or to an order under the MFL program under subch. VI of ch. 77, Stats.

#### ***2009 Assembly Bill 715***

Generally, 2009 Assembly Bill 715 proposed the same conditions on the closure of managed forest lands as provided under Senate Substitute Amendment 1 to 2009 Senate Bill 300, except that the prohibition on closure would have applied to contiguous parcels that exceeded 1,000 acres in size instead of 8,000 acres.

Assembly Amendment 2 to Assembly Bill 715 modified the bill to refer to land subject to managed forest land orders *effective* January 1, 2010, or later, rather than managed forest land orders *dated* January 1, 2010.

#### ***Policy Considerations***

The committee may wish to consider the following items with regard to a prohibition on closure of managed forest lands by certain classes of owners:

- Parcel characteristics, including:
  - Parcel size.
  - Parcel continuity.
  - Parcel location.

- Ownership characteristics, including treatment of shared ownership.
- The extent of retroactive applicability.
- The treatment of current MFL program enrollees.

### **Management of Limited Public Access Through the DNR's ALIS System**

Under this option, the committee could recommend legislation to implement an electronic registration system for the MFL program through the DNR's Automated License Issuing System (ALIS).

#### ***Access Options***

Through the use of the ALIS system, the committee could recommend the creation of three classes of managed forest land for renewals and new enrollees: open, limited access, and closed. Current MFL program enrollees could be presented with the option to retain their current classifications (with the current leasing prohibition) or opt into one of the three new classes. The new classes would be defined by the following characteristics:

- Open: Self-explanatory, with the same acreage fees as currently open land.
- Limited Access: Through the ALIS system, limited access enrollees would be able to limit the public access to their property. Access could be limited by use (e.g., no hunting, but unlimited hiking, cross-country skiing, and sightseeing) or by volume (e.g., a certain number of public users per acre per day). Under a volume-based model, the ALIS system could be used by members of the public to apply for access to limited access properties on a first-come, first-served basis, and by landowners to identify public users for security purposes. In order to encourage limited access enrollment, acreage fees would likely need to be less than acreage fees for currently closed land.
- Closed: Generally, self-explanatory, however, the committee could decide whether to permit leasing under the new "closed" classification. Acreage fees could be raised to encourage limited access enrollment and, if applicable, account for leasing revenues.

#### ***Policy Considerations***

The committee may wish to consider the following items with regard to leasing of MFL property:

- With regard to limited access, the different manners by which access could be limited (e.g., use and volume), and the creation of equivalencies of these different manners for purposes of the program.
- The role of rate-setting in encouraging one class of access over another.

- If leasing of closed acreage is permitted, whether to create subcategories of the closed class; one where leasing is permitted and the other where it is prohibited, accompanied by a different acreage fee for each subcategory.
- If leasing of closed acreage is permitted, whether that permission should extend to all types of MFL program enrollees.
- Whether it is advisable to guarantee that MFL program enrollees may rely on proposed program changes.

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