

Committee Name:

**Assembly Committee – Rural Affairs and Forestry
(AC–RAF)**

Appointments

99hr_AC–RAF_Appt_pt00

Committee Hearings

99hr_AC–RAF_CH_pt00

Committee Reports

99hr_AC–RAF_CR_pt00

Clearinghouse Rules

99hr_AC–RAF_CRule_99–

Executive Sessions

99hr_AC–RAF_ES_pt00

Hearing Records

99hr_ab0504c

99hr_sb0000

Misc.

99hr_AC–RAF_Misc_pt00

Record of Committee Proceedings

99hr_AC–RAF_RCP_pt00

12-16-99 EXEC
AB127, AB202

AB-504

Committee Meeting Attendance Sheet

Assembly Committee on Rural Affairs and Forestry

Date: 12/16/99 Meeting Type: Executive Session
Location: 328 Northwest - State Capitol

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Rep. John Ainsworth, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Terry Musser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Kitty Rhoades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Stephen Freese	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Judith Klusman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mary Hubler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Barbara Gronemus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Donald Hasenohrl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>8</u>	<u>0</u>	<u>1</u>

Kristina Boardman
Kristina Boardman, Committee Clerk

Boardman, Kristina

From: Paul Mikulak [pomklk@hotmail.com]
Sent: Tuesday, November 30, 1999 8:28 AM
To: rep.ainsworth@legis.state.wi.us
Subject: Committee Status

Dear John,

Perhaps you could find a minute or one of your staff people could bring me up to speed on the status of the various forestry bills in committee. I will be attending a Governor's Council meeting tomorrow in Stevens Point and they will want to know what is happening.

I am concerned about AB 540, AB 555, and AB 293. I know that you have time before January to take care of some of the concerns in Rep. Pettis' bill but perhaps you give me an indication about where you think it will go. If you include the amendments in 504 I don't believe that there should be much problem with that.

Please let me know by e-mail. I am at pomklk@hotmail.com

Thank you,
Paul Mikulak

Get Your Private, Free Email at <http://www.hotmail.com>

Boardman, Kristina

From: Paul Mikulak [pomklk@hotmail.com]
Sent: Tuesday, November 30, 1999 2:28 PM
To: Kristina.Boardman@legis.state.wi.us

Kristina,
Many Thanks for the update. If anything comes up on these issues please do me a favor and let me know.

Paul Mikulak

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Send
Alice O'Connor
copy of
Exec Notice



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: December 15, 1999

TO: REPRESENTATIVE JOHN AINSWORTH, CHAIRPERSON; AND
MEMBERS OF THE ASSEMBLY COMMITTEE ON RURAL AFFAIRS
AND FORESTRY

FROM: Gordon A. Anderson, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment __ (LRBs0221/1) to 1999 Assembly Bill
504, Relating to Cutting, Removal and Transportation of Raw Forest Products,
Seizure of Forest Products, Granting Rule-Making Authority and Providing
Penalties

This memorandum describes proposed Assembly Substitute Amendment __ (LRBs0221/1) to 1999 Assembly Bill 504 and notes the differences between the substitute amendment and the original bill. It also describes an issue relating to the bill and some alternative methods to deal with the issue if the Committee so desires.

A. PROVISIONS OF THE SUBSTITUTE AMENDMENT

1. Cutting Forest Products

a. Current Law

Current s. 26.03, Stats., requires notice to a county clerk of a county before a person cuts or causes to be cut any "logs, pilings, poles, posts, pulpwood, Christmas trees or other forest products, except fuel wood for personal home consumption." A person is required to pay all delinquent taxes on the land prior to cutting and, each year, to mail a notice to the county clerk. The county clerk is required to mail a notice to the town chairperson of each town in which the lands are located. The county treasurer must determine whether there are any tax certificates or tax deeds to the land. The treasurer is required to take action to collect any unpaid taxes or, if the county holds the tax deed or tax certificate, to prevent cutting on the land.

Cutting on public lands, and cutting for the purpose of clearing the land for agricultural use, are excluded from the requirement. Also, a person may cut up to five Christmas trees on

their own property for his or her own use providing that he or she can prove that real estate taxes for the previous calendar year have been paid.

No purchaser of Indian reservation land or land to be placed on the tax roll for the first time may cut any forest products except fuel wood for personal home consumption without first recording the instrument by which title to the land was acquired.

b. Assembly Substitute Amendment

Assembly Substitute Amendment __ (LRBs0221/1) provides that unless authorized by the county, no person may harvest any raw forest products or direct the harvesting of any raw forest products from land until 14 days after the clerk of the county in which the land is located is notified. The person is required to notify the county clerk each year and may do so in any manner acceptable to the county. Each time the person notifies the county, the person must describe the land upon which the harvesting will occur. Notification expires on December 31 following the notification and no person may harvest or direct the harvesting of additional products after that date until further notification is provided to the county.

The county clerk is required to notify the town chairperson of each town in which the land that will be harvested is located and the county treasurer. The county treasurer must determine whether the county holds a tax certificate or tax deed to the land involved and to take action to collect the unpaid taxes or to prevent the harvesting of raw forest products.

The substitute amendment continues the exemptions for public lands, harvesting raw forest products for fuel wood for home consumption, harvesting for purposes of clearing the land for agricultural purposes and harvesting from a person's own land boughs or up to five Christmas trees for his or her use.

The substitute amendment provides that anyone who violates the provisions relating to harvesting only after notification to the county or harvesting without first recording the instrument by which title to the land was acquired, or rules promulgated under those provisions, may forfeit not more than \$100. The substitute amendment also provides that a person who harvests raw forest products or directs the harvesting of raw forest products from any land on which taxes are delinquent shall forfeit not less than \$500 nor more than \$10,000.

2. Timber Theft

a. Current Law

Under current s. 26.05, Stats., a person who cuts, removes or transports raw forest products without the consent of the owner is subject to a forfeiture of not less than \$100 nor more than \$10,000. As an alternative, the person may be punished under s. 943.20, Stats., for theft.

b. Assembly Substitute Amendment

Assembly Substitute Amendment __ (LRBs0221/1) amends the definition of "raw forest products" in the timber theft statute to include *seedlings, saplings, shrubs, whole-tree chips and boughs*, in addition to the items currently covered, "logs, pilings, posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees." It also provides that any person who violates a rule promulgated under this statute can be punished under s. 943.20, Stats., for theft.

3. Enforcement, Seizure and Sale of Materials

a. Current Law

Under current s. 26.06, Stats., any person who, without the consent of a person legally able to give consent, removes any seized products or removes or defaces a seizure notice of the Department of Natural Resources (DNR) or of any sheriff shall forfeit not more than \$50. This provision relates to enforcement, seizure and sale of materials unlawfully cut from *public lands* of the state, federal and local governments. It also covers *forest croplands* and *managed forest lands*.

b. Assembly Substitute Amendment

Assembly Substitute Amendment __ (LRBs0221/1) increases the penalty to a forfeiture of not less than \$500 nor more than \$10,000.

4. Civil Liability for Unauthorized Cutting, Removal or Transportation of Forest Products

a. Current Law

Under current s. 26.09, Stats., in addition to other penalties and costs, any person who unlawfully cuts, removes or transports raw forest products is liable in a civil action for double the amount of damages suffered.

b. Assembly Substitute Amendment

Assembly Substitute Amendment __ (LRBs0221/1) provides that, in addition to any other enforcement action that may be taken, the owner of raw forest products that were harvested without consent may bring a civil action against the person who harvested the raw forest products to recover damages. A county in which violations of the notice requirement occurred may bring a civil action to recover damages for that violation.

The owner may not recover damages if the person harvesting the raw forest products or the person giving consent for the harvesting "reasonably relied on a written agreement among adjacent owners or their agents that the owner giving consent to harvest has the authority to do so." This provision is limited to situations in which the harvesting is from land owned by an owner who is a party to the agreement.

A court shall award damages equal to the *stumpage value* of the raw forest products if the person that harvested the products or the person giving consent reasonably relied upon a recorded survey by a registered land surveyor or a person with a permit to practice land surveying, even if the recorded survey is determined to be in error.

A court shall award damages equal to *two times the stumpage value* of the raw forest products harvested if a recorded survey was not relied on but the person harvesting the raw forest products took reasonable precautions in identifying harvesting boundaries.

The court shall award damages *equal to four times the stumpage value or two times fair market value* of the raw forest products harvested, whichever is greater, if a recorded survey was not relied upon and the person harvesting the products did not take reasonable precautions in identifying the harvesting boundaries.

A court shall award other reasonable and necessary costs which may include costs for:

1. Repair of damage to, or cleanup on, the land from which the raw forest products were harvested.

2. Removal of slash from agricultural land, waterways, highways, private roads, trails or other sites where the slash would either appear with reforestation or replanting.

3. Determining the fair market value, the stumpage value or the volume of the raw forest products that were harvested.

4. Determining the location of property boundaries necessary for determining whether a violation occurred.

5. Preparing forest management or reforestation plans.

6. Reforestation.

7. Replanting by direct seedlings or use of seedlings.

Assembly Substitute Amendment __ (LRBs0221/1) also specifies what are reasonable precautions, including how the person may identify the harvesting boundaries through reviewing land ownership records and other sources of documentation regarding the land. It also specifies that harvesting boundaries may be identified by use of a compass and measuring device or use of a global positioning system or a method established by rule by the DNR.

In addition to remedies available under s. 807.01, Stats. (settlement offers), a court shall award the successful party court costs and reasonable attorney fees if the unsuccessful party, before the commencement of the action, unreasonably refused to pay a demand for damages or to accept an offer of payment for damages.

B. DIFFERENCES FROM THE ORIGINAL BILL

Assembly Substitute Amendment __ (LRBs0221/1) incorporates three amendments (LRBa1072/1, LRBa1073/1 and LRBa1074/1, previously distributed to the Committee). The changes include:

1. In the original bill, it provided that the person notifying the county clerk of intent to harvest may do so in "any manner acceptable to the county." The substitute amendment provides that the person "shall notify the county clerk each year and may do so in any manner acceptable to the county."

2. In the original bill, a person is required to describe the land on which harvesting is to occur. The substitute amendment requires that *each time* the person notifies the county, the person must describe the land.

3. Under the original bill, notification is valid for 365 days after the date on which the county clerk is notified. The substitute amendment provides that the notification expires on December 31 of the year immediately following the notification and that no person may harvest or direct the harvesting of additional raw forest products from the land until further notification, for the next calendar year, is provided to the county.

4. Under the original bill, a court could calculate and award damages using a different method than the one, two or four times the stumpage value provisions, if the method used is reasonable and appropriate. The methods include:

- (a) Subtracting the fair market value of the land after the harvesting from the fair market value of the land before the harvesting.
- (b) Determining the loss of any ornamental, scenic, recreational, aesthetic or environmental value of the land that results from the harvesting.

The substitute amendment deletes these provisions.

5. Under the original bill, a court must award the *plaintiff* in a civil action court costs and reasonable attorney fees if the *plaintiff* presented a written reasonable demand for damages to the defendant not less than 60 days before the commencing of the action and those damages were not paid before the action was commenced. The substitute amendment provides instead that the court shall award the *successful* party in a civil action court costs and reasonable attorney fees if the unsuccessful party before the commencement of the action unreasonably refused to pay a demand for damages or to accept an offer of payment for damages.

C. NOTE

Assembly Substitute Amendment __ (LRBs0221/1) deletes the ability of a court to calculate an award of damages using a different method. It also appears that an action under s. 26.09, Stats., as affected by the proposal, may be the *exclusive civil remedy* for unauthorized cutting of forest products.

Under the substitute amendment, although the court may award damages equal to one, two or four times the stumpage value or two times the fair market value depending on the precautions taken by the harvester or the lack thereof, there *is no provision in the proposal to allow the court to award damages for lost income or other economic losses* that may be experienced by the landowner.

If the owner is to be able to recover other economic losses, this could be accomplished by an amendment to create authorization for the person to include in the civil action "other economic losses." (Noneconomic losses could also be included if so desired.)

As an alternative, the proposal could be amended to provide that a person could bring a civil action under ch. 801, Stats., as an alternative to s. 26.09, Stats. This would allow a person to sue for and prove all losses caused by the unauthorized harvesting but would not include the stumpage value provisions of s. 26.09, Stats.

If you have any questions or I can be of further assistance, please let me know.

GAA:jal:wu;rv