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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Forestry...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2013)

Assembly

Record of Committee Proceedings

Committee on Forestry

Assembly Bill 781

Relating to: managed forest land for which there is limited access for persons to engage in certain recreational activities.

By Representatives Wood, Townsend, Mursau, Petrowski and Albers; cosponsored by Senators Kreitlow, Kapanke and Olsen.

February 08, 2008 Referred to Committee on Forestry.

February 12, 2008 **PUBLIC HEARING HELD**

Present: (6) Representatives Friske, Mursau, A. Ott, M. Williams, Hubler and Sherman.
Absent: (1) Representative Boyle.

Appearances For
- Jeff Wood, Madison — Representative, 67th Assembly District
- Jolene Plautz, Madison — Wisconsin State Horse Council

Appearances Against
- Merlin Becker, Manawa — Wisconsin Woodland Owners Association
- M. Scott Statz, Madison — 810 Woodrow St
- Jordan Loeb, Madison — Self

Appearances for Information Only
- Paul DeLong, Madison — Chief State Forester, Wisconsin Department of Natural Resources
- John Olson, Cederburg — Self

Registrations For
- Pat Kreitlow, Madison — Senator, 23rd Senate District

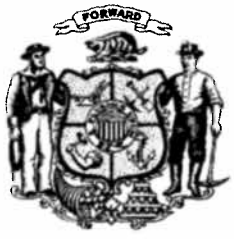
Registrations Against
- None.

Registrations for Information Only
- None.

March 13, 2008 Failed to pass pursuant to Senate Joint Resolution 1.

Tim Gary
Committee Clerk

WISCONSIN STATE LEGISLATURE



Wisconsin Woodland Owners Association, Inc.

P.O. Box 285, Stevens Point, WI 54481-0285
www.wisconsinwoodlands.org

WWOA OFFICE
EXECUTIVE DIRECTOR
Nancy C. Bozek
P.O. Box 285
Stevens Point, WI 54481
715/346-4798
FAX 715/346-4821

February 12, 2008

Assembly Committee on Forestry
State Capitol, Madison, WI

Representative Friske and Assembly Committee on Forestry members,

The Wisconsin Woodland Owners Association or WWOA, representing Wisconsin's private woodland owners provides the following comments for your consideration at this public hearing regarding AB 781.

WWOA thanks Representative Wood for attempting to remedy the provision in Act 20, the budget bill, which eliminated the right of MFL contract holders to lease their land, formally or informally, for recreational activities. Unfortunately, AB 781 does not reinstate our rights in a manner feasible for the average MFL landowner.

WWOA <u>does not</u> support AB 781 for the following reasons:

1. MFL landowners believe that the provisions that were in effect when they signed their MFL contracts are binding and should not be taken away by the government. We believe that Act 20 was a "takings" of our rights as private landowners. In addition this bill, as in Act 20, does not provide MFL landowners with the option of leaving the program because they feel their contract was broken without paying a significant penalty.

2. The MFL program is an incentive program tied to property tax. The United States taxation system taxes property separately from income. This proposal attempts to tax income earned through property tax instead of income tax provisions.

3. The bill penalizes MFL landowners who are exercising their property rights to manage, enjoy and profit from their land in ways consistent with sustainable forestry.

4. Currently farmers receiving a "property tax break" under Use Value Assessment are not prevented from leasing their land for recreation.

5. Contrary to the belief that these attempts will increase the amount of land under MFL that is open to the general public, it will not. Closed land will remain closed, whether or not it is leased, with few if any exceptions. By allowing MFL participants to continue to lease their land under the closed option, more recreational activities will occur on these lands.

6. Many MFL landowners choose to lease their land for several reasons: an ability to know and trust the people using their land, concerns about liability issues, concerns about safety for family and property during the hunting season, and the ability to

Wisconsin Woodland Owners Association, Inc.

P.O. Box 285, Stevens Point, WI 54481-0285

www.wisconsinwoodlands.org

regulate the types of activities that occur so that they are compatible with their goals and those of the MFL program.

7. MFL landowners often incur additional costs in implementing their management plans such as tree planting, timber stand improvement, pruning and other silvicultural practices which are required under MFL. These landowner costs are not taken into consideration. Leasing provides a way to earn income off the land to help pay for these practices.

8. Legislation banning recreational leasing was aimed at a few large industrial landowners who retitled 160 acre segments so they could be leased. This legislation will not stop this practice, but will continue to penalize hundreds or perhaps thousands of ordinary MFL landowners.

9. Bartering or exchanges of services is a rural way of life across America. Expecting MFL landowners to pay a higher property tax rate for "other agreements for consideration" when they do not receive actual income is unrealistic.

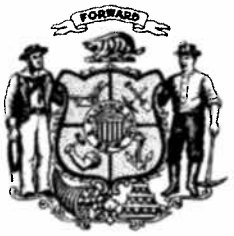
10. The "limited access" option property tax rates proposed are so high that the average MFL participant would not earn the income necessary through leasing to cover the costs. The bill proposes a "limited access" tax amount total equal to 50% of the average statewide forest land property tax per acre but does not take into account the additional fees the MFL participant incurs such as a written management plan to enter the program (estimated at $1500), required silvicultural practices that do not earn an income as discussed above and the yield tax of 5% of the value of the merchantable timber cut based on the stumpage values.

11. This type of legislation is extremely difficult to enforce.

WWOA members thank you for listening to our concerns regarding AB 781. We are requesting that the government honor our MFL contracts as written. We feel the government broke our MFL contracts by enacting the recreational leasing provision in Act 20 and unfortunately AB 781 does not repeal this action to our satisfaction.

Merlin Becker
WWOA President


WISCONSIN STATE LEGISLATURE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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

Assembly Bill 781

Assembly Committee on Forestry

Department of Natural Resources Testimony
Paul J. DeLong, Director Bureau of Forest Management
Division of Forestry
February 12, 2008

Mr. Chairman and Committee Members:

Good morning. My name is Paul DeLong and I am the Administrator for the Division of Forestry. I appreciate this opportunity to appear before you to discuss AB 781.

Managed Forest Law (MFL) is the single most important program to promote the long term public benefits of sustainable forestry on privately owned lands. There is no question that MFL helps keep forest in forest, providing a full array benefits to the people of Wisconsin. These benefits include a steady supply of forest products that fuel one of Wisconsin's largest industries, clean water and air, habitat for a diversity of wildlife both common and rare, carbon sequestration, the scenic beauty that attracts tourists from near and far, and the settings in which a multitude of outdoor recreation activities occur.

The public benefits from a program that encourages land use decisions that maintain our forest land and facilitates the provision of this array of benefits. The challenge is to balance the private incentive necessary for private landowners to make a long-term commitment to providing these public benefits, with assuring the public a positive return on their investment in these lands.

The recent legislative change to MFL prohibiting leasing has raised this question regarding the balance between the private and public benefits. The Department appreciates the willingness of Representative Wood to stimulate dialogue through the introduction of this bill. The Department desires to be a full partner in seeking an outcome that maintains MFL as an attractive tool for private landowners to sustainably manage their forests and as a result provide the public benefits we all desire.

Before commenting on the specific provisions of this bill, I think it might be instructive to reflect on how MFL was structured when it was created in 1985. MFL was created by combining provisions from the Forest Crop Law (FCL) and the Woodland Tax Law (WTL). MFL also included new provisions, reflecting the public desire to see a fuller range of public benefits provided from MFL lands. Specifically regarding public recreation, the drafters of the MFL program strove to balance the private incentive and public benefit by allowing landowners to close up to 80 acres of land with the intent that the remaining MFL lands would be left open to public recreation. It seems the drafters recognized that requiring all MFL land to be open (as was the case under FCL) would severely limit the amount of family forestland entered in the program. By providing a limited amount of closed land, landowners might enter larger parcels knowing they could limit access on a portion of the entry. It seems that the drafters also recognized that allowing all land to be closed would result in the loss of public access of more than a million acres of private

land owned at the time by forest industry. It seems clear that the drafters were striving to find an appropriate balance on the issue of public access to MFL lands.

When MFL was first introduced in 1985, lands "developed for commercial recreation" were, by statute, not eligible to enter or remain under the MFL law. The definition of "developed for commercial recreation" included a range of activities from highly developed activities, such as downhill ski runs with lifts to activities with little or no development, such as hunting leases.

In 1992, as a result of requests from the public, DNR promulgated an administrative rule change to the definition of "developed for commercial recreation." The rule change redefined "developed for commercial recreation" as the alteration of land or its features or the addition of improvements that impede, interfere with or prevent the practice of forestry. Under this rule commercial recreation opportunities, such as hunting leases, no longer made lands ineligible for designation as MFL lands. It was the Department's determination that hunting lease, per se, do not prohibit the management of forest resources.

What occurred between 1992 and 2007 is a combination of increasing demand (and willingness to pay) for exclusive access to land and the increasing use of a "work-around" of the closed acreage limitations under MFL. The ability to legally work around the closed acreage limitation through creative land deeding has been practiced with increasing frequency. This legal loophole has not been able to be closed due to the fact that it would constrain legitimate divisions of land between family members. I would contend that the law as designed does a good job of balancing private incentives and public benefits with respect to the benefits of land open for public recreation. However, the effective elimination of an acreage cap on closing land under MFL through deed manipulation has generated both public ire and a response that has eliminated the small scale use of leasing on parcels that could legitimately be closed under the intent of the law.

I have called on those interested in or affected by this issue to come together to discuss how we might go forward in a way that ensures we have a good balance between the private incentive and public benefit of MFL. Without that balance, the law will not be successful and the people of Wisconsin will lose the provision of an array of important benefits. Representative Wood has jump-started the necessary dialogue with his introduction of AB 781.

This bill creates a third tier under MFL that increases the payment by landowners in this tier in exchange for the ability to engage in leasing or other activities for which they receive compensation for public use of their land. There are a number of impacts likely to result from the implementation of this bill including:

1. AB 781 provides another option for landowners to meet their management goals and may attract more landowners to practice sustainable forestry on their properties. Some landowners desire income from the recreational use of their land by others. Adding the third tier would give landowners this option in exchange for a significantly increased annual tax rate.
2. The bill allows the limited access fee to be used for the new MFL Recreation Grant program. As a result, landowners closing land for leasing will be providing a source of funds to increase the amount of land that is available in Wisconsin for public recreation. This maintains a strong link between MFL and public recreation, a benefit many in Wisconsin place a high value on.
3. AB 781 does not prevent the "work-around" that effectively allows more than 160 acres (as called for in the bill) to be closed under the law, whether leased or not. As a result, nothing in this bill prevents a large landowner from closing hundreds or thousands of acres that the law clearly intends to be open. I want to reiterate that there is no easy legislative fix to this loophole; however, I believe we need to continue to work on it together, given the consequence related to public support for MFL.

4. There are large administrative costs associated with implementing a new tier under MFL. These costs would be incurred by local municipalities and counties as well as the Departments of Natural Resources and Revenue. These costs suggest the need to exercise caution in proceeding to ensure that whatever major changes are made to MFL will have the desired consequences.

In closing, I again want to express my appreciation to Representative Wood for facilitating the very important dialogue needed regarding public recreation under MFL. The stakes here are high. Our forests, the vast majority of which are privately owned, are quietly producing a vast array of benefits that most of us take for granted. Given increasing economic pressures to shift forest land to other uses (and which do not take into account public benefits), it is imperative that we have in place a strong MFL program. Our economy, environment and quality of life all will be affected by the decisions made about MFL. The Department is commitment to working with you to address this challenge.

I appreciate this opportunity to speak before you today and would be glad to answer any questions you might have.


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Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 12, 2008

TO: Representative Jeff Wood
Room 21 North, State Capitol

FROM: Erin Rushmer, Fiscal Analyst

SUBJECT: 2007 Assembly Bill 781: Managed Forest Land Acreage Payments and Lease Agreements

At your request, this memorandum provides a summary of the provisions of 2007 Assembly Bill 781 and Assembly Substitute Amendment LRB s 0261/1, which would allow a landowner to limit access to certain managed forest land (MFL) under a lease or other agreement involving consideration (compensation). The bill would require a landowner engaging in such a lease or agreement to pay an additional fee per acre of land where access is limited.

The managed forest land program is designed to encourage landowners to manage private forest land for the production of future forest crops for commercial use through sound forestry practices. Land enrolled under the program is exempt from property taxes. Instead, landowners make payments to municipalities (which in turn pay 20% to the counties) in amounts determined by the date land is entered into these programs. These acreage share payments are based on the average statewide property tax rate as applied to the equalized value of land classified as productive forest land and are calculated by the Department of Revenue. The payments were recalculated in 2007 using the average 2006 statewide property tax (payable in 2007), and will be recalculated every fifth year thereafter. For land entered prior to April 28, 2004, the acreage share payment is adjusted based on the change in the average statewide property tax rate on productive forest land since tax year 1991. The payment for lands entered prior to April 28, 2004 is currently 67¢ per acre, and for land entered after that date, the acreage share payment is $1.67 per acre (5% of the average statewide tax rate on productive forest land). These rates first apply to MFL acreage share payments for tax year 2008 made in January, 2009. DNR also pays the municipality 20¢ per year for each MFL acre in the municipality, of which the municipality keeps 80% and sends 20% to the county. In addition, landowners enrolled in the MFL program must pay a yield (severance) tax of 5% on timber harvested. For MFL orders that took effect on or after April 28, 2004, the yield tax is waived

on harvests in the first five years. The municipality retains 80% of the payment and sends 20% to the county.

In exchange for the property tax benefit, the owner of land enrolled in MFL must comply with certain forestry practices. Further, under current law, while the landowner may elect to keep a specific area closed to public access for an additional fee (closed acreage fee), the remainder of the land must be kept open for recreational activities. Annually by January 31, landowners must make an additional payment for each acre of land closed to the public (up to 160 acres per municipality). These fees were also recently recalculated based on the average 2006 statewide property tax (payable in 2007). The fee for closed acres entered prior to 2004 (for up to 80 acres per municipality) is currently 90¢ per acre and is adjusted every fifth year based on the change in the average statewide property tax per acre of productive forest land since tax year 1991. For lands entered after April 28, 2004, the fee is equal to 20% of the average statewide property tax per acre of productive forest land, adjusted every fifth year, and is currently $6.67 per acre. These fees will first apply to closed acreage payments for tax year 2008 made in January, 2009. Revenues from the closed acreage fee are deposited in the forestry account of the conservation fund.

Prior to 2007 Act 20 (the 2007-09 biennial budget act), land designated as managed forest land was prohibited from being developed for commercial recreation, for industry, or for any other use determined by DNR to be incompatible with the practice of forestry. However, some landowners with large acreages enrolled in MFL had been allowed to close most of their lands by subdividing ownerships and then leasing the MFL property to individuals willing to pay a fee for hunting (or other recreational activities) on the lands. Act 20 specifies that owners of land designated as managed forest land may not enter into a lease or other agreement for consideration (compensation) permitting persons to engage in recreational activities on the land. In addition, the act specifies that recreational activities include hunting, fishing, hiking, sightseeing, cross-country skiing, horseback riding, and rental of cabins. Under the Act, this restriction does not apply to reasonable membership fees required by a non-profit entity organized under s. 501(c)(3) of the Internal Revenue Code and approved by DNR. In addition, Act 20 created a penalty for the violation of this provision of $500, or whatever income was earned from the commercial recreation while under MFL designation, whichever is greater.

SUMMARY OF BILL

Assembly Bill 781 would exempt owners of land designated as "limited-access" from the prohibition against leasing land enrolled in MFL for consideration for the purpose of permitting persons to engage in recreational activities. Under the bill, a landowner would be allowed to designate land enrolled in MFL as "limited-access" and may permit access to that land as authorized under a lease or agreement involving consideration if the only purpose of the lease or agreement is to permit recreational activity. The bill does not include a limit on the number of acres that a landowner may designate as limited access. Under the bill, a landowner would be allowed to change the designation of any portion of their land twice while it is enrolled in the MFL program. In addition, a landowner would be allowed to transfer their MFL land to another owner and that owner

would be allowed to designate a portion of the land as limited access as provided under the bill. The bill specifies that land be designated as closed instead of limited access if the consideration paid for access under the lease or agreement consists solely of reasonable membership fees charged by a nonprofit organization and the lease or agreement is approved by the department. Under the bill, landowners of land designated as open land would be required to permit public access to the land for hunting, fishing, hiking, sight-seeing, and cross-country skiing while landowners of land designated as closed or limited-access would be exempt from this requirement. In addition, owners of land designated as open or closed would still be prohibited from leasing land enrolled in MFL for consideration for the purpose of permitting recreational activity and subject to the penalty created under Act 20 for violation of that prohibition. Further, any landowner of land designated as limited access would also be subject to the penalty if they entered into a lease or agreement for a purpose other than permitting recreational activity.

Under the bill, landowners of land designated as limited access would be required to pay a fee in addition to the annual acreage share payment. Under the bill, the fee for lands designated as limited access would be equal to 45% of the average statewide property tax per acre of property assessed as productive forest land (closed acreage would remain at the 20% rate). Based on the recently recalculated rates using the average 2006 statewide property tax (payable in 2007), the limited access fee would be approximately $15 per acre (rather than the $6.67 per acre for closed lands). The bill specifies that payments be made annually to each municipal treasurer on or before January 31. Unlike the closed acreage fee revenues, which are sent to DNR for deposit in the segregated forestry account, the limited access fee revenues would be retained by the municipalities. The payments would be re-calculated by the Department of Revenue (DOR) every fifth year at the same time as the acreage share payments and the additional payments for lands designated as closed. Under the bill, certain non-profit organizations entering into a lease or other agreement approved by DNR would be subject to the closed acreage fees rather than the limited access fees.

The bill would first apply to payments due beginning on January 1, 2009. Legislative Reference Bureau staff indicate that a technical amendment could be made to change the effective date to first apply to payments due beginning on January 31, 2009 rather than January 1, 2009 (to be consistent with the current program payment due date).

SUBSTITUTE AMENDMENT

Assembly Substitute Amendment LRB s 0261/1 would make the following changes to Assembly Bill 781. It would limit the total number of acres a landowner with land enrolled in MFL could designate as closed and limited access to 160 acres per municipality (the total number of acres allowed designated as closed under current law). In addition, the amendment would specify that the revenue from limited access acre fees under the bill be sent to DNR for deposit in the forestry account by each county (same as for the closed acre fee under current law).

Finally, the substitute amendment would affect the outdoor recreational activities land acquisition grant program created in 2007 Act 20. The program provides grants to cities, villages, towns, counties, non-profit conservation organizations, and to DNR for the purpose of acquiring easements or purchasing land for approved outdoor recreational activities including hunting, fishing, hiking, sightseeing, cross-country skiing, and other purposes compatible with these purposes. Act 20 also created a five-member Managed Forest Land (MFL) Board to administer the grant program. Further, the Act requires DNR to promulgate administrative rules, in consultation with the Board, that include the following requirements: the Board must give priority to counties over other grant applicants and highest priority to counties with the highest number of MFL closed acres; and, when awarding grants to towns, the Board must give higher priority to those towns with higher numbers of MFL acres designated as closed to public access.

The substitute amendment would modify these requirements to specify that the MFL Board must give priority to counties with the highest number of MFL closed or limited access acres and, that; when awarding grants to towns, the Board must give higher priority to those towns with higher numbers of MFL acres designated as closed or as limited access.

I hope this information is useful. Please contact me if you have any additional questions.

ER/mb


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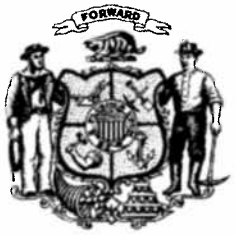
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Wisconsin County Forests Association

Jane Severt, Executive Director
518 W. Somo Avenue
Tomahawk, WI 54487

February 11, 2008

Representative Don Friske, Chairman
Assembly Forestry Committee
Room 312 North
P.O. Box 8952
Madison, WI 53708

Representative Friske,
Wisconsin County Forests Association (WCFA) would like to offer the following testimony for consideration at the February 12, 2008 Public Hearing of the Assembly Committee on Forestry:

Regarding AB 785 (LRB 3441) – WCFA would like to offer testimony in opposition to this bill for the following reasons; WCFA does not view this law as "obscure" such as is noted in the Memorandum from Rep. Garey Bies but rather we see the law as a valuable tool used by counties and townships. Several County Clerks send copies of filed cutting notices to the County Forest Administrator. If the proposed cutting as outlined in the notice is adjacent to County Forest Lands the County Forest Administrator has the ability to review cutting boundaries before cutting takes place often times averting the situation of timber trespass to County Forest Lands. When townships are made aware of proposed cutting through cutting notices filed with the County Clerk they are better able to monitor both the cutting of timber and the hauling. Use of town roads where weight limits, bridges or culverts may be an issue is important to towns. Even though land values are increasing and individuals may be less likely to allow their lands to go tax delinquent there are instances where this law has recently been used to prevent cutting of timber on lands that were indeed delinquent in the payment of taxes. If this proposal becomes law then there really is no need to have the law on the books at all as landowners will be less inclined to file a cutting notice with the County Clerk if they know they will be given seven days to do so AFTER they are notified by the WDNR Ranger. Most landowners will take their chances on not being caught as there are no real consequences for not filing the cutting notice, they would have seven days to "make things right". By that time much of the timber could be cut and gone and possible timber trespass or sale of wood from tax delinquent lands would have already occurred and the damage may have already been done to township or county forest road systems. We believe the current law to be effective and useful.

Regarding AB 781 (LRB 3610) – WCFA would like to offer testimony in opposition to this bill for the following reasons; We are concerned that the increased cost and workload to WDNR, counties and townships that this proposal would require has not been researched enough. These costs have the potential to be significant in terms of both personnel time and required software revisions that would be necessary to accommodate a third tier in the MFL program. WCFA does not see adding a third tier to MFL as the correct remedy to the current situation. We are concerned with the loss of the original intent of the MFL program, which we believe to be public benefit derived from the long - term sustainable forest management of private lands. Adding this third tier to the MFL program will not solve nor does it address the problem of manipulation of land deeds. WCFA is opposed to AB 781.

Thank you for the opportunity to comment on these two proposed pieces of legislation. If you need any additional information from us or have any questions, please do not hesitate to contact our office.

Sincerely,

Jane F. Severt, Executive Director
Wisconsin County Forests Association

Telephone: 715-453-6741
E-mail: wcfa@mac.com
Website: www.wisconsincountyforests.com


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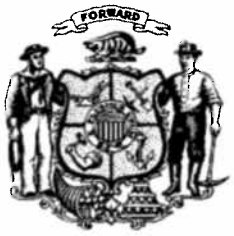
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February 12, 2008

Testimony Regarding AB 781.

My name is Mark Warner. Our family operates Otter Creek Farm in Dunn County. Years ago we ran this farm as a 50 cow dairy operation. The cows are long gone but our farm remains a working farm that focuses on horse raising and horse shows.

Our upcoming horse show season will host shows over 30 days, attract 1200 riders and an additional 2000 participants and spectators. The riding disciplines we offer are dressage, hunter/jumpers, and eventing. These are Olympic sanctioned equestrian sports and during our spring Combined Training event held on May 16-18 we will host the first internationally recognized Combined Training show ever held in Wisconsin.

Our farm currently attracts riders from 8 states. Only 25% of our customer base comes from Wisconsin. We generate 1,000 motel stays in Menomonie and like any working farm spend a lot of money in the neighboring community. The equestrian industry is large and economically important. Like other large industries it is very competitive. We compete with show facilities in Chicago, St. Louis, and Minneapolis. We do not have access to a publicly owned and maintained Horse Park on the outskirts of St. Louis, nor do we have a location on the outskirts of Chicago 20 minutes from O'Hare Airport. We do offer a relaxed and rural setting, an opportunity to gallop through the woods and across open fields in a pastoral Wisconsin valley. Over the last ten years, this has been a successful formula for our family farm.

In December we received a letter from the DNR informing us that any for profit recreational use of our woodland covered under the Managed Forest Law would be prohibited by legislation included in the state budget.

I was dismayed to see that horseback riding was specifically singled out in this legislation. During our busy show season we use logging trails on a small portion of our MFL land during 2 days a year for cross-country jumping. This use is not in conflict with the use of the land for forestry purposes. In fact, we have conducted timber harvests on this land in 1998 and 2006 and are in full compliance with our DNR forest management plan.

We now find ourselves faced with potential fines and penalties in the range of $30,000 to $60,000 for simply conducting our business on our land. I have talked extensively with representatives from the DNR, legislators, and reviewed in detail our MFL Contract. After all of this, the legal status of our farm business remains in limbo. We have never prohibited anyone from riding in our woods, does that mean that if we allow some people free access that we can receive compensation from others? The unequivocal answer from DNR legal staff is maybe. Exactly where are the boundaries of this MFL contracted land? My honest answer is I don't know. The DNR maps are vague and imprecise. There are no surveys or boundary markers that define the contracted land.

Do we take our chances and conduct our business and risk losing our farm because the legislature has changed the conditions of our MFL contract 10 years after it was signed.

Excuse me, did I say contract again? I have been confused for the last 10 years thinking that what I signed entering the MFL was a contract. After talking to many knowledgeable people, I now know that this contract is not really a contract but a program or is it tax policy?

Lots of us are confused by this contract business. Even the DNR has some problems with it. For example, take Carol Nielsen, the previous Forest Tax Program Manager with the DNR. She wrote a publication called "Forestry Facts" that is currently on the Official DNR web site.

> "If you decide to enroll some or all of your land in the MFL program, you must choose a contract period of either 25 or 50 years. If you decide to withdraw land from the program before the contract period ends, you will be required to pay a penalty. There is no penalty if you choose not to renew at the expiration of the contract. If you sell or otherwise transfer the enrolled land prior to the end of the contract period, the new owner must either continue the current MFL contract or withdraw from the program and pay the penalties."

I don't want to pick on Ms. Nielsen. She and many others in the state agencies believed that these were contracts. The official DNR history of the various forest tax laws makes the same claim that these are actually binding contracts.

> "The purpose of all of Wisconsin Forest Tax Laws has been to encourage proper forest management on private lands by providing property tax incentives to landowners. This is accomplished with a binding contract between the state Department of Natural Resources and private landowners."

Explanations of the MFL routinely present the MFL as a contract between the State and landowner. The DNR web site is full of statements to this effect. "Landowners have the option to choose either a 25 or 50 year contract period."

Let's not get bogged down in a discussion of tax policy verses contracts and programs or consider quaint notions about the rule of law, property rights, or waste time considering that governments have an obligation to be truthful and honest. We all know how these contracts were abrogated because is suited the interests of two powerful Senators.

Consider what would happen to a business that made repeated public claims to its customers that are false and used these false claims to induce its customers to sign lengthy contracts involving extremely valuable property. Consider that this business conducted this fraud over a span of many years, that many of those signing contracts were elderly, that over 30,000 contracts were signed, and that the value of the property involved was in the billions of dollars. This fraud would be vigorously prosecuted by the

state, the business would be forced to make restitution, and the executives responsible would probably face criminal and civil charges.

I appreciate the efforts of Representative Wood and the cosponsors of AB 781 to remedy problem created by the changes to the MFL. The intentions of these legislators are well meaning but unfortunately to not provide an appropriate remedy to the bad public policy contained in the budget bill changes to the MFL.

First of all, AB 781 is a massive tax hike on small tourism businesses in rural Wisconsin. The taxes levied by AB 781 would represent between a 100% to 1000% property tax increase depending upon the dates the landowners signed MFL contracts with the state. In addition to this tax increase, the landowner would still be required to pay for management plans, entry fees, and severance taxes as required under the MFL.

Nor does AB 781 do anything to remove the MFL from the special interest politics that have taken control of forest management in Wisconsin.

The primary purpose of the MFL was to promote timber production on private forestland. Access to this land for recreational use has always been a secondary consideration under the program.

Without the MFL, property taxes on forestland exceed the value of timber produced by the land. If Wisconsin is going to maintain a forest products industry and meet the growing demand for forest products as a renewable energy source, the state needs a tax policy that makes the production of forest products economically viable. Success of this tax policy requires the trust and cooperation of the private landowners that own 70% of Wisconsin's forests.

The MFL has provided a tax climate that is favorable to the utilization of land for production of timber and has also insured that this production is based upon management plans that meet international sustainability standards.

Compliance with these plans is over 99% on MFL lands, however only 20% of non-MFL land has management plans in place. Land outside of the MFL is not likely to be well managed to produce commercial forest products and timber from this land cannot be used by the forest products industry for global markets requiring certification.

The willingness of the legislature to violate the spirit of the contracts with MFL landowners is a threat to the long-term viability of the state's forest products industry. There is a great deal of resentment, distrust, and anger by the 30,000 MFL contract holders who now see the state as willing to violate contracts with its citizens. I have talked with landowners who have withdrawn their land from the program, others have stated that they will not renew contracts as they expire, and nobody I have talked with is willing to enter a lengthy contract with a partner that can change the terms of the contract at any time.

Rather than penalizing entrepreneurs who are producing extra income from their forestland, the state should be encouraging landowners to maximize the return on their land. The more profitable foreestland is, the less likely it is to be converted to other uses. On our farm the extra income generated by recreational use of our forestland contributes to the economy of places like Wheeler, Ridgeland, Colfax, and Prairie Farm. The new MFL will take income and tourism income away from rural areas throughout the state.

The new state policy provides a strong incentive to sell forestland to owners who are not likely to manage it as productive forestland. Sale of forestland to recreational owners will not provide public access to anyone and will not provide the forest products needed to sustain a forest products industry.

The legislature has violated the trust of 30,000 MFL contract holders. The MFL is now broken but it will take a number of years before the program's demise becomes evident. It needs to be fixed now. I suggest that this committee acts to restore the MFL contracts to their original terms. The state needs to be required to honor these agreements as the contracts they are. If changes in the program are warranted, they should apply to new contracts and should not penalize existing contract holders.

I have heard that this is not politically possible, perhaps not, but I urge you to try and let the Senators who have damaged the program face the political consequences of putting Wisconsin's forest products industry at risk for the sake of a few disgruntled hunters that have lost free access to a small fraction of the state's forestland.

Thank you for taking my testimony and thanks again to the sponsors and cosponsors of AB 781.

Mark Warner
Wheeler, WI


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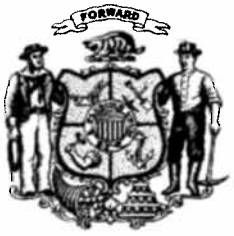
FORWARD

Post Office Box 8953
Madison, WI 53708-8953
(608) 266-1194
Toll-Free: (888) 534-0067
Fax: (608) 282-3667

JEFF WOOD

State Representative • 67th Assembly District

District: 1501 Miles Street
Chippewa Falls, WI 54729
(715) 726-9226
Rep.Woodj@legis.wi.gov

Testimony from Representative Jeff Wood Regarding: Assembly Bill 781

February 12, 2008

Good afternoon. Chairman Friske and committee members, I thank you for scheduling a hearing on this bill so quickly. As we are all aware, we're getting to a point in the legislative session where if we don't move quickly on bills, they may die for lack of time, so I greatly appreciate the committee's quick action.

The issues AB 781 addresses first came to my attention when I received a number of calls from constituents who had received a letter from the Department of Natural Resources notifying them of changes in the Managed Forest Law program that were included in the budget. The changes to the program essentially banned anyone with land in the program from receiving compensation for any recreational activity on their property.

This change was spurred by a small number of individuals who were subdividing land titles in order to be able to designate more of their property in the program as closed to the public and then lease the property to hunting parties. The authors of the changes felt that this practice ran counter to one of the stated purposes of the program – to increase the amount of land open to public recreation. Further, they objected to the land owners receiving a property tax incentive at the same time they were making money on the land.

Though I have a different perspective on the issue, I understand their position and drafted this bill in an effort to find middle ground.

This bill retains the prohibition on receiving compensation for activities on land enrolled as open or closed in the program and creates a new status in the program under which owners receive a lesser tax incentive but may receive compensation for allowing recreational use of the land.

Currently, if the owner allows full public access to the land for recreation, their property tax liability is reduced to 5% of the average statewide property tax per forested acre. If they have the land in the program, but do not have it open to public use, their tax liability is reduced to 25% of the average statewide property tax per forested acre. Under this bill, if the owner enrolls the land as "limited-access" their tax liability would be 45 percent of the average statewide property tax per acre.

The purpose of the MFL program is to give an incentive to land owners to actively manage their forestland and provide public benefits, specifically: to sustain future forest crops; provide watershed protection; prevent forest and habitat fragmentation; and allow public access to private land for recreation. It seems reasonable that if some land owners are willing to provide a portion of these benefits, they should be given a portion of the incentive. Further, by not allowing some incentive for those willing to managed their forests and preserve the habitat, and forcing them to pay a penalty for taking the land out of the program, you are creating a strong incentive and may in some cases force owners to parcel off and develop their property.

Many landowners feel that the changes made in the budget were a one-sided change in the terms of agreement made with the State when they enrolled in the program. The State has given landowners an unfair and no-win choice of either remaining in a one-sided agreement or paying the penalty for early withdrawal (all back taxes since joining MFL).

It is difficult to argue with land owners who feel this change was a breach of the agreement they had with the state when they enrolled in the program. By making this change, I hope we can restore some of the trust and good will that was lost. I believe that creating this third tier and allowing those who wish to change the status of their property to do so without any retroactive penalty will help continue the success of the program and its goals: active and sustainable management of Wisconsin's forests & wildlife habitat.

Finally, I drafted Substitute Amendment 1 to this bill after receiving input from the Department of Natural Resources. The change in the substitute amendment clarifies that, as under current law, each participant in the program may only close 160 acres of the land they have enrolled in the program. This land may be designated as closed or as limited access, but the sum of the two may not exceed 160 acres. This was my intent, and the substitute amendment clarifies the restriction.