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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...

PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(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

Senate Bill 300

Relating to: certain areas of land subject to managed forest land orders that were part of a parcel of land under single ownership that exceeded 8,000 acres in size.

By Senators Holperin, Decker, Lassa, Taylor and Hansen; cosponsored by Representatives Brooks and Nass.

October 29, 2009 Referred to Committee on Forestry.

November 18, 2009 **PUBLIC HEARING HELD**

Present: (4) Resigned Sherman; Representatives Clark, Milroy and Mursau.

Absent: (1) Representative Friske.

Appearances For

- Senator Holperin, Eagle River — 12th Senate District

Appearances Against

- Mike Wittenwyler, Madison — Coleman Lake Club

Appearances for Information Only

- Kathy Nelson, Madison — DNR

Registrations For

- Eugene Roark — Wisconsin Woodland Owners Association

Registrations Against

- None.

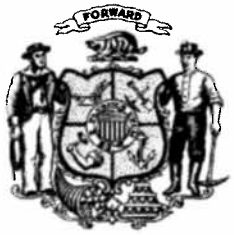
Registrations for Information Only

- None.

April 22, 2010 Failed to concur pursuant to Senate Joint Resolution 1.

Beau Stafford
Committee Clerk


WISCONSIN STATE LEGISLATURE


FORWARD

Town of Goodman
Marinette County, Wisconsin
P.O. Box 306
Goodman, WI 54125

11/16/2009

To: Assembly Committee on Forestry

Re: SB 300

Like so many communities in Northern Wisconsin, the Town of Goodman is comprised of large tracts of public forest land and privately owned Open Managed Forest Land. Per Wis. Stats, § 77.80, Managed Forest Land, the purpose of the MFL program is to encourage the proper management of private forest lands and provide accessibility of private property to the public for recreational purposes.

Under the MFL program an owner may designate up to 160 acres in each municipality subject to managed forest land order as closed to public access. Recently some land owners have been taking advantage of the Closed MFL law by subdividing large tracts of land greater than 160 acres under the name of multiple Limited Liability Companies (LLCs).

In early 2009, the Coleman Lake Club formed 56 LLCs, each owning approximately 160 acres for explicit entry into the Closed MFL program. Though each LLC is a separate entity, the underlying ownership of the property still resides with the Coleman Lake Club. Therefore the Coleman Lake Club, as the single land owner, has 56 land parcels in the Closed MFL Program totaling approximately 8,500 contiguous acres.

The Town of Goodman appealed these MFL entries to the DNR. On October 29, 2009, Kathy Nelson, Forest Tax Section Chief, issued a letter denying the Town's appeal. She states, "The department cannot deny entry of lands in landowners have chosen to create Limited Liability Corporations (LLC) prior to applying for MFL entry. LLCs are considered individual ownerships under s. 183, Wis. Stats. and each entity is given full recognition by the State of Wisconsin." If all the members of the Coleman Lake Club are listed as members under each LLC, the Coleman Lake Club is the true sole owner of 8,500 acres of Closed Managed Forest Land. This clearly skirts the intent of MFL law.

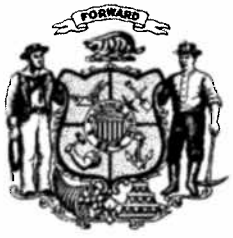
Entry of the Coleman Lake Club property into the Closed MFL program would take $15,756,537 from the Equalized Value of the Town of Goodman; property tax rates in Goodman will increase by roughly $2.06 per $1,000 of assessed value or $206 per $100,000 of value. Additionally, $55,000 of the Goodman Armstrong Creek School District Levy will be shifted to Armstrong Creek residents thus increasing property taxes in the Town of Armstrong Creek. Also, with the drop in Equalized Value, there is no guarantee that State School Aids will cover any of the lost revenues to the School District.

We are asking that the Assembly Committee on Forestry support this Legislation to stop large land owners from taking advantage of the Closed MFL program forcing rural residents to carry a larger burden of taxation. This type of corporate greed should not be allowed. Please move this Bill to the Full Assembly.

Respectfully submitted on behalf of the Taxpayers of the Town of Goodman.

William Stankevich	Steve Gostisha	Jim LaChapell
Chairman	Supervisor	Supervisor


WISCONSIN STATE LEGISLATURE


FORWARD

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matt Frank, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
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Senate Bill 300

Assembly Committee on Forestry

Department of Natural Resources Testimony
Kathryn J. Nelson, Forest Tax Section Chief
Division of Forestry
Bureau of Forest Management
November 18, 2009

Mr. Chairman and Committee Members:

Good morning. My name is Kathy Nelson and I am the Forest Tax Section Chief within the DNR's Bureau of Forest Management. I appreciate this opportunity to appear before you to discuss Senate Bill 300.

SB 300 attempts to restrict the ability of individual private landowners to divide their landownership into smaller ownerships and then to enter those ownerships into the Managed Forest Law (MFL) program as closed to public recreation.

As you know, the MFL program was enacted in 1985 to provide an incentive for private landowners to practice sustainable forestry on their lands. MFL struck a balance between private landowners' interest in entering the MFL program and the public's desire to support the program. Landowners were allowed to pay an acreage share tax instead of regular ad valorem property taxes and were given in depth assistance in forest management practices. Landowners paid their deferred property taxes when timber was harvested.

Private forests provide an array of benefits to the public. These benefits include clean air, clean water, wood products, settings for recreation and tourism, wildlife habitat, carbon sequestration and scenic beauty. Our forests generate jobs throughout Wisconsin and contribute billions in value to Wisconsin's economy. Forests are an essential element of Wisconsin's landscape and the places where millions of us live, work and recreate. MFL is a key tool in keeping forested land in forest and providing these benefits to both present and future generations.

One major public benefit that MFL provides is access to private lands for hunting, fishing, hiking, sight-seeing and cross-country skiing. Landowners are allowed to close up to 160 acres of land to public access, with the intent that the remaining lands would be left open to public access. Owners can be an individual person, a group of people, or entities, such as corporations or partnerships. The drafters of MFL worked to strike a balance between the desires of the public for land on which to recreate, and the interests of landowners to restrict who can recreate on their properties. The size limitation was an effective approach to balance those interests.

Through the course of time, landowners have learned to divide their properties so that they may take advantage of the MFL program's closed acreage limits. Small landowners have divided their properties so that a husband and wife can have 3 properties, his, hers and theirs. Large landowners have divided their properties so that they can have any number of ownerships

through the creation of limited liability corporations. The department recognizes that these actions violate the intent of the MFL as enacted by the legislature.

SB 300 would prevent landowners from entering their lands into MFL as closed to public access if their lands were a part of a larger parcel under a single ownership in a single municipality, was part of a parcel that exceeded 8,000 acres in size as of January 1, 2009, and was not subject to a contract under the Forest Crop Law (FCL) or Woodland Tax Law (WTL), or an order under the Managed Forest Law (MFL). Landowners who meet the criteria of SB 300 may only enter their lands into MFL as open to public access. The incentive to subdivide larger properties into small units for the purpose of entering the entire ownership into MFL as closed to public access would be eliminated.

SB 300 was amended from its original introduction in an effort to reduce the impact of the bill to large industrial landowners. Industrial landowners were most likely to have parcels of land in 8000 acre blocks and to have been impacted by the bill. The amendment now includes the provision that lands that would be impacted by SB 300 would not have been subject to FCL or MFL on January 1, 2009.

The department had concerns about the definition of "parcel." The amendment clarified that the parcel would be an 8000 acre block in a single municipality and under the same ownership as of January 1, 2009. This clarification narrows the number of landowners who would be affected by SB 300. That being said, the department still has concerns about the implementation of SB 300.

Reviews of deeds and tax statements occur during the entry process; however the review is done solely for the purpose of determining current ownership. SB 300 would require the department to determine past ownership of lands as well. Title searches may be required on future MFL entries and transfers. These title searches may be relatively easy at first, but would become more difficult with time since the trend is to subdivide ownerships into smaller, more fragmented units. The department will work with county land offices to develop a permanent record or map of land ownership as of January 1, 2009 to assist in this determination.

SB 300 provides opportunities for further discussion to solve the larger public access issues associated with MFL. The department is well aware of the concerns presented by the public in accessing private lands for recreational activities and has discussed proposed solutions, yet we understand that there are many ways in which the issues can be resolved with some of the issues being resolved easier than others. The department is ready to work with you as you work through these issues.

Issue #1: MFL lands are designated as "open" when the landowner has no legal access to the property.

There are MFL properties where the landowner has no legal access to their lands, yet have enrolled it as open to public recreation. Hunters and recreational users must ask permission of the adjacent landowner for permission to cross lands to access the open MFL lands. If the adjacent landowner denies permission to cross his or her lands, the MFL landowner is effectively paying the open acreage share tax rate for lands that cannot be accessed by the general public.

A similar situation occurs when landowners create a number of LLCs and deny permission for hunters to cross one LLC that is closed to public access in order to gain access to another LLC that is open to public access. This behavior appears to disregard the intent of the MFL program to allow access to open MFL lands and effectively prevents the public from accessing open MFL lands.

A possible solution may be to require that landowners must provide proof of legal access to open MFL lands as a condition to MFL entry. Landowners who lose legal access to their lands would no longer be allowed to have the open tax status.

Issue #2: Landowners maximize the amount of closed acreage through the creation of multiple combinations of owners and exceed the 160 acre closed limitation for an individual owner.

The ability of landowners to create ownerships with any combination of multiple people so that the maximum amount of lands can be closed to public access appears to disregard the intent of the MFL program. An example would be a husband and wife, where the husband has 160 acres, the wife has 160 acres and together they own 160 acres. These two people could have 480 acres of land closed to public access because three separate ownerships occur.

A possible solution may be to link landowners and MFL lands so that if a landowner is listed on one MFL and has his or her maximum of 160 acres closed he or she will not be able to be listed on another deed or ownership unless that land is entered into MFL as open to public access. In the case of a husband and wife, a minimum of 160 acres would be left open to public access or left on the regular ad valorem property tax rolls.

Issue #3: Landowners maximize the amount of closed acreage through the creation of limited liability corporations (LLCs).

Landowners have taken advantage of ch. 183, Wis. Stats. and have created many limited liability corporations (LLCs). These LLCs are considered separate ownerships for tax law purposes because each entity created under ch. 183 is recognized as a separate LLC under state law.

There are a multitude of reasons why people create LLCs and other similar entities, like trusts. Some of these reasons are for tax and succession planning. The ability of landowners to create a multitude of LLCs of which no one LLC exceeds 160 acres in size, and then to enter those lands into the MFL program appears to disregard the intent of the MFL program to close the maximum of 160 acres and to leave the remaining lands open to public access.

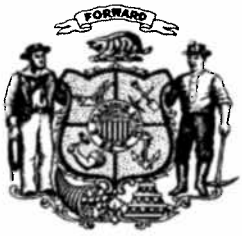
Possible solutions to this situation are difficult and warrant careful consideration. Arguments can be made that since people, and not companies, recreate on lands, only individual people should be allowed to close lands to public access. Should a bill such as this occur any ownership that is a corporation, trust or some other entity would be required to leave lands open to public access.

There are a multitude of options that could be developed to change the behavior of landowners so that more lands are accessible to the public for recreational activities. The department looks forward to working with you and your staff to identify these options.

It is important that the options that are developed and introduced as bills continue to provide enough incentive for landowners to enter the MFL program to practice sustainable forestry on their lands, and provide enough return on investment for the public to support the MFL program.

I appreciate this opportunity to share with you the department's review of SB 300 and would be glad to answer any questions you might have.


WISCONSIN STATE LEGISLATURE


FORWARD

Assembly Committee on Forestry
November 18, 2009

2009 Senate Bill 300

On behalf of the Coleman Lake Club
Testimony of Mike B. Wittenwyler

COLEMAN LAKE CLUB

The Coleman Lake Club is located just East of Goodman, Wisconsin, on U.S. Highway 8 in Marinette County. It was founded over a hundred years ago, in 1888, and is compromised of over 100 families from Wisconsin and fifteen other states.

The Coleman Lake properties consist of dozens of separate – but contiguous – parcels that, together, make up nearly 9,000 acres of forests, lakes, streams and wetlands.

The Coleman Lake properties are not leased to third-parties for hunting or other recreational activities. Instead, the Coleman Lake properties are used directly by its member families and their guests, including staff and neighbors from the surrounding communities.

Since it was founded, the Coleman Lake Club has worked to preserve the pristine natural landscape and wildlife on its properties. And, in more recent years, it has begun to take a more active role in forest management.

As the Wisconsin DNR has noted in its Land Legacy Report, the Goodman area woodlands – which include some of the Coleman Lake properties – have some of the highest "conservation significance" in Wisconsin because they contain the headwaters of the Pike and Peshtigo rivers, and constitute a crucial link between ecosystems of the Chequamegon-Nicolet National Forest and the Marinette County Forest.

MANAGED FOREST LAW ORDER

After consulting with its own forester and the Wisconsin Department of Natural Resources (the "DNR"), the Coleman Lake families concluded that participation in Wisconsin's Managed Forest Law ("MFL") program would be the best way to ensure that its contiguous properties remain an incomparable natural resource for future generations. Moreover, participation in the MFL program will allow for the longstanding forest management activities on the Coleman Lake properties to be harmonized with the DNR's own forest management priorities for the surrounding woodlands in Northeastern Wisconsin.

In April 2009, the Coleman Lake Club applied to the DNR for membership of its constituent and contiguous wooded parcels in the MFL program.

In order dated November 2, 2009, the DNR notified the Coleman Lake Club that its properties are enrolled for participation in the MFL program for a 25 year period, beginning with the property tax bill for 2010.

SENATE BILL 300

Senate Bill 300 is special legislation, designed to apply to a specific Wisconsin property owner.

It would prohibit certain parcels of "160 acres in size or less that is subject to a managed forest land order dated January 1, 2010, or later" from being closed to public access if the land was part of a contiguous parcel on January 1, 2009 that:

a) exceeded 8,000 acres in size;
b) was located in a single municipality and was under a single ownership; and,
c) was not subject to a contract under the forest cropland program, the woodland tax law or the managed forest land program.

As the sponsors of the legislation stated during the Senate floor debate and in committee, Senate Bill 300 was written specifically to target the Coleman Lake properties.

Ironically, Senate Bill 300 would not apply to the Coleman Lake properties as the orders for MFL participation are dated November 2, 2009 – a date before the January 1, 2010 date in Senate Bill 300.

Any attempt to modify the legislation at this point to address the Coleman Lake MFL orders will further demonstrate the "special legislation" purpose of Senate Bill 300.

Any attempt to retroactively change the MFL program's rules at this point to address the Coleman Lake MFL orders will face the same legal challenges raised in *Tigerton Lumber Company v. DNR* – a case that was decided last month against the DNR.

WISCONSIN CONSTITUTION PROHIBITS SPECIAL LEGISLATION

Article IV, Sec. 31 of the Wisconsin Constitution prohibits "special legislation" if it leads to differential treatment in the assessment or collection of taxes.

This prohibition against special legislation has guaranteed fundamental even-handed tax laws in Wisconsin since 1892.

Only five years after this requirement was added to the state constitution, the Wisconsin Supreme Court concluded that this prohibition applied broadly to "the entire subject and method of taxation," and "the whole statutory method of imposing taxes upon property," because the language of this provision "is not used in any restricted or technical sense." *Chicago & N.W.R. Co. v Forest Co.*, 95 Wis. 80 (1897). This decision, rendered by a court interpreting this requirement in the same decade in which it was enacted, concluded simply that "[t]he object of section 31 of article 4 of the constitution was to restrict and lessen the evils of special legislation." *Id.*

Nearly a century later, the Wisconsin Supreme Court revisited this provision again in a lawsuit brought by Milwaukee suburbs seeking to challenge a new state law that would have empowered the Milwaukee Metropolitan Sewerage District to increase its assessments against these municipalities for its capital costs. While the law itself did not specifically identify municipalities such as Brookfield, Mequon, or Germantown, the Wisconsin Supreme Court applied what it called "a sophisticated multirule test to determine whether legislation which is general on its face is impermissibly local or private because the generality is simply a surface sham." *City of Brookfield, et. al. v. Milw. Metro. Sewerage Dist.*, 144 Wis.2d 896, 914 (1988).

This "test" includes whether the classification employed by the legislature is "based on substantial distinctions which make one class really different from another," whether any such different characteristics justify different legislative treatment, and whether others "could join" the class. *Id.* at 907-08. As the court explained, "if there is not something substantially distinct about them that requires" a different "method of assessing charges," then a law treating two taxed parties differently "is in reality local or private legislation," not general legislation. *Id.* at 916.

In the *City of Brookfield* decision, the Wisconsin Supreme Court concluded that the legislature couldn't get around its special tax treatment of a limited class of municipalities simply by trying to package the bill as a general, neutral law. The supposed generality was a "surface sham." *See id.* at 914.

In its introduction of Senate Bill 300, the Wisconsin Legislature has made no findings that land that was part of a contiguous 8,000 acres on January 1, 2009 ought to be treated differently from land that was part of a contiguous 7,000 acres, or even a contiguous 5,000 acres. In the absence of such findings, Senate Bill 300's superficial generality is clearly as a "surface sham."

Senate Bill 300 does not allow any other landowner to "join the class." The bill addresses land that was part of a contiguous 8,000+ acre parcel as of January 1, 2009. There are no neutral policy justifications for this limitation, which effectively allows newly-created 8,000 acre parcels to remain unaffected.

There are also no justifications for Senate Bill 300's "single municipality" requirement. Our state's largest contiguous wooded parcels routinely cross township boundaries. The legislature has yet to identify what is "substantially distinct" about those contained entirely in a single municipality.

The Wisconsin Constitution requires that the Wisconsin Legislature have some general policy reason for its tax-related enactments instead of crafting seemingly neutral language that is designed to target a specific taxpayer. Even without the specific discussion of the Coleman Lake Club during the Senate's consideration of Senate Bill 300, the Wisconsin Legislature is on precarious legal ground by the language of this bill alone.

CONCLUSION

Senate Bill 300 should not be advanced or supported by the Committee on Forestry or its members.

Senate Bill 300 is special legislation, prohibited under the Wisconsin Constitution.

Even though it was designed as a blatant attempt to target a specific Wisconsin property owner, Senate Bill 300 will not affect the Coleman Lake properties as the properties are subject to MFL orders dated November 2, 2009.

By targeting only the Coleman Lake properties, Senate Bill 300 does not address any broader public policy concerns with the MFL program.

If there are concerns with the current MFL program, they should be considered by a legislative study committee and any legislation should prospectively affect all MFL parcels in a uniform manner.