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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10
(session year)

Senate
(Assembly, Senate or Joint)

Committee on ... Transportation, Tourism, Forestry, and Natural Resources (SC-TTFNR)

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: Mike Barman (LRB) (June/2012)

Senate

Record of Committee Proceedings

Committee on Transportation, Tourism, Forestry, and Natural Resources

Senate Bill 590

Relating to: petitions and management plans for the designation of managed forest land; transferrals of ownership of managed forest land; establishing stumpage values, filing cutting reports, and estimating withdrawal taxes under the managed forest land program; signatures and authentication requirements for orders under the forest croplands program; granting rule-making authority; making an appropriation; and providing a penalty.

By Senators Holperin and Taylor; cosponsored by Representatives Clark, Friske, Mursau and Turner.

March 04, 2010 Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

April 1, 2010 **PUBLIC HEARING HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.
Absent: (0) None.

Appearances For
- Jim Holperin, Eagle River — 12th Senate District
- Kathy Nelson — Wisconsin DNR

Appearances Against
- None.

Appearances for Information Only
- None.

Registrations For
- None.

Registrations Against
- None.

Registrations for Information Only
- Joe Murray, Madison — Wisconsin Realtors Association

April 8, 2010 **EXECUTIVE SESSION HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

Moved by Senator Hansen, seconded by Senator Kedzie that **Senate Bill 590** be recommended for passage.

Ayes: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.
Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 7, Noes 0

Elizabeth Novak
Committee Clerk


FORWARD
E PLURIBUS UNUM

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

February 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 580: Forest Cropland and Managed Forest Law and Changes

Assembly Bill 580 makes a change to the forest cropland (FCL) and several changes to the managed forest law (MFL) programs, administered by the Department of Natural Resources (DNR). The bill specifies that, as under the MFL program, facsimile signatures are allowed under the forest croplands program. The changes to the MFL program include technical language changes such as substituting the words "application" and "applicant" for "petition" and "petitioner" throughout the MFL statutes and several other changes related to DNR's administration of the MFL program. In addition, the bill requires the Department of Revenue, at the request of an MFL landowner, to prepare (in cooperation with DNR) an estimate of the withdrawal tax that would be due if the owner's land were withdrawn from the MFL program. The bill was introduced on November 16, 2009, and referred to the Assembly Committee on Forestry. Assembly Amendment 1 and Assembly Amendment 2 to the bill were offered on December 14, 2009. On December 15, 2009, the Committee adopted Amendment 1 and Amendment 2, each on a vote of Ayes, 4; Noes, 0 and recommended passage of the bill, as amended, by the same vote. On January 12, 2010, the bill was referred to the Joint Committee on Finance.

CURRENT LAW

The forest croplands (FCL) and the managed forest law (MFL) programs are designed to encourage landowners to manage private forest lands for the production of future forest crops for commercial use through sound forestry practices. Land enrolled under these programs is exempt from property taxes. Instead, landowners make payments to municipalities (which in turn pay a portion to the counties) in amounts determined by the date the land is entered into these programs.

In return for the property tax benefits, property owners with land enrolled in FCL must comply with certain forestry practices and must allow hunting and fishing on all of the designated

land. In addition, landowners pay the town 10¢ per acre for land entered prior to January 1, 1972. On land entered since 1972, owners paid 83¢ per acre through 2002. The rate was adjusted to $1.66 per acre for 2003 payments and is adjusted every tenth year thereafter. In addition, DNR receives yield taxes on timber harvested on FCL land and withdrawal penalties for land taken out of the program under certain conditions. The revenue from the taxes and penalties is divided between DNR and the municipality and county in which the land is located. On January 1, 1986, new entries into FCL were eliminated, although existing FCL orders will remain in effect until their expiration. The last FCL order expires in 2035. Landowners with land enrolled in the FCL program may convert their land to the managed forest law program when the FCL order expires. Early conversion into MFL is available for a non-refundable application fee of $20.

Under the MFL program, an owner of 10 or more contiguous acres of productive forest land (at least 80% of the parcel is capable of producing at least 20 cubic feet of sellable timber per acre per year) can petition the DNR to enroll land in the MFL program. If the petition and corresponding forest management plan is approved, DNR issues an order designating the land as MFL land for a period of 25 or 50 years.

Land enrolled under the MFL program is exempt from local property taxes. Instead landowners make payments to municipalities (which in turn pay a portion of revenues received to the counties) in amounts determined by the date that the land was entered into the program. These payments include an annual acreage share payment (currently 67¢ per acre for lands enrolled in the program from 1987 through 2004 and $1.67 per acre for lands enrolled after 2004) and a yield (severance) tax on timber harvested on MFL land. The municipality retains 80% of the yield tax payment and sends 20% to the county. In addition, landowners must pay a fee for each acre of MFL enrolled land closed to public access (up to a maximum of 80 acres per municipality for lands enrolled from 1987 through 2004 and up to 160 acres per municipality for lands enrolled after 2004) (currently 90¢ per acre for lands entered between 1987 and 2004 and $6.67 for lands entered after 2004). Remaining land is required to be open to public access for recreational activities such as hunting, fishing, trapping, hiking, sightseeing, and cross-country skiing. Revenues from the closed acreage payments are deposited as general revenues to the forestry account of the conservation fund.

With certain exceptions, if land is withdrawn from the MFL program before the expiration of the MFL order, the landowner must pay a withdrawal fee and withdrawal taxes. The withdrawal fee of $300 is deposited in the forestry account of the conservation fund. The withdrawal taxes due (calculated by the Department of Revenue) are generally the higher of either: (a) the MFL owner's past tax liability (calculated using the assessed value of the property and net tax rate in the municipality in the year prior to withdrawal multiplied by the years the land was designated as MFL); or (b) five percent of the stumpage value of merchantable timber on the land (less any acreage share and yield taxes paid by the owner). DNR remits all withdrawal taxes to the municipality where the land is located and the municipality retains 80% of the payment and remits 20% to the county.

SUMMARY OF BILL

Forest Cropland Change

The bill would make one change to the forest croplands program. Under current law, all FCL orders require original signatures from DNR staff. The bill would allow facsimile signatures which is consistent with the MFL program under current law.

Managed Forest Law Changes

Terminology

The bill would make changes in the statutory terminology used to describe the managed forest law (MFL) program. First, the bill would substitute the words "applicant" and "application" for "petitioner" and "petition" throughout the managed forest law statutes found in chapter 77. The bill would also substitute "prepared or completed" for the current "prepared" in reference to forestry management plans in certain MFL statutes.

MFL Application and Review Process

In addition, the bill would make several changes to the MFL application and review process. Under current law, a petition for enrollment in the MFL program may be accompanied by a proposed forestry management plan; or, if a proposed management plan is not submitted with the petition, the petition must include a request that DNR prepare a management plan, though the Department may decline to prepare the plan. If DNR declines to prepare the management plan, a landowner must contract with an independent plan writer certified by DNR to prepare the plan. The qualifications required to become a certified independent plan writer are specified in administrative rule. The bill would generally require an applicant to submit a management plan prepared by a certified independent plan writer with an application for enrollment in the MFL program. Under the bill, if a management plan is not filed with the application, the application must contain a request that DNR prepare the plan. DNR would be allowed to decline to prepare the plan, unless the Department determines that the applicant is unable to have a certified independent plan writer prepare the plan. The bill would require DNR to promulgate administrative rules establishing the criteria that an applicant would need to meet in order for the Department to determine that an applicant is unable to have an independent plan writer prepare the management plan. In addition, the bill would require that a proposed management plan "shall" cover the entire acreage of each parcel, rather than "may" under current law.

Under current law and under the bill, if DNR chooses to prepare the management plan, DNR staff may prepare the plan or contract with independent plan writers certified by DNR to prepare the plan. If DNR prepares the plan, or if DNR contracts with a certified independent plan writer to prepare the plan, DNR is authorized to charge a "plan preparation" fee for preparation of the management plan based on the comparable commercial market rate charged by independent certified plan writers. The fee is based on a formula comprised of the average of cost data supplied

by independent certified plan writers for MFL plan preparations completed in the previous year (June 1 through May 31) and consists of a base rate plus a cost per acre rate. The current rate (established in July, 2009) for entries effective January 1, 2011, is a base rate of $499 plus $7.09 per acre. Forest management plans prepared by a certified independent plan writer under contract with a landowner are not subject to the plan preparation fee. The bill would change the term "plan preparation" fee to "management plan" fee and clarify that a plan is exempt from this fee if it is prepared or completed by a certified independent plan writer instead of by the Department. These sections would first apply to applications for enrollment in MFL beginning on the second June 1 after publication of the bill.

Under the MFL program, the landowner is required to follow the management plan throughout the period of the MFL order. However, under current law, a landowner and DNR may mutually agree to amend a management plan. The bill would specify that a management plan may be amended either by an agreement entered into by the owner and the Department or by the Department to ensure the practice of sound forestry. (Assembly Amendment 1 would delete this modification.)

The bill would also alter the dates by which the Department must act on an application for enrollment in the MFL program. Under current law, if the petition is received by DNR on or before March 31 from a petitioner seeking to enroll 1,000 acres or more, DNR is required to approve or deny the petition on or before the following November 21. For petitioners seeking to enroll less than 1,000 acres without a completed forestry management plan, applications received on or before July 1 must be approved or denied before November 21 of the year following the year in which the petition was received. However, if the petition for enrollment of a parcel including less than 1,000 acres is received on or before May 15 and includes a completed management plan, DNR must either approve or deny the petition before the following November 21. For petitions transferring forest cropland into the MFL program, current law requires DNR to approve or deny the application within three years from the date on which the petition is submitted to the Department. The bill would require that, except for applications transferring forest cropland into MFL, for applications received by DNR on or before June 1 of any year, DNR is required to approve or deny the application before the following November 21. In addition, the bill would alter the dates by which a landowner must file an application for renewal of an MFL order. Under current law, an application filed by an owner of 1,000 MFL acres or more must file a renewal application by the March 31 before the expiration date of the order and an owner of less than 1,000 MFL acres must file by the second July 1 before the expiration date of the order. The bill would change the date for renewal of an order for less than 1,000 MFL acres to the June 1 before the expiration date of the order. (Assembly Amendment 2 would make June 1 the uniform application deadline.)

Timber Harvests, Yield Tax Deadlines, and Stumpage Values

Under current law, DNR approval is required before an owner may cut timber on MFL land (except timber cut for use as fuel in a landowner's home). A landowner must submit a notice of intent to cut timber on MFL enrolled land to DNR 30 days prior to cutting. Under current law, if the

proposed cutting conforms to the management plan, DNR is required to approve the request. If the proposed cutting does not conform to the management plan, DNR is required to assist the landowner in developing a suitable proposal before approving the request. Within 30 days after completing any approved cutting, an MFL landowner is required to submit a timber harvest report to the Department, which contains a description of the species of wood, kind of wood product and the quantity of each species cut. The bill would specify that the proposed cutting must conform to the management plan and be "consistent with sound forestry practices" in order to be approved by the Department.

Currently, any landowner who fails to file notice to cut timber or who intentionally files a false timber harvest report is subject to a forfeiture of not more than $1,000. The bill would remove the word "intentionally" from the false reporting prohibition and would add failure to file a timber harvest report as a violation subject to the forfeiture. The bill would also delete the word "intentionally" from the prohibition on cutting timber on MFL lands without DNR approval, which is subject to a forfeiture equal to 20% of the current value of the merchantable timber cut. Further, the bill would specify that if a landowner fails to file a timber harvest report in a timely manner, DNR will determine the value of the timber cut for the purpose of assessing the yield tax. The bill also clarifies that, the yield tax assessed by DNR for timber harvested on MFL land is due on the last day of the next month following the date the yield tax certificate is mailed to the owner. Similarly, if within a year of the filing of a timber harvest report, DNR determines that the report is inaccurate and that a supplemental yield tax is due on the timber harvested, that tax is due to DNR on the last day of the "next" month following the date DNR mailed the supplemental yield tax certificate to the owner. These provisions would first apply to timber harvested on MFL land beginning on the effective date of the bill.

In addition, the bill would remove the requirement that DNR establish stumpage values through administrative rule. The Department uses stumpage values (value of timber based on recent timber sales) to calculate the yield tax due on timber harvested on MFL enrolled land. Current law requires DNR to annually promulgate a rule establishing a reasonable stumpage value for the merchantable timber grown in the municipalities in which MFL land is located. If DNR finds that stumpage values vary in different parts of the state, the Department may establish different zones and specify the stumpage value for each zone. The rule is effective November 1 of each year. The bill would remove the requirement that the stumpage values be established by administrative rule and would prohibit DNR from promulgating rules that established stumpage values. DNR would maintain the authority to establish stumpage values and the stumpage values would still take effect on November 1 of each year.

DNR indicates that the removal of the requirement that stumpage values be established in administrative rule would allow DNR to establish stumpage values that are reflective of more current timber sale data. Under current law, DNR foresters and cooperating foresters submit timber sale data to the Department every fall. At that point, the Department begins developing the stumpage values and takes the preliminary stumpage values to the Natural Resources Board the following February. After the preliminary values are approved by the Board, the Department

schedules public hearings on the stumpage values to be concluded by April. After possibly incorporating public comments into the stumpage values, the final stumpage value administrative rule is brought before the Natural Resources Board at the June Board meeting. After approval of the rule by the Board, the rule must go to the Legislature and, after Legislative approval, becomes effective November 1 (more than a year after the initial timber sale data is collected). Under the bill, the Department indicates that DNR could collect timber sale data from DNR foresters and cooperating foresters earlier, possibly by late summer, and establish stumpage values November 1 of the same year (perhaps two or three months later). The Department indicates that it would use a similar process of providing opportunities for public comment on the stumpage values before finalizing the values, and would make the final values available on the Department website and in MFL published materials. However, the Natural Resources Board and Legislature would no longer have a direct role in approval of the stumpage values.

MFL Transfers

Under current law, an owner of a Wisconsin property that contains a dwelling unit who transfers that property (by sale, exchange, or land contract) is generally required to provide a real estate condition report to prospective buyers within 10 days after acceptance of a contract of sale or option contract. The bill would require this report to include a statement on whether the seller was aware that the property, or a portion of the property, was subject to MFL. Further, the bill would establish a similar requirement for MFL landowners whose property is not subject to a real estate condition report (generally, where the land does not contain dwelling units); where, if the landowner transfers the property, the landowner must disclose, in writing, to a prospective buyer of the property, whether the property, or any portion of the property, after transfer to the buyer, is subject to an order designating it as managed forest land. The requirement of notice to prospective buyers would first apply to property transfers beginning on the first day of the seventh month after publication of the bill.

In addition, the bill would clarify that, in the event of a transfer of ownership of MFL land, the transferee (buyer) would pay the transfer fee, and would specify that the transfer fee is due to DNR within 30 days of a transfer of ownership. Under current law, a transfer fee of $100 is due to DNR within 10 days of a transfer of ownership, but the statutes do not currently specify whether the transferor or transferee pays the fee. Further, the bill would specify that the transferee (buyer) must sign and file the transfer report with DNR.

Withdrawal Tax Estimate

Finally, the bill would require the Department of Revenue (DOR), with the assistance of the Department of Natural Resources, to, upon request of an owner of MFL land, prepare an estimate of the amount of withdrawal tax that would be assessed if DNR were to issue an order to withdraw the land from the MFL program. The bill establishes a fee that DOR would charge for the withdrawal tax estimate of either $100 or $5 per acre, whichever is greater. The withdrawal tax estimate requirements would first apply to notifications of investigations for withdrawing managed forest

land that are issued beginning on the first day of the fourth month after publication of the act.

AMENDMENTS

Amendment 1 would eliminate the provision in the bill which would authorize DNR to amend a management plan, without the MFL owner's consent, to ensure the practice of sound forestry. (The amendment would maintain current law, where a landowner and DNR must agree to amend an MFL management plan).

Amendment 2 would eliminate the March 31 deadline for applications for renewal of an MFL order for MFL owners who own 1,000 acres or more of MFL land and replace it with a June 1 deadline. Under the bill, as amended, all MFL owners would have the same June 1 MFL order renewal deadline.

FISCAL EFFECT

The bill would allow facsimile signatures instead of requiring DNR staff signatures under FCL. DNR indicates that allowing facsimile signatures for the FCL program would make administering the program easier for DNR staff and would require minimal staff effort to implement.

In addition, the bill makes a number of changes to the terminology and administration of the MFL program. Changing the term "petition" to "application" is intended help landowners better understand the MFL application process. The bill, as amended, would also streamline the MFL application and renewal deadlines. According to DNR, the clearer terminology, general requirement that a completed management plan be submitted with the application, and shorter review periods would mean DNR would be less likely to need to request additional information and supporting documents from landowners. This would save forestry staff time which could be devoted to unmet workload including working with new landowners who do not have a forestry management plan and conducting forestry work on state owned properties.

Under the bill, DNR would be required to promulgate administrative rules that define the conditions a landowner would need to meet in order for the Department to determine that they are unable to hire a certified independent plan writer to prepare the MFL management plan. In addition, the Department indicates that the Forest Tax Law Handbook (available on the DNR website) would need to be updated to reflect the new rule.

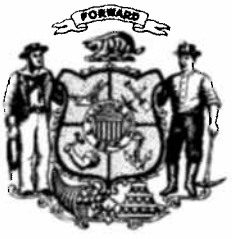
The bill would require the Department of Revenue (with the assistance of DNR) to, upon request of an MFL landowner; prepare an estimate of the withdrawal tax that would be assessed if the land were to be withdrawn from the MFL program. The bill establishes a fee for the withdrawal estimate of $100, or $5 per acre, whichever is greater. DNR processes an average of 355 withdrawals from the MFL program each year, with an average withdrawal size of 46 acres.

Under the bill, a withdrawal tax estimate for an average withdrawal of 46 acres would result in a fee of $230. DNR staff discussed with DOR staff the amount of time Revenue could expect to devote to calculating withdrawal tax estimates under the bill. They anticipated spending 30 minutes per estimate to contact local municipalities to calculate a withdrawal tax estimate. While it is unknown how many landowners would request a withdrawal tax estimate, because of the potential for large withdrawal tax payments (the average exceeds $10,000), and because the withdrawal process is generally not reversible once commenced, officials expect that 30% of landowners would request a withdrawal tax estimate. If 30% of the MFL landowners withdrawing from MFL requested a withdrawal tax estimate, the Department of Revenue would, on average, calculate 107 withdrawal tax estimates per year (53.5 hours of staff time annually) at an annual estimated cost of approximately $1,900 and collect a total of approximately $24,600 annually. However, it should be noted that the revenue from the withdrawal tax estimate fee would be deposited in the general fund as GPR-Earned and could, therefore, not be utilized by DOR to cover staff costs. The Department of Revenue indicates the staff costs are minimal and absorbable within the agency's budget. If a larger number of landowners were to request a withdrawal tax estimate, for example, 50%, which on average would be 178 landowners, DOR staff costs would be approximately $3,100 annually and revenues from the withdrawal tax estimate fee would be approximately $40,900 annually.

Overall, the bill may result in some increased workload costs to DOR (estimated at approximately $1,900 annually) associated with calculating withdrawal tax estimates. In addition, the bill would result in one-time costs to DNR of approximately $4,900 associated with updating FCL computer programs, developing administrative rules related to MFL management plans, and revising and printing MFL published materials. However, the overall effect of the bill is expected to streamline MFL administration, allowing DNR foresters more time to assist MFL landowners or perform other forest management duties. The bill makes no appropriation; therefore, any costs would be absorbed within current agency budget levels. Finally, the fee for withdrawal tax estimates could be expected to increase general fund revenues by, perhaps, $25,000 annually beginning sometime in state fiscal year 2010-11.

Prepared by: Erin Rushmer

WISCONSIN STATE LEGISLATURE



Luther S. Olsen
State Senator
14th District

AB 580 folder

Also included in the SB 510 folder

April 1, 2010

Senate Committee on Transportation, Tourism, Forestry, and Natural Resources

Re: Support of Senate Bill 510

Senator Holperin and Committee Members:

Thank you Senator Holperin and Committee members for taking the time to hold a hearing on Senate Bill 510. I apologize for not being able to be here to testify to the merits of this bill, but I hope you will listen to this proposal and give this bill serious consideration for passage.

I introduced Senate Bill 510 at the request of Steve and Christine McDiarmid and the Village Board of Coloma. Since both Steve and his wife are here today along with a representative from the Coloma Village Board, I only want to give you a brief overview of this legislation and let them talk about the details of their request and let them answer any questions that the committee might have.

I introduced Senate Bill 510 in order to grant the Village of Coloma an additional Class B liquor license for Watertower Wines and Edibles. Located just down the road from the historic Coloma water tower, Watertower Wines and Edibles offers fine wines and artisan cheeses to Coloma residents and visitors. While currently holding a Class A liquor license which allows them to sell wine by the bottle for off-premises consumption, Steve and Chris are interested in expanding their business to include wine tastings and service at community events for which they would require a Class B license. The Village of Coloma, however, has already met its Class B liquor license quota.

I am supportive of this proposal because I believe that this expansion would be beneficial to both Watertower Wines and the Village of Coloma. While Mr. and Mrs. McDiarmid's business would benefit from the expansion by being able to offer more services to their customers, the Village of Coloma as a whole would benefit by drawing more visitors and tourists into the area. With the Coloma Village Board being in support of this proposal, this is common sense legislation that would help a small business in central Wisconsin in these tough economic times.

Again, thank you for the opportunity to testify before you today. I will now turn the floor over to Mr. and Mrs. McDiarmid.

<end>

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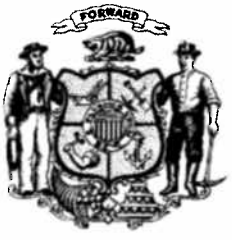
WISCONSIN STATE LEGISLATURE



Wisconsin **REALTORS®** Association

To: Members, Senate Committee on Transportation, Tourism, Forestry & Natural Resources

From: Tom Larson, Director of Regulatory and Legislative Affairs

Date: April 1, 2010

Re: SB 590 – Disclosures Related to Managed Forest Law

The Wisconsin REALTORS® Association (WRA) supports requiring the disclosure of whether property is enrolled in Wisconsin's managed forest land (MFL) program. However, we have concerns with the disclosure methods and requirements set forth in SB 590. Specifically, we are concerned that the new disclosure methods and requirements in SB 590 will (a) be ineffective at informing prospective buyers that the property being purchased is enrolled in the MFL program, and (b) create additional liability for sellers of real property because most will be unaware of the new disclosure requirement.

New Disclosure Requirements in SB 590

SB 590 contains two different disclosure provisions which require all sellers of real property to disclose whether the property they are selling is enrolled in the MFL program:

1. Section 79 – Requires the real estate condition report (RECR), which is required by Wis. Stat. § 709.03 for transactions involving 1 to 4 family dwellings, to be amended to include a provision which would require property owners to indicate whether they are aware if the property they are selling is designated as "managed forest land."

2. Section 80 – Requires any property owner who is not required to complete a RECR to provide a prospective buyer with a written disclosure, no later than 10 days after acceptance of a contract of sale or option contract, whether the property they are selling is designated as "managed forest land."

Concerns With Disclosure Requirements

The WRA has the following concerns with the proposed disclosure requirements in SB 590:

1. Disclosure in RECR will be ineffective for most transactions involving forest land – The RECR is required for transactions involving the sale of 1 to 4 family dwellings. See Wis. Stat. § 709.01. Sellers of all other types of property (e.g., vacant land, farms, commercial buildings) are not required to complete the RECR. Because most transactions involving forest land do not include 1 to 4 family dwellings, adding this disclosure to the RECR will fail to benefit the target audience -- buyers of land designed as "managed forest land."

2. Adding the disclosure to RECR will dilute the effectiveness of other disclosure provisions – The RECR currently contains approximately 27 different disclosures and is only one of many pieces of paper given to a buyer of real property during the course of a real estate transaction. Adding additional disclosures to the RECR, especially those which do not apply to most of the related transactions, will make the RECR even longer, thereby making it less likely that buyers will read other, more applicable provisions in the RECR.

3. Separate disclosure in statutes is too broad – As drafted, the disclosure in the statutes (section 80) would apply to ALL owners of property not required to complete a RECR. Because only owners of 1-4 family dwellings are required to complete the RECR, this disclosure requirement would apply to forest land, but also to owners of commercial buildings, vacant residential lots, and industrial property. Given that most of these transactions do not involve forest land, we believe this is beyond the scope of what the bill authors intended.

4. Most sellers will be unaware of separate disclosure requirement – While the RECR is a common form used in most transactions involving 1 to 4 family dwellings, the written disclosure requirement in Section 80 can be found only in Section 710.12 of the Wisconsin Statutes. In other words, a seller of property that is subject to this disclosure requirement must first be aware that this disclosure requirement exists in order to make the necessary disclosure. Because this disclosure requirement will be buried in the statutes, it is highly unlikely that most sellers will be aware of this disclosure requirement in order to be in compliance.

5. Penalty for noncompliance is unclear - The disclosure requirement in Section 80 requires the seller to provide a written disclosure within 10 days after acceptance of a contract of sale or option contract. However, the bill does not indicate what happens if the seller fails to make a timely disclosure. Does the buyer have the ability to rescind the contact of sale or option contract, as provided for under Wis. Stat. § 709.02? Can the buyer sue the seller for any damages resulting from the seller's failure to disclose?

Recommended Solution

We have worked closely with Representative Clark and members of the Joint Finance Committee to address these concerns which have been incorporated into Assembly Amendment 3 to AB 580. The amendment does the following:

- Remove the disclosure requirement from the real estate condition report (which is required only for transactions involving 1 to 4 family dwellings) and replace it with a written disclosure that can be added to more appropriate contracts (e.g. vacant land offer to purchase, farmland offer to purchase) and disclosure statements.

- Clearly define what information must be included in the written disclosure so that prospective buyers can be better educated about the MFL, any related penalties, and learn where to obtain additional information.

- Delay the effective date of the written disclosure until January 1, 2011 so that companies have sufficient time to update the appropriate contracts and forms with the new written disclosure.

We respectfully request that this committee amend SB 590 by adopting the provisions found in Assembly Amendment 3 to AB 580.

If you have questions, please feel free to contact us at (608) 241-2047.