



# TOM TIFFANY

STATE SENATOR • 12TH SENATE DISTRICT

## **Testimony on Senate Bill 867 Senate Committee on Sporting Heritage, Mining, & Forestry February 25, 2020**

Thank you members of the Senate Committee on Sporting Heritage, Mining, & Forestry for hearing testimony on Senate Bill 867 (SB 867) related to the managed forest land program. I would also like to thank Representative Mursau for his hard work on this legislation.

In 1985, the Forest Crop Law and Woodland Tax Law were revised to create what is known today as the Managed Forest Law (MFL) program. This program is an incentive to encourage sustainable forestry on private woodland. In exchange for paying a reduced property tax, landowners agree to follow sound forest management practices to help ensure a constant stream of wood fiber and may allow additional recreational opportunities for the general public.

In 2013, the Governor's Council on Forestry proposed simplifying the MFL program and reducing the Department of Natural Resources' administrative burden. The Council recommended several possible changes to the program, and many of them ended up being included in 2015 WI Act 358 which I authored with Representative Mursau. The changes to the program have been largely successful.

Senate Bill 867 further tweaks the MFL program and cleans up a few issues that have been identified since the passage of 2015 WI Act 358. This includes modifying minimum acreage, allowing leasing on closed MFL land, clarifying when something is a material change, and adding more flexibility to allow DNR to determine if taxes and fees should be assessed.

Representative Mursau introduced an amendment, which he will speak to. However, my staff sent a Legislative Council memo to committee members which describes both the bill and the amendment. The Assembly companion was passed, as amended, on a voice vote.

Again, thank you members of the Senate Committee on Sporting Heritage, Mining, & Forestry for hearing my testimony on Senate Bill 867. I would appreciate your support.

Thank you.



# Jeff Mursau

STATE REPRESENTATIVE • 36<sup>TH</sup> ASSEMBLY DISTRICT

Senate Committee on Sporting Heritage, Mining, and Forestry  
SB 867 – Managed Forest Law Program  
February 25, 2020

Committee Members -

Thank you for the opportunity to testify in support of SB 867, relating to changes to the Managed Forest Law (MFL) program.

The MFL program was created in 1985 to replace the less popular Forest Crop Law. Both laws were intended to encourage sustainable forestry practices to ensure a constant stream of fiber for the second largest industry in Wisconsin, while at the same time providing recreational opportunities for the general public.

To participate in the MFL program, landowners designate property as “Open” or “Closed” to public access for recreation, and commit to a 25 or 50 year sustainable forest management plan. The plan sets the schedule for specific forestry practices, which landowners must complete. In return, MFL participants pay a reduced property tax rate.

According to a new national study by the National Alliance of Forest Owners, Wisconsin was first in the Midwest in the number of timberland acres (16.5 million), total employment in the forestry sector (174,848) and value of timber sales (\$21.6 billion). The report also showed an increase in employment in the forestry sector of nearly 5% and timber sales were up nearly 10 percent.

These figures highlight a need to encourage enrollment in MFL by private landowners. They own more than sixty-percent of all forest lands; and, two-thirds of the wood harvested in Wisconsin comes from their forest lands. Our timber industry wouldn't be what it is today without the commitment of private woodland owners to actively manage their woods for the ecological and economic health of our state.

In 2015, Senator Tiffany and I introduced legislation that was a major overhaul of the MFL program. That is now 2015 WI Act 358. Now that a couple of years have passed we know the changes we made have been largely beneficial to the program, but we're aware that some areas need to be tweaked and that's what bring us here today.

SB 867 is a collaboration of efforts between my office, the DNR, and private woodland owners to encourage greater participation in the program. During the rule-making process the department identified several areas where they felt it was necessary to clarify legislative intent. Those are most notably related to allowing leasing on MFL land, determining when something is a material change, and allowing the DNR flexibility on assessing a withdrawal tax and fee if part of the land in the program no longer meets eligibility.

Additional provisions include:

- Smaller portions of land that are not contiguous to each other could be combined to meet the 20 acre minimum entry. The smaller portions of land would need to be at least 10 acres, under the same ownership, and contained in a tract of contiguous land.
- Allows a building on MFL land if the building is used exclusively for storage
- Allows an addition of any size to an existing MFL plan as long as it meets specific eligibility requirements of the original order

After the bill was introduced and the Assembly held a public hearing on the bill, we introduced an amendment to add greater clarity on a couple provisions. Most notably, and at the request of the Wisconsin Association of Assessing Officers, we removed the provision repealing the requirement that buildings be taxed as personal property. We feel this is still worth reviewing, but will work with them on a more suitable way to address it.

My goal is, and has always been, to pass meaningful legislation that supports the sustainability of our forests while balancing the accessibility of the private lands to the public for recreational purposes. I'm confident this bill strikes that balance and I'm hopeful the Senate will send this bill to the Governor.

I would be happy to try to answer any questions you may have.



## Senate Committee on Sporting Heritage, Mining and Forestry

*2020 Senate Bill 867*  
*The managed forest land program*  
*February 25, 2020*

Good afternoon Chairman Tiffany and members of the Committee. My name is R.J. Wickham, and I am the Tax Law Section Chief with the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Senate Bill 867 (SB 867), relating to the Managed Forest Law (MFL) program.

SB 867 makes numerous changes to the MFL program to include recommendations made by the Department to further clarify 2015 Wisconsin Act 358, which was signed into law in April 2016 and established added flexibility for MFL landowners.

Overall, the Department is supportive of the changes included in the bill and appreciates the continued efforts of the bill author and this Committee to pursue legislation that will help improve the administration of the MFL program. Furthermore, the Department is committed to better serving the people of Wisconsin and their resources by:

- Streamlining administrative processes
- Upholding the intent and purpose of MFL to produce forest products through sound forestry
- Maintaining public support of the program
- Maintaining municipal and local government support of the program

On behalf of the Division of Forestry, Bureau of Forestry Field Operations, I would like to thank you for your time today. I welcome the opportunity to discuss the bill in greater detail and I am happy to answer any questions you may have. Skya Murphy, DNR Tax Law Policy Specialist, is also present and available to address questions.



**Testimony on Senate Bill 867  
Committee on Environment and Forestry**

**Wisconsin Alliance of Forest Owners  
February 4, 2020**

**Mr. Chairman and Committee Members:**

My name is Richard Wedepohl and I'm representing the Wisconsin Alliance of Forest Owners, a trade association that represents the interests of Wisconsin's private woodland owners, including the over 40,000 landowners who have MFL orders. We are tree farmers who manage 59% of Wisconsin's forest land and who provide 67% of the raw material needed to support Wisconsin's \$20 billion forest industry. Additionally, our woodlands are directly tied to two of the State's other biggest economic engines: our woods provide the beautiful backdrop for the Wisconsin tourism economy and also the wildlife habitat and hunting grounds for our State's hunting economy and heritage. No other rural land type offers more to Wisconsin's diverse economy, legacy and future than private woodlands. Thank you for the opportunity to provide testimony on this bill.

Since its inception almost 30 years ago, tree farmers have embraced the MFL program as a means to allow them to sustainably grow trees and keep land in forest. In exchange for committing to keep their land as a productive forest for the next 25 years, they were provided a differential tax rate that recognized that growing a crop of trees requires a long term commitment. These tree farmers also agreed, in return, to follow a management plan that commits them to providing the raw material needed to sustain our forest products industry. Good steps were made with ACT 358 which revised the MFL in 2015. The cleanup issues associated with this bill are something that I believe we all can agree upon.

**WAFO POSITIONS ON THIS BILL**

First, WAFO wants to acknowledge the work done on MFL by many fine people over the past several years. With this bill we wish to thank Representative Mursau for taking the initiative to get this job done. Additionally we want to thank the DNR who has worked hard to implement the new program and identified language with this bill that helps clarify the intent of ACT 358. We support:

- **Allowing landowners to be able to construct a shelter, shed or garage that is needed for storage of equipment necessary to manage their woodlands.** This bill clarifies language with ACT 358 related to structures and improvements. Current language under s.77.82(1)(bp)g states that "Structures and fixtures that are needed for sound forestry practices" may be allowed. However, the DNR felt that, given other language in the bill that limits construction,





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they were uncomfortable allowing sheds or garages for equipment storage without more clarification. This bill would directly state that structures necessary to store equipment such as saws, tractors or other tools needed to actively manage their woodlands would be allowed.

- **Allow landowners to meet the new, minimum 20 acre, enrollment size by being able to aggregate wooded parcels of 10 acres or larger to meet that requirement.** Many landowners have wooded areas on their property that are separated by non-wooded area such as wetlands or agricultural fields. This bill would allow these smaller areas to be enrolled in the program and then be actively managed similar to the other woods on a landowner's property.
- **The many other provisions which have been designed to clear up some inconsistencies found with the original law.**

### **Where the Managed Forest Law Still Falls Short**

- **No reduction of the special State tax landowners must pay.** WAFO strongly recommends that the growing of timber be recognized as an agricultural crop. MFL tax rates need to be compatible with those applied to other agricultural lands if we expect landowners to grow the fiber needed by our forest products industry in a profitable manner. The current \$10.68/acre rate is excessive, greatly exceeding the average \$3.17/acre property tax paid on other agricultural lands. We also do not understand why actively managed woodlands do not qualify for the M&A tax credit. If we want to keep actively managed forests on our landscape the current tax structure needs to be revised if we want to keep tree farmers actively managing their woodlands as a viable business venture.

Thank you for this opportunity to testify. Please know we very much want to work with you and other stakeholders to make the MFL an improved and sustainable program.

Respectfully submitted,

Richard Wedepohl  
Wisconsin Alliance of Forest Owners



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## WHY WOODLAND OWNERS NEED A PRESENCE IN MADISON – MY OBSERVATIONS

By Geary Searfoss\*

**My first experiences:** When my wife and I purchased our first woodland property back in the early 1980's, it was strictly an investment property. Yes, we liked some of the other amenities it offered, things like wildlife, aesthetics, and a place to call our own. But we were as poor as church mice, we didn't even own our own house. We borrowed all but a couple thousand to purchase the property. It had to pay the interest on the loan as well as return us something.

To reduce costs, we entered the property in the Woodland Tax Law, which eventually disappeared in favor of the Managed Forest Law. Our annual property taxes on 32 acres of pine plantation was \$12.80. That's it. \$12.80 per year! The DNR forester came out and wrote the management plan for free and there was no fee to enroll. There was also no severance tax on wood products harvested. In addition we received a federal tax break on the long term capital gain income the property generated – we were only taxed on 40% of the gain. We received the same break on our Wisconsin return.

At that time, the State of Wisconsin recognized the value of woodlands to the citizens and wood products companies of this State, as well as its importance to the tourism industry – clean water, clean air, aesthetics, and all that – and tried to make forest management a profitable endeavor. Perhaps they recognized that if management of the forests wasn't profitable the owners might just possibly convert the land to other uses.

**Times have changed:** I'm not saying the State doesn't still recognize the importance of forested land, but they don't appear to support it in the way they used to. Other land use activities, farming in particular, have become much more favored while forest management, it appears, has become less favored. Woodland owners just don't make good poster children when it comes time for Madison to pass out favors.

Or perhaps farmers are better organized and have high paid lobbyists. The first inkling I had that forest management was taking a back seat to farming (other than the fact that the back of our State quarter ended up with a cow head, an ear of corn and a block of cheese) was when the Legislature enacted use valuation assessment for agricultural property.

**Taxes on farmland reduced:** In 1995 Wisconsin Act 27 created the statutory authority for use value assessment and they entered a phase in period that ended in 1999 with full use value assessment becoming effective on January 1, 2000 that significantly lowered taxes on 12,000,000 acres of agricultural land. Use value assessment taxes land based on its current use rather than its highest and best use.

**Forested lands don't qualify:** The goal of this legislation was to protect Wisconsin's farm economy and curb urban sprawl by assessing farmland based on its agricultural productivity, rather than its potential

for development. Sounds good. And since I'm growing trees, an agricultural product, I figured I'd be included. But I figured wrong. Only activities included in subsector 111 Crop Production or 112 Animal Production in the North American Industry Classification System (NAICS) qualify as agricultural use. This includes many different farming activities including the growing of Christmas trees or ginseng or the growing of tree nuts as well as the gathering of maple sap, but not the growing of saw timber and pulpwood.

A more simple definition (my overly simple simplification) of a typical agricultural use is either a) stripping the land of all native vegetation followed by a major disturbance of natural soil horizons followed by the planting of non-native plants or b) some combination along with the introduction of large numbers of unnatural or non-native animals. Growing trees? Nah. Of course, governmental units still needed to raise the same amount of money as they did before use valuation.

**Taxes for woods on agricultural land further reduced:** Taxes on agricultural land went down but taxes on woodland and other real property, like homes, went up. Of course, many farmers weren't too happy either since their savings on their agricultural land often disappeared because of the increased taxes on woodland interspersed on their property. As a result they went back to the legislature which promptly amended the law to include "agricultural forest" which affected 2,000,000 acres. This took effect in 2005. The only catch is that to qualify as "agricultural forest" the land has to be on a parcel or contiguous to a parcel that qualifies as "agricultural land." In other words, if you weren't a farmer in the first instance, you can't have agricultural forest in the second. "Agricultural forest" is only assessed at 50% of its full value. And so, again, a shift of property taxes being paid by owners of farmland to other owners. This shift also impacted the Managed Forest Law (MFL).

**Managed forest law taxes increased:** Prior to April 28, 2004 MFL landowners paid a fixed amount per acre per year with taxes on closed MFL land being based upon 25% of the average taxes paid on all forested and agricultural lands. With use value now in place, keeping this same formula would have given the 3,000,000 acres of lands in the MFL a much lower, and unpalatable, tax. The MFL law was then changed to be calculated solely upon lands classified as productive forest land. As taxes went up on productive forest land, they also went up for MFL landowners. So, for land entered in 2005 or later, the "open" (open to public access) tax rates have gone from \$.79 per acre to \$2.14. "Closed" rates went from \$1.87 to \$10.68. But that is not the only cost.

**More fees and limitations on using MFL lands passed:** Owners now have to pay a consulting forester to develop the plan. Just to apply would cost me over 3.5 times what I paid in taxes and fees for the whole fifteen years I was in the Woodland Tax Law. In addition, the MFL program required that when you harvest timber, a yield tax must also be paid.

There's more. Then along came an amendment to the law that was buried in the state budget that prevented landowners from leasing their MFL land for recreational purposes. We thought we had a contract. The State said no. It was simply an agreement and that allows the State to be free to make changes throughout the length of the program without landowner agreement!

**How do taxes under MFL compare:** In 2018, taxes on qualified agricultural land averaged \$3 per acre. Want to pasture your woods? Well, if you do, you'll pay only \$1 per acre!



Taxes on Agricultural Forest, taxed at 50% of fair value, averaged \$25 per acre. Just plain forestland (no MFL or use valuation) averaged \$40 per acre, ranging from \$10 per acre in parts of northern Wisconsin to over \$200 per acre in some SE Wisconsin towns. Keep in mind to get the tax break under use valuation there is no yield tax, no application fee, no requirement to have a management plan, no multiple year enrollment period, and virtually no withdrawal tax.

**More inequities- Capital Gain Taxes:** Other actions by the Wisconsin Legislature have continued to favor “farming” over growing trees. As an example, back in 2009 the net long-term capital gain exclusion was reduced from 60% to 30%. Another way of looking at the change is that the taxable portion of long-term capital gains increased from 40% to 70% - that is, unless you're selling farm assets. In that case, the exclusion remained at 60%. As you may have guessed, growing trees is not farming for this provision. And if you are selling to a related party (by blood, marriage, or adoption within the 3rd degree of kinship) you can exclude the long-term gain on the sale of farm assets entirely from your Wisconsin return.

**Manufacturing and Agricultural Tax Credit:** Beginning January 1, 2013 there was a new provision added that was called the Wisconsin Manufacturing and Agriculture Credit. The maximum effective tax rate on “eligible qualified production activities income” is a mere 0.4%. Many who qualify for the credit will pay no Wisconsin income tax at all on income from those activities. “Agriculture property” is, of course, referring to lands that have been classified as agricultural by assessors under use-value assessment. This, again, doesn't include forest land that isn't “agricultural forest.” There was hope it could be changed when the proposed 2015-2017 state budget included Productive Forest land as being eligible for this credit. Could it be possible? Well, almost, but nope again. When presented with the bill, then Governor Walker vetoed this provision saying, “He believed an error was made and it was not the Administration's intent to recognize timber as an agricultural crop.” And so, it seems apparent to the author that Wisconsin lawmakers aren't nearly as concerned about protecting the State's forest land from urban sprawl as they are about protecting farmland from the same. Clearly it's not very profitable to grow timber compared to other, more intensive, uses of our lands.

**Growing trees as a business is difficult:** Considering the high capital requirements of making an investment in timberland, the very long term nature of the investment, and the increasing risk associated with exotic insect and disease pests not to mention the increasing risk of damaging weather events as our climate warms; coupled with the importance that the forest products industry has to the region's economy, you would think the State would do more, not less, to encourage its citizens to make an investment in forest management.

**Getting the word out:** Work is still needed to achieve more equity with other agricultural uses, but at least there is hope. We need to continue and expand our efforts to get our message across to our state representatives and regulatory officials.

\*Geary is a WAFO Charter Member, a forester and a retired Certified Public Accountant specializing in forest taxation.