Managed Forest Law tax exempt withdrawals under Wis. Stat. s. 77.885

Special Committee on State-Tribal Relations

Quinn Williams, DNR Natural Resources Section Chief, Bureau of Legal Services

I. Introduction

Chairman Mursau and members of the Special Committee on State-Tribal Relations, on behalf of the Department, thank you for the opportunity to present on this issue today. Under Secretary Stepp places a very high value on the importance of our government to government relationship with all 11 tribes in Wisconsin. Management and protection of our state's natural resources are a critical issue for the state and the tribes. As part of that management and protection, establishing ongoing structured dialogue between our respective governments is critical to the long term success of that shared mission, and this committee has an established track record of finding solutions to impediments in state law that prevent the kinds of common sense efficiencies and cooperation that benefit all of our respective citizens and our shared environmental resources.

II. General background on Managed Forest Law and Forest Crop Law

III. History of Wis. Stat. s. 77.885

IV. Current issues with Tribal MOUs under Wis. Stat. s. 77.885

1) Payment to local units of government in lieu of
   - Acreage share tax
   - Yield tax
   - Withdrawal tax

2) Access
   - For enforcement
   - Public hunting/fishing (if open, and if not, how to consider the open/closed acreage restrictions)

3) Venue for dispute resolution/enforcement
   - Federal court with the exception that the only mechanisms/remedies available are those under the MOU.

4) Enforcement mechanisms
   - If MOU becomes null and void (upon notification unless joint agreement of the parties)
   - Bond amount - year prior to trust designation assessed value locked in for life of MFL MOU designation period

5) Mechanisms to administer the law

County Forest/Public Lands Specialist (October 6, 2010).
- Presentation, *Additional Information*, by Kathy Nelson, Forest Tax Law Program and Policy Chief (October 6, 2010).
- Handout, *Estimated Wisconsin Local Government Comprehensive Planning Status*, distributed by Richard Stadelman, Wisconsin Towns Association (March 6, 2010).
- Testimony by Clyde Samsel.

September 9, 2010	Notice	Agenda	Audio	Minutes

- *2000 Managed Forest Land Tax Comparisons*, distributed by Lynn Neek, Price County Treasurer.
- *Resolution No. 37-10*, distributed by Lynn Neek, Price County Treasurer.
- Handout, *A Brief History of Sustainable Forestry*, prepared by Paul Pingrey (September 9, 2010).
- Presentation, *Evolution of Sustainable Forestry in Wisconsin's MFL*, by Paul E. Pingrey (September 9, 2010).
- Presentation, *Wisconsin Woodland Owners Association*, by Richard Wedepohl, Wisconsin Woodland Owners Association.
- Testimony, *Wisconsin Landowners and the Managed Forest Law*, Mark Rickenbach, Associate Professor and Extension Specialist, UW-Madison.
- Presentation, *Wisconsin Landowners and the Managed Forest Law*, Mark Rickenbach, Associate Professor and Extension Specialist, UW-Madison.
- Discussion questions distributed by Chair Clark (September 9, 2010).
- Testimony by Kathy Nelson, Forest Tax Program and Policy Chief, Division of Forestry, Department of Natural Resources (September 9, 2010).
- Sample forestry plan submitted by DNR.

August 18, 2010	Notice	Agenda	Audio	Minutes

- Memo No. 1, *The Managed Forest Land Program* (August 11, 2010).
- Presentation, *An Overview of the Wisconsin Council on Forestry, Report to the Legislature,* by Fred Souba, Jr.
- *Report to the Legislature Regarding a Legislative Study on the Managed Forest Law*, Fred Souba, Jr.
- Presentation, *Carbon Credits & Ecosystem Markets for Private Landowners*, Katie Fernholz, Dovetail Partners, Inc. (August 17, 2010).
- Presentation, *Wisconsin's Largest Private Forest Management Incentive Program*, by Kathy Nelson, Forest Tax Law Program and Policy Chief, Department of Natural Resources (DNR) (August 18, 2010).
- Presentation, *Wisconsin's Forest Industry*, by Terry Mace, Forest Product Specialist, Wisconsin DNR Division of Forestry (August 18, 2010).
- Testimony by Pau DeLong, Administrator, Division of Forestry, DNR (August 18, 2010).
- *Wisconsin's Managed Forest Law, A Program Primer*, prepared by DNR, Division of Forestry, Primary Authority Kathryn J. Nelson, Forest Tax Program and Policy Chief (August 18, 2010).

The Forest Crop Law

It is useful to review the principles of Forest Crop Law because it is the foundation of today's Managed Forest Law (MFL).

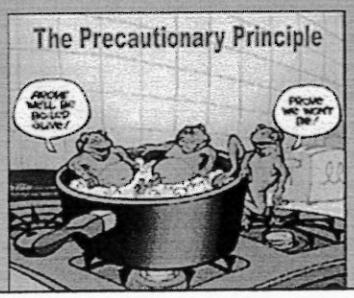
Forest Planning for Wisconsin's Future

Its purpose is laid out in Wis. Stats. s. 77.01

The statute, broken into its component parts identifies the following three purposes:

1) " . . . encourage a policy of protecting from destructive or premature cutting the forest growth in this state and of reproducing and growing for the future adequate crops through sound forestry practices of forest products."

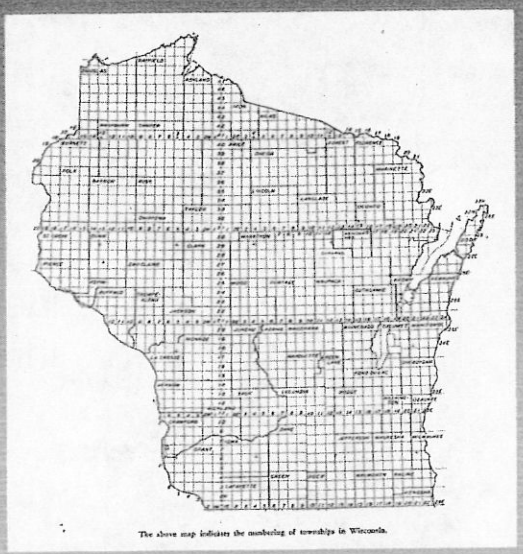
This component specifically identifies the evils of "premature" cutting in relation to forest growth, and the need for the practice of sound forestry. **The "premature" and "sound forestry," coupled with the overarching public trust placed in the Department's hands, would favor a "precautionary principle" approach to the science.**



2) Give the townships and counties "just tax revenue."

This provision recognizes the importance of balancing the forestry practice with the needs of the local governments.

The history of the statute emphasizes the importance of a fair system to even out the tax base and to provide adequate revenue to the towns and counties.



The above map indicates the numbering of townships in Wisconsin.

3) Provide for "public hunting and fishing" opportunities for the citizens of the state.

Again, in addition to the variety of timber products and related jobs, the legislature intended the Forest Crop Law to provide

"something more" for the citizens of the state.

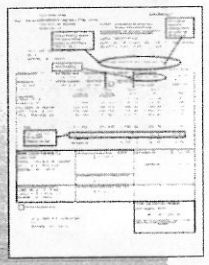
Managed Forest Law

Wisconsin's Largest Private Forest Management Incentive Program

Kathy Nelson
Forest Tax Law Program
and Policy Chief
August 18, 2010

1

MFL – Also a Property Tax Incentive Program



- Forest Tax Law program authorities lie in Ch. 77
- Found in sections of state statute dealing with all taxation
- Basic taxation premise – all private lands will be taxed equally
- If not – there must a strong public purpose to allow differential taxation
- First accepted in 1927 when Forest Crop Law (FCL) was created

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Public Purpose of Forest Tax Laws

- Economic – provide timber products for forest industries, reduce changes in land use to housing, industrial, or commercial
- Ecologic – keep forests healthy and providing all ecosystem services (trees, clean air, clean water, regulation of stream flow, wildlife habitat, endangered resources, etc.)
- Social – acceptance of program, fairness of shifting taxes to non-MFL landowners, recreational opportunities

3

Legislature must balance private and public needs

- Private Needs – must be attractive enough to enroll in the program
- Public Needs – must provide enough return on investment to make it acceptable by non-MFL landowners
- Needs must be balanced to have an MFL program

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MFL – A Better Program

Used best provisions of Forest Crop Law (FCL) and Woodland Tax Law (WTL)

- Included provisions not found in earlier programs to reflect new social and ecological concerns

FCL (1927) + WTL(1954) → Managed Forest Law (1985)

New Ideas

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MFL Continues to Evolve

- 17 statutory changes to MFL
  - 1985 Act 29 – July 19, 1985
  - 1991 Act 39 – August 14, 1991
  - 1993 Act 16 – August 11, 1993
  - 1993 Act 131 – March 18, 1994
  - 1993 Act 301 – April 28, 1994
  - 1995 Act 27 – July 28, 1995
  - 1997 Act 27 – October 13, 1997
  - 1997 Act 35 – December 30, 1997
  - 1997 Act 237 – June 16, 1998
  - 2001 Act 109 – July 29, 2002
  - 2003 Act 228 – April 27, 2004
  - 2005 Act 64 – January 5, 2006
  - 2005 Act 299 – April 20, 2006
  - 2007 Act 20 – October 26, 2007
  - 2009 Act 28 – June 29, 2009
  - 2009 Act 186 – March 29, 2010
  - 2009 Act 365 – May 19, 2010

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Regardless of Statutory Changes, MFL is a Popular Program

- Open only to Private Landowners
  - Non-industrial Private Forest (NIPF)
  - Industrial
- Over 3 million acres
- Over 43,000 MFL entries

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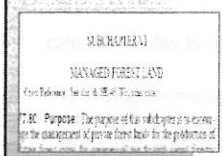
Purpose of the MFL Program



- Written in 77.80, Wis. Stats.

Encourage the management of private forest lands for the following uses:

- Production of future forest crops for commercial use
  - Use of sound forestry practices
- Recognizing the objectives of
  - individual property owners
  - compatible recreational uses
  - watershed protection
  - development of wildlife habitat
  - accessibility of private property to the public for recreational purposes.

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Encourage Management of Private Forests through Incentives

- Reduce annual property tax 75 to 95%
- 10 acre minimum to enroll
- Provide resources for management
  - DNR foresters, wildlife and fisheries biologists, ER ecologists, others
  - Cooperating foresters and certified plan writers
  - Cost-share money (WFLGP)
- Provide 3rd party forest certification
  - Tree Farm (SFI) and FSC

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Production of Forest Crops Primary Purpose

- Each forest parcel must be 80% productive

  No more than 20% can be unsuitable for growing timber products, including
  - Non-stocked areas (grass, marsh, etc.)
  - Areas not capable of growing 20 cubic feet per acre per year
  - No management zones
- Management prescriptions are prepared for each timber stand
  - Harvesting, regeneration, cultural work

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MFL is NOT a Strict Timber Products Production Program

- Creation of MFL required that all resources be managed

  Timber production was meant to be a main purpose, meaning that
  - Most of the land must produce forest products
- Other resources and values are also managed
- Management of those resources and values cannot subordinate timber products production to a minor role

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Forestry Defined in MFL Statute

- Defined in 77.81(2) as
  - *managing forest lands and their related resources, including trees and other plants, animals, soil, water and air.*
- Ecological and non-timber resources are mandated to be managed along with the timber resource.

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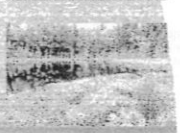
Sound Forestry Further Defined in Admin. Rule



- Defined in NR 46.15(29) as
  - timber cutting, transporting and forest cultural methods recommended or approved by the department for the effective propagation and improvement of the various timber types common to Wisconsin.
  - the management of forest resources other than trees including wildlife habitat, watersheds, aesthetics and endangered and threatened plant and animal species.

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Ecological Components Managed Regardless of Landowner Goals

- Endangered and Threatened Species - Natural Heritage Inventory
- Historical Sites - Cultural and Archeological Inventory
- Water – BMPs for Water Quality
- Soil –
  - BMPs for Water Quality
  - Biomass Harvesting Guidelines – mandatory on January 1, 2011
- Ecological Diversity –
  - Natural Heritage Inventory
  - BMPs for Invasive Species

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Meeting Landowner Goals

- Landowners required to list their land management goals
  - Timber
  - Wildlife
  - Recreation
  - Other
- DNR required to meet goals if compatible with
  - Stand (site) conditions
  - Can be done through current science
  - Meets MFL program requirements

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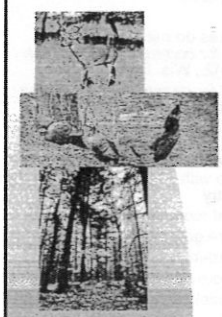
Commonly Stated Goals



- Easy to meet landowner goals, examples
  - Improve wildlife habitat, especially for deer, grouse and turkey
  - Have large diameter trees
  - Reduce property taxes
  - Leave a legacy for my children
  - Convert to long lived trees
- Some goals cannot be met, examples
  - No harvesting at all
  - Harvesting only after MFL is over or lands are sold to new buyer
  - Destructive harvesting

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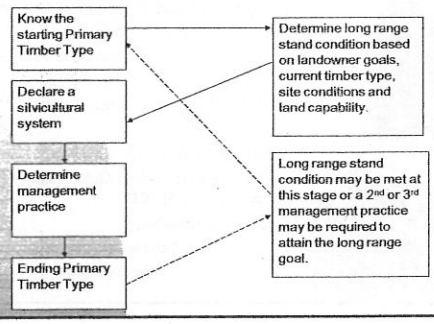
Process to Meet Management Goals



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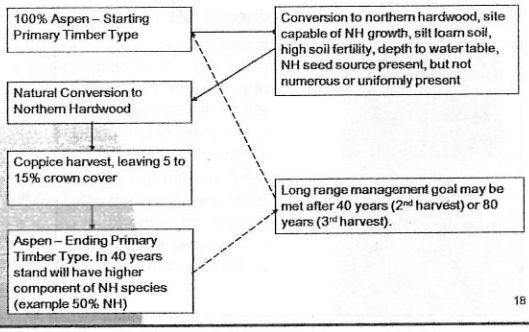
Example



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Accessibility of Private Lands for Public Recreation

State statutes do not allow lands *developed for commercial recreation* (77.82(1)(b)2., Wis. Stats.)

Developed for commercial recreation further defined in NR 46.15(8) as

- the alteration of the land or its features or the addition of improvements which impede, interfere with or prevent the practice of forestry

Commercial recreation may include

- Miniature golf
- Campgrounds
- Motor bike racing
- Horse back riding trails and stables
- Ski Hills

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Public Recreation on Open Lands

Recreation required on open lands

- Hunting
- Fishing
- Hiking
- Cross-country skiing
- Sight-seeing

All hunting and fishing must be allowed according to DNR hunting and fishing seasons

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Landowners Cannot Receive Consideration

Consideration defined in NR 46.15(3m), Admin. Code

Consideration includes

- Cash
- Goods
- Services

Definition includes a note further describing how DNR will interpret the definition

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Local Government Coordination

- Department of Revenue
- Register of Deeds
- Assessors
- Supervisor of Assessment
- Town Clerk

DNR orders lands to be taxed as MFL

Notify other government agencies and taxation districts of orders

Work cooperatively in administration of MFL

Towns and Counties have large stake in MFL

MFL would not succeed without this coordination

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Role in MFL

	Municipality	County
Annual Property Tax	Charges MFL tax – keeps open tax rate	Collects closed acreage rate, sends to DNR
Checks unpaid property tax	No role	County treasurer checks and reports to DNR
Withdrawal tax	Provide raw data for calculations	No role
Enforcement	Charges $250 non-compliance fee	Check county cutting notice
Review of data	Checks for errors	Checks for errors
Recording of Orders	No role	Records Orders
Others	As needed	As needed

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Payments to Local Government

DNR makes payments to local units of government

Payments	Municipality	County
Annual Aid	DNR pays 20 cents per acre of tax law lands. Municipality receives payment, keeps 80%	Municipality pays county 20%
Resources Aid	None	Only counties with 40,000 acres or more
Withdrawal, termination, yield, severance tax	Municipality receives payment, keeps 80%	Municipality pays county 20%

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Withdrawal Tax Estimates

- New legislation (2009 Act 365) requires Department of Revenue to provide withdrawal tax estimates
- Landowner pays
  - $100
  - $5 per acre, whichever is higher
- Payment made to DOR, non-refundable

Forms available September 1 from DOR

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Certification

- MFL became Tree Farm and FSC certified because of
  - Regulations
  - Checks and balances
  - Results
- New programs developed from this study will not be certified
  - There will be a cost associated with modifying certification if new program created

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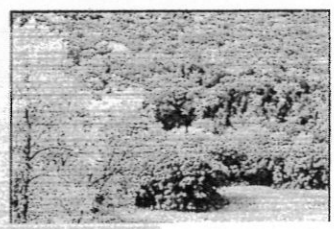
Questions?



Contact me at:
Kathy Nelson
608-266-3545

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14 30

Implementing Mandatory Practices

- Mandatory practices must be established by due date
- Landowner reminded of mandatory practice one year before due date
- Cooperating forester largely contract with landowners for services
- Amendments to management practices are made after new forest inventory is done

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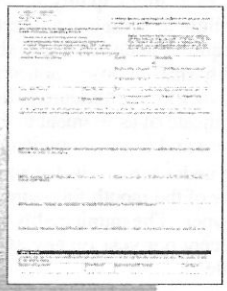
Cutting Notices and Reports



- Landowners must fill out cutting notices and reports
  - Notices - 30 days prior to cutting
  - Reports – 30 days after cutting
- DNR approves to insure proper harvesting is prescribed and reporting of cut materials is accurate
- Cutting reports generate landowner invoice
- Payments are mailed to municipality once payment is received

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New Tools for Enforcement

Citations for failure:
- file cutting report
- Follow all items in 77.86(5)

Citations for cutting contrary to plan or cutting notice

- Withdrawal taxes can be high
  - $25,000 to over $100,000
- Legislature gave DNR more tools to get lands back into compliance before need to withdraw
  - Citation authority
    - Allows landowner ability to pay damages for violations without withdrawal
  - Ability to get cutting reports filed without landowner signature

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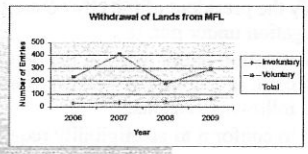
Enforcement of MFL

Philosophy is to gain compliance and avoid withdrawal; keep lands in the program



Stepped enforcement
- 1st reminder
- 2nd reminder
- Notice of Investigation (NOI), including:
  - Notification to township
  - $250 non-compliance fee
  - Issuance of citations
- Withdrawal

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(5) DELINQUENCY. If a tax due under this section is not paid on or before the last day of the August following the date specified under sub. (3), the department shall certify to the taxation district clerk the description of the land and the amount due for the tax and interest. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

History: 1985 a. 29; 1991 a. 39; 2003 a. 228; 2005 a. 64; 2009 a. 365.

77.875 Grazing restricted. An owner of managed forest land may not permit domesticated animals to graze on managed forest land.

History: 1985 a. 29.

77.876 Noncompliance assessment. (1) ASSESSMENT. The department shall certify to each municipality in which the property is located an owner's failure to complete a forestry practice during the period of time required under an applicable management plan, and the municipality shall impose a noncompliance assessment of $250 against the owner for each failure. The department shall mail a copy of the certificate of assessment to the owner at the owner's last–known address and to the municipality.

(2) PAYMENT. An assessment under sub. (1) is due and payable to the municipality on the last day of the month following the date the certificate is mailed to the owner. The municipality shall collect interest at the rate of 12 percent per year on any assessment that is paid later than the due date.

(3) OWNER'S LIABILITY. The owner is personally liable for an assessment under sub. (1). An unpaid assessment becomes a lien against the merchantable timber cut. If the merchantable timber cut is mingled with other wood products, the unpaid assessment becomes a lien against all of the wood products while they are in the owner's possession or in the possession of any person other than a purchaser for value without notice in the usual course of business.

(4) DELINQUENCY. If an assessment due under sub. (1) is not paid on or before the last day of the August following the date specified under sub. (2), the municipality shall certify to the taxation district clerk the description of the land and the amount due for the assessment and interest. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

History: 2003 a. 228; 2005 a. 299.

77.88 Withdrawal; transfer of ownership; nonrenewal. (1) WITHDRAWAL BY DEPARTMENT ORDER. (a) The department may, at the request of the owner of managed forest land or of the governing body of any municipality in which any managed forest land is located, or at its own discretion, investigate to determine whether the designation as managed forest land should be withdrawn. Except as provided in par. (am), the department shall notify the owner of the land and the mayor of the city, the chairperson of the town, or the president of the village in which the land is located of the investigation.

(am) If a city or village is organized under subch. I of ch. 64, the department shall notify the president of the city council or village board of any investigation under par. (a).

(b) Following an investigation under par. (a), the department may order the withdrawal of all or any part of a parcel of managed forest land for any of the following reasons:

1. Failure of the land to conform to an eligibility requirement under s. 77.82 (1).

2. The owner's failure to comply with this subchapter or the management plan.

3. Cutting by the owner in violation of s. 77.86.

4. The owner's development or use of any part of the parcel for a purpose which is incompatible with the purposes specified in s. 77.80.

5. The owner's posting of signs or otherwise denying access to open managed forest land.

(c) If the department determines that land should be withdrawn, it shall issue an order withdrawing the land as managed forest land and shall assess against the owner the tax under sub. (5) and the withdrawal fee under sub. (5m).

(2) SALE OR TRANSFER OF OWNERSHIP. (a) Except as provided in par. (am), an owner may sell or otherwise transfer ownership of all or part of the owner's managed forest land if the land transferred is one of the following:

1. An entire parcel of managed forest land.

2. All of an owner's managed forest land within a quarter quarter section.

3. All of an owner's managed forest land within a government lot or fractional lot as determined by the U.S. government survey plat.

(am) If the land transferred under par. (a) does not meet the eligibility requirements under s. 77.82 (1), the department shall issue an order withdrawing the land from managed forest land designation and shall assess against the owner a withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m).

(b) If the land remaining after a transfer under par. (a) is contiguous and meets the eligibility requirements under s. 77.82 (1) (a) 2. and (b), it shall continue to be designated as managed forest land until the expiration of the existing order, even if the parcel contains less than 10 acres. Notwithstanding s. 77.82 (12), an owner may not file an application with the department for renewal of the order if the parcel contains less than 10 acres. No withdrawal tax under sub. (5) or withdrawal fee under sub. (5m) may be assessed when the remaining land is withdrawn at the expiration of the order.

(c) If the remaining land does not meet the eligibility requirements under s. 77.82 (1) (a) 2. and (b), the department shall issue an order withdrawing the land and shall assess against the owner the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the owner is not entitled to a hearing on an order withdrawing land under this paragraph.

(d) 1. Within 30 days after a transfer of ownership, the transferee shall, on a form provided by the department, file with the department a report of the transfer signed by the transferee. The transferee shall pay a $100 fee that will accompany the report. The fee shall be deposited in the conservation fund. Twenty dollars of the fee or a different amount of the fee as may be established under subd. 2. shall be credited to the appropriation under s. 20.370 (1) (cr). The department shall immediately notify each person entitled to notice under s. 77.82 (8).

2. The department may establish by rule a different amount of each fee under subd. 1. that will be credited to the appropriation under s. 20.370 (1) (cr). The amount shall be equal to the average expense to the department of recording an order issued under this subchapter.

(e) The transferred land shall remain managed forest land if the transferee, within 30 days after the transfer, certifies to the department an intent to comply with the existing management plan for the land and with any amendments to the plan, and provides proof that each person holding any encumbrance on the land agrees to the designation. The transferee may designate an area of the transferred land closed to public access as provided under s. 77.83. The department shall issue an order continuing the designation of the land as managed forest land under the new ownership.

(f) If the transferee does not provide the department with the certification required under par. (e), the department shall issue an order withdrawing the land and shall assess against the transferee the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the transferee is not entitled to a hearing on an order withdrawing land under this paragraph.

(3) VOLUNTARY WITHDRAWAL. An owner may request that the department withdraw all or any part of the owner's land meeting one of the requirements specified under sub. (2) (a) 1. to 3. If any remaining land meets the eligibility requirements under s. 77.82 (1), the department shall issue an order withdrawing the land subject to the request and shall assess against the owner the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m).

2009–10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted on or before July 1, 2012. Statutory changes effective on or prior to July 1, 2012 are printed as currently in effect. Changes effective after July 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official?

Electronic reproduction of 2009–10 Wis. Stats. database, current through 2011 Wis. Act 286.

(3m) WITHDRAWAL FOR FAILURE TO PAY PERSONAL PROPERTY TAXES. If an owner of managed forest land has not paid the personal property tax due for a building on managed forest land before the February settlement date under s. 74.30 (1), the municipality in which the building is located shall certify to the department that a delinquency exists and shall include the legal description of the managed forest land on which the building is located in the certification. Immediately after receiving the certification, the department shall issue an order withdrawing the land as managed forest land and shall assess against the owner of the land the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the owner is not entitled to a hearing on an order withdrawing land under this subsection.

(4) NONRENEWAL. If an owner does not file with the department an application to renew a managed forest land order, the department shall order the land withdrawn at the expiration of the order. No withdrawal tax under sub. (5) or withdrawal fee under sub. (5m) may be assessed.

(5) WITHDRAWAL TAX. The withdrawal tax shall be determined as follows:

(a) Except as provided in pars. (am), (ar), and (b), for land withdrawn during a managed forest land order, the withdrawal tax shall be the higher of the following:

1. An amount equal to the past tax liability multiplied by the number of years the land was designated as managed forest land, less any amounts paid by the owner under ss. 77.84 (2) (a) and (am) and 77.87.

2. Five percent of the stumpage value of the merchantable timber on the land, less any amounts paid by the owner under ss. 77.84 (2) (a) and (am) and 77.87.

(ab) In this subsection:

1. "Expanded order" means an order approved under s. 77.82 (8) for which an application is filed under s. 77.82 (4g) (b).

2. "Original order" means the order from which designated land is withdrawn as authorized under s. 77.82 (4g) (b).

(am) For land that is withdrawn within 10 years after the date on which an initial managed forest land order was issued under s. 77.82 (8) for an application approved under s. 77.82 (7) (d), the withdrawal tax shall be the higher of the following:

1. The amount calculated under par. (a).

2. The amount calculated under s. 77.10 (2) that would have applied to the land on the date on which the order was issued for the land under s. 77.82 (8).

(ar) If any land designated as managed forest land under an expanded order is withdrawn before the expiration date of the original order, the withdrawal tax shall be the sum of the following:

1. For the portion of the land that is designated as managed forest land under the original order, an amount equal to the product of the total net property tax rate in the municipality in the year prior to the year in which the expanded order is approved and the assessed value of the land for the same year, as computed by the department of revenue, multiplied by the number of years under the original order, less any amounts paid by the owner under ss. 77.84 (2) (a) and 77.87 during the time the land was designated as managed forest land under the original order.

2. An amount equal to the product of the total net property tax rate in the municipality in the year prior to this withdrawal and the assessed value of the land for the same year, as computed by the department of revenue, multiplied by the number of years the land was designated as land under the expanded order, less any amounts paid by the owner under ss. 77.84 (2) (am) and 77.87 during the time the land is designated as managed forest land under the expanded order.

(b) For land withdrawn after the renewal of a managed forest land order, the withdrawal tax shall be the higher of the following:

1. An amount equal to the past tax liability multiplied by the number of years since the renewal, less any amounts paid by the owner under ss. 77.84 (2) (a) and (am) and 77.87.

2. Five percent of the stumpage value of the merchantable timber on the land, less any amounts paid by the owner under ss. 77.84 (2) (a) and (am) and 77.87.

(c) For purposes of pars. (a) 1. and (b) 1., if the parcel of land is located in a single municipality, the past tax liability is an amount equal to the product of the total net property tax rate for that municipality in the year prior to the withdrawal multiplied by the assessed value of the parcel of land for the same year, as computed by the department of revenue. For purposes of pars. (a) 1. and (b) 1., if the parcel is located in more than one municipality, the past tax liability is an amount equal to the sum of the products calculated by multiplying the total net property tax rate for each municipality in the year prior to the withdrawal by the corresponding assessed value of the land in that municipality for the same year, as computed by the department of revenue.

(5g) ESTIMATES OF WITHDRAWAL TAX. (a) Upon the request of an owner of managed forest land, the department of revenue, with the assistance of the department, shall prepare an estimate of the amount of withdrawal tax that would be assessed under sub. (5) if the department were to issue an order to withdraw the land under this section.

(b) A request from an owner under this subsection shall be accompanied by a nonrefundable fee payable to the department of revenue of either $100 or the alternative nonrefundable fee calculated under par. (c), whichever is greater.

(c) The alternative nonrefundable fee shall be calculated by multiplying the total number of whole and partial acres by $5.

(5m) WITHDRAWAL FEE. The withdrawal fee assessed by the department under subs. (1) (c), (2) (am), (c), and (f), (3), and (3m) shall be $300.

(6) DETERMINATION OF STUMPAGE VALUE. In determining the stumpage value of merchantable timber for purposes of this section, an estimator agreed upon by the parties or, if they cannot agree, a forester appointed by a judge of the circuit court in the county in which the land is located shall estimate the volume of merchantable timber on the land. The estimate obtained shall be final. The department shall determine the current stumpage value of the merchantable timber, based on the applicable stumpage value established under s. 77.91 (1). The owner shall pay the entire cost of obtaining the estimate.

(7) PAYMENT; DELINQUENCY. Taxes under sub. (5) and fees under sub. (5m) are due and payable to the department on the last day of the month following the effective date of the withdrawal order. Amounts received shall be credited to the conservation fund. If the owner of the land fails to pay the tax or fee, the department shall certify to the taxation district clerk the amount due. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

(8) EXCEPTION. (a) No withdrawal tax or withdrawal fee may be assessed against an owner who does any of the following:

1. Transfers ownership of managed forest land for a public road or railroad or utility right–of–way.

2. Transfers ownership of managed forest land for a park, recreational trail, wildlife or fish habitat area or a public forest to the federal government, the state or a local governmental unit, as defined in s. 66.0131 (1) (a).

3. Transfers ownership of or leases not more than 10 acres of managed forest land to a county, city, village, or town for siting a public safety communications tower.

(b) The department may not order withdrawal of land remaining after a transfer of ownership is made under par. (a) 1., 2., or 3. or after a lease is entered into under par. (a) 3. unless the remainder fails to meet the eligibility requirements under s. 77.82 (1).

2009–10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted on or before July 1, 2012. Statutory changes effective on or prior to July 1, 2012 are printed as currently in effect. Changes effective after July 1, 2012 are designated by NOTES. See *Are the Statutes on this Website Official?*

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Electronic reproduction of 2009–10 Wis. Stats. database, current through 2011 Wis. Act 286.

(9) ORDER; MISCELLANEOUS PROVISIONS. (a) Each withdrawal order issued under this section shall include the legal description of the land withdrawn.

(b) The department shall notify the owner in writing of the withdrawal order, stating the reason for the withdrawal.

(c) The department shall mail a copy of the withdrawal order to each person specified under s. 77.82 (8).

(d) A withdrawal order issued before December 15 of any year takes effect on the January 1 after the date of issuance. A withdrawal order issued on or after December 15 of any year takes effect on the 2nd January 1 after the date of issuance.

(e) If less than a total parcel of managed forest land is withdrawn, the department shall amend the order under s. 77.82 and the management plan to correct the description of the remaining land.

(10) APPLICABLE TAXES. Chapter 70 applies to any land withdrawn from the managed forest land program under this section.

(11) LIABILITY FOR PREVIOUS TAXES. Withdrawal of land under this section does not affect the liability of the owner for previously levied taxes under s. 77.84 or 77.87.

History: 1985 a. 29; 1991 a. 39; 1993 a. 16, 131; 1995 a. 27; 1999 a. 150 s. 672; 2003 a. 228; 2005 a. 64, 299; 2009 a. 186, 365.

The withdrawal provision of sub. (2) (f) is directory upon the DNR and therefore does not require the DNR to withdraw the subject property from the managed forest land program due to noncompliance with certification requirements. Warnecke v. Warnecke, 2006 WI App 62, 292 Wis. 2d 438, 713 N.W.2d 109, 05-0021.

77.885 Withdrawal of tribal lands. Upon request of an Indian tribe, the department shall order the withdrawal of land that is owned in fee that is designated as managed forest land from the managed forest land program. No withdrawal tax under s. 77.88 (5) or withdrawal fee under s. 77.88 (5m) may be assessed against an Indian tribe for the withdrawal of such land if all of the following apply:

(1) The Indian tribe provides the department the date of the order to transfer the land to the United States to be held in trust for the tribe.

(2) The tribe and the department have in effect a written agreement under which the tribe agrees that the land shall continue to be treated as managed forest land until the date on which the managed forest land order would have expired.

History: 2009 a. 28.

77.89 Distribution of moneys received. (1) PAYMENT TO MUNICIPALITIES. By June 30 of each year, the department, from the appropriation under s. 20.370 (5) (bv), shall pay 100 percent of each payment received under ss. 77.84 (3) (b) and 77.87 (3) and 100 percent of each withdrawal tax payment received under s. 77.88 (7) to the treasurer of each municipality in which is located the land to which the payment applies.

(2) PAYMENT TO COUNTIES. (a) Each municipal treasurer shall pay 20% of each payment received under sub. (1) and under ss. 77.84 (2) (a) and (am), 77.85, and 77.876 to the county treasurer and shall deposit the remainder in the municipal treasury. The payment to the county treasurer for money received before November 1 of any year shall be made on or before the November 15 after its receipt. For money received on or after November 1 of any year, the payment to the county treasurer shall be made on or before November 15 of the following year.

(b) The municipal treasurer shall pay all amounts received under s. 77.84 (2) (b) and (bm) to the county treasurer, as provided under ss. 74.25 and 74.30. The county treasurer shall, by June 30 of each year, pay all amounts received under this paragraph to the department. All amounts received by the department shall be credited to the conservation fund and shall be reserved for land acquisition, resource management activities, and grants under s. 77.895.

History: 1985 a. 29; 1987 a. 378; 1991 a. 39; 1995 a. 27; 2003 a. 228, 327; 2005 a. 253, 299; 2007 a. 20.

"Each municipality" in sub. (1) means every municipality where the property is presently located, not every municipality where the property has ever been located. When a parcel was annexed by a village and removed from the program, the village, and not the town that previously contained the parcel, was entitled to the withdrawal tax payment under sub. (1). Town of Somerset v. Department of Natural Resources, 2011 WI App 55, 332 Wis. 2d 777, 798 N.W.2d 282, 10-1501.

77.895 Grants for land acquisitions for outdoor activities. (1) DEFINITIONS. In this section:

(a) "Board" means the managed forest land board.

(b) "Land" means land in fee simple, conservation easements, and other easements in land.

(c) "Local governmental unit" means a city, village, town, or county.

(d) "Nonprofit conservation organization" has the meaning given in s. 23.0955 (1).

(2) PROGRAM. The department shall establish a program to award grants to nonprofit conservation organizations, to local governmental units, and to itself to acquire land to be used for hunting, fishing, hiking, sightseeing, and cross–country skiing. The board shall administer the program and award the grants under the program.

(3) REQUIREMENTS. The department, in consultation with the board, shall promulgate rules establishing requirements for awarding grants under this section. The rules promulgated under this subsection shall include all of the following:

(a) A requirement that the board give higher priority to counties over other grant applicants in awarding grants under this section.

(b) A requirement that, in awarding grants to counties under this section, the board give higher priority to counties that have higher numbers of acres that are designated as closed under s. 77.83.

(c) A requirement that, in awarding grants to towns under this section, the board give higher priority to towns that have higher numbers of acres that are designated as closed under s. 77.83.

(d) A requirement that no grant may be awarded under this section without it being approved by the board of each county in which the land to be acquired is located.

(e) Requirements concerning the use of sound forestry practices on land acquired under this section.

(fm) A requirement that no more than 10 percent of grant funding available under this section may be used to acquire parcels of land that are less than 10 acres in size.

(gm) A requirement that land acquired with a grant under this section be open to hunting, fishing, and trapping during all applicable hunting, fishing, and trapping seasons.

(4) USE OF LAND. Land acquired under this section may be used for purposes in addition to those specified in sub. (2) if the additional uses are compatible with the purposes specified in sub. (2).

History: 2007 a. 20.

77.90 Right to hearing. An applicant under s. 77.82 or an owner of managed forest land who is adversely affected by a decision of the department under this subchapter is entitled to a contested case hearing under ch. 227.

History: 1985 a. 29; 2009 a. 365.

77.905 Procedure in forfeiture actions. The procedure in ss. 23.50 to 23.85 applies to actions to recover forfeitures brought under this subchapter.

History: 1989 a. 79.

77.91 Miscellaneous provisions. (1) STUMPAGE VALUES. Each year the department shall establish reasonable stumpage values for the merchantable timber grown in the municipalities in which managed forest land is located. If the department finds that stumpage values vary in different parts of the state, it may establish different zones and specify the stumpage value for each zone. The stumpage value shall take effect on November 1 of each year. Notwithstanding s. 227.11, the department may not promulgate or have in effect rules that established stumpage values.

2009–10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted on or before July 1, 2012. Statutory changes effective on or prior to July 1, 2012 are printed as currently in effect. Changes effective after July 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official?

Senator Miller
Representative Mason
Representative Sherman
Representative Colón

NATURAL RESOURCES -- WATER QUALITY

Passes 12-4

Omnibus Motion
[LFB Papers #580 Through #586]

Motion:

Move to do the following:

1. *Dam Safety [LFB Issue Paper #580].* Adopt Alternative #A1, as modified, to provide $4,000,000 in general obligation bonding authority for dam safety grants (an additional $1,000,000 BR).

Adopt Alternatives #B3, #C1, and #D2, which would: (a) for dam repair and reconstruction grants, provide up to 50% of the first $400,000 in project costs, and 25% of the next $800,000 in project costs ($400,000 maximum grant award for a $1.2 million project); (b) for dam removal projects, adopt the Governor's recommendation to delete the statutory definition of a small dam and provide grants for up to 100% of estimated project costs up to the maximum state contribution; and (c) maintain the current law requirement that DNR keep an inventory of all dams requiring a dam safety project and related public notice and hearing requirements.

2. *Dam Safety Grant Earmarks.* Earmark $477,000 from the Dam Safety program (grant recipients would not be required to provide a local match) for the following projects: (a) $150,000 to Adams County for the repair and/or reconstruction of Easton Dam; (b) $150,000 to the City of Stanley in Chippewa County for repair and/or reconstruction of Stanley Dam; (c) $150,000 to the City of Montello in Marquette County for repair and or/reconstruction of Montello Dam; and (d) $27,000 to Eau Claire County for repair and/or reconstruction of Lake Altoona Dam, Lake Eau Claire Dam, and Coon Fork Lake County Park Dam.

3. *Dam Fishway Requirements.* Delete the current requirement that DNR may require a dam owner to have sufficient fishways (fish ladders) only if the following conditions are met: (a) DNR must have promulgated rules concerning rights held by the public in navigable waters that are dammed; and (b) a grant program (federal or state) must be in place to equip dams with fishways under which a grant is available to the dam owner. Both of these conditions would be deleted.

4. *Dam Inspection Requirements [LFB Issue Paper #581].* Adopt Alternative #2, which would adopt the Governor's recommendation to: (a) specify that DNR classify each large dam in the state as a high hazard, significant hazard, or low hazard dam; (b) require DNR to inspect

Require that when MMSD contracts for the project authorized under the design-build construction process, it must submit to the Department of Natural Resources (DNR) for approval performance objectives and preliminary designs in a form that is satisfactory to the Department, rather than complete plans.

13. *Recycling Grant for Town of Wrightstown.* Notwithstanding the requirements of the municipal and county recycling grant program, specify $46,000 from the appropriation in 2010-11 be provided as a grant to the Town of Wrightstown in Brown County to purchase new recycling bins. Direct DNR to allocate the grant to the Town of Wrightstown before grants for other eligible applicants are calculated.

14. *Water Pollution Discharge Fees.* Specify the Wisconsin Pollution Discharge Elimination (WPDES) fee for a concentrated animal feeding operation (CAFO) application be $1,200 and assess an annual fee of $345. Require DNR to promulgate a rule establishing annual fees on the basis of the number of animal units owned by an operation. Require the rule to be promulgated by no later than the first day of the 19th month following publication.

15. *Managed Forest Law Withdrawal.* Move to specify that DNR issue a withdrawal order to remove tribal lands from a managed forest law order, and that no withdrawal tax or withdrawal fee may be assessed if both of the following apply: (a) an Indian tribe has provided DNR with documentation which demonstrates that the tribe intends to transfer land currently under a managed forest law order to the United States to be held in trust for the tribe and (b) the tribe and the Department have entered into an intergovernmental agreement in which the tribe has agreed to comply with the existing forestry management plan, and continue to pay all fees associated with the existing MFL order (acreage share fees, closed acreage fees, and yield taxes) until the date the order would have otherwise expired.

Note:

Item #	Provision	2009-10	2010-11	Fund
1	Dam Safety Program	$1,000,000		BR
8	Great Lakes Compact Implementation and Fees	75,000	-75,000	PR

[Change to Bill: $1,000,000 BR]

2009-11 Biennial Budget—Veto Recommendation

DIVISION: Forestry

BUREAU/SUBPROGRAM: Forest Management/Forest Tax Section

ISSUE:

Budget language was introduced as part of Assembly Substitute Amendment 1 to 2009 Assembly Bill 75, May 28, 2009, Sec. 1872r (also proposed in Section 15 of the Joint Finance Motion 528) which proposes amending the Managed Forest Law (MFL) to allow exempted withdrawals of land by Native American tribes if they intend to transfer the land to the United States to be held in trust for the tribe. The proposed amendment requires that the tribes document that their intention to enroll lands into trust status and have in place at the time of applying for the exempt withdrawal a written agreement to require the lands to continue to be treated as MFL until the date on which the MFL order would have expired had it stayed in the MFL program.

This issue was raised to address upcoming concerns from the Potawatomi Tribe when it came to re-enrolling tribal lands under the MFL program. Currently tribes are not exempt from payment of withdrawal taxes and fees if they wish to enroll their lands in federal trust status. Any MFL entry of land shows up as a lien against the land during title searches. The federal government will not accept title of any lands with liens.

The Potawatomi Tribe could allow their lands to remain on the regular ad valorem property tax rolls when their MFL orders expire, however they would like to take advantage of the reduced property taxes that MFL allows prior to having their lands accepted as federal trust lands.

DNR has consistently determined that tribal lands that are being enrolled as federal trust lands do not qualify for the exemption since the land is owned by the federal government for the benefit of a beneficiary (tribes) to the exclusion of the public.

There are several issues that cause concern:

- The language in current form is likely an unconstitutional violation of the uniformity taxation clause of the Wisconsin constitution, since there would be no statutory authority to tax the tribes at the MFL tax rate during the time period between withdrawal from the MFL program and the time of trust status designation.
- There is no provision defining what would constitute an "intent" to transfer land into federal trust status, which would likely lead to conflict or litigation between the Department and the tribes.
- The agreement that would be developed would likely be delegated to the Department of Natural Resources (DNR), since the MFL program is administered by the DNR. Compliance with MFL provisions would be difficult since DNR would not be allowed to use the main enforcement tool of the MFL program if the tribal lands are not enrolled in the MFL program. Any enforcement of the agreement would become a contractual relationship and would likely be heard in federal court.

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DNR and Department of Revenue (DOR) are currently discussing property tax issues with tribes of the Chippewa Nation. Many of these issues are related to MFL and Forest Crop Law (FCL). All tribes could take advantage of the proposed change to the MFL program.

LANGUAGE OF CONCERN: The items in bold and all capital letters are of concern in the proposed wording.

> **SECTION 1872r.** 77.885 of the statutes is created to read:
> **77.885 Withdrawal of tribal lands.** Upon request of an Indian tribe, the department shall order the withdrawal of all land that is owned in fee by that tribe that is designated as managed forest land from the managed forest land program. No withdrawal tax under s. 77.88 (5) or withdrawal fee under s. 77.88 (5m) may be assessed against an Indian tribe for the withdrawal of such land if all of the following apply:
>
> **(1)** The Indian tribe provides the department before the date of the withdrawal order, with documentation that demonstrates that the tribe **INTENDS** to transfer the land to the United States to be held in trust for the tribe.
>
> **(2) THE TRIBE AND THE DEPARTMENT HAVE IN EFFECT A WRITTEN AGREEMENT UNDER WHICH THE TRIBE AGREES THAT THE LAND SHALL CONTINUE TO BE TREATED AS MANAGED FOREST LAND FOR PURPOSES OF SS. 77.83, 77.84, 77.85, 77.86, 77.87, 77.875, 77.876, 77.89, 77.90, 77.905, AND 77.91 UNTIL THE DATE ON WHICH THE MANAGED FOREST LAND ORDER WOULD HAVE EXPIRED.**

VETO RECOMMENDATION: A partial veto of specific wording is recommended.

> **77.885 Withdrawal of tribal lands**. Upon request of an Indian tribe, the department shall order the withdrawal of all land that is owned in fee by that tribe that is designated as managed forest land from the managed forest land program. No withdrawal tax under s. 77.88 (5) or withdrawal fee under s. 77.88 (5m) may be assessed against an Indian tribe for the withdrawal of such land if ~~all of the following apply:~~
>
> ~~(1)~~ The Indian tribe provides the department~~, before~~ the date of the ~~withdrawal~~ order~~, with documentation that demonstrates that the tribe intends~~ to transfer the land to the United States to be held in trust for the tribe.
>
> ~~(2) The tribe and the department have in effect a written agreement under which the tribe agrees that the land shall continue to be treated as managed forest land for purposes of ss. 77.83, 77.84, 77.85, 77.86, 77.87, 77.875, 77.876, 77.89, 77.90, 77.905, and 77.91 until the date on which the managed forest land order would have expired.~~

FISCAL IMPACT OF VETO:

This language would exempt tribes from being subject to the withdrawal tax and fee upon the land being entered into federal trust status, and would reduce the state's administration costs to create and administer agreements or contracts with the tribes. Local municipalities would not receive the financial benefits they would have had there been agreements for the tribes or the

state to make the payments to local municipalities as if the tribal lands were entered into MFL until the date the MFL would normally have expired.

Local municipalities may lose the following amounts of money over the course of the time frame in which lands are withdrawn from MFL and subject to an agreement or contract that would require tribes and the state to make payments as if the lands were in MFL.

Acreage Share Tax	$ 692,300
Annual Aid Payment	$ 206,600
Yield Tax	$ 640,600
TOTAL	$ 1,539,500

EXPLANATION:

This partial veto would make it easier for tribes and the state to administer the MFL program. Tribes could remove lands from MFL once they are ready to enter lands into federal trust status. Their lands would go from being taxed as MFL to being tax exempt. All provisions of the MFL program would cease to exist at that time. This process is similar to the process for lands that go to other public entities, except that payment-in-lieu of tax (PILT) payments will not be made to the local municipalities.

This veto language would eliminate the constitutional conflict between allowing taxable lands to be treated and taxed as if they are MFL in the period of time when lands are no longer in MFL and before they are accepted as federal trust lands.

Contracts with the tribes would not need to be created or administered by the DNR to collect taxes or other payments in which the tribes are not subject to except by virtue of the agreement. This would save time and allow for greater cooperation between the state and the tribes for mutual benefits outside the terms of a contract.

VETO MESSAGE

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I am vetoing this provision because it could be very costly to dam owners to install fishways in the absence of a grant program. Moreover, it would be inappropriate to impose this requirement before rules are promulgated detailing how fishways are to be constructed and maintained.

13. Managed Forest Law Withdrawal of Tribal Land

Section 1872r

This section specifies that the Department of Natural Resources issue a withdrawal order, upon request of an Indian tribe, to remove tribal lands from a managed forest law order without paying a withdrawal tax or fee if an Indian tribe has provided the department with documentation which demonstrates the tribe's intent to transfer land currently under a managed forest law order to the United States to be held in trust, and the tribe and department have entered into a written intergovernmental agreement in which the tribe agrees to comply with the existing forestry management plan and other program requirements until the date the order would have otherwise expired.

I am partially vetoing this section because it may prevent a tribe from being able to place land in federal trust due to the potential encumbrances against the land. I am deleting language in order to establish a clear process wherein land will be removed from a managed forest law order when the tribe has a date for transfer to federal trust status, rather than documented intent to transfer the land. Also, I am deleting language in order to specify that the provision relates only to particular parcels of land owned in fee that would be removed from a managed forest law order, instead of all land owned by that tribe. In many instances a tribe may only want to remove some parcels and often land is owned by a tribal entity instead of directly by the tribe. In addition I am deleting certain statutory references contained in the section because they include statements that allow for the potential taking of the land through a tax deed if payments are not made. Even with this veto, the intent remains that the land will continue to be treated as managed forest land until the date on which the order would have expired.

Through use of this partial veto I ensure that the intent of the provision prevails. The ability of a tribe to transfer land under a managed forest law order to federal trust status is maintained by removing potential encumbrances and preventing the assessment of property taxes instead of managed forest law payments.

14. Nonresident Boat Sticker

Sections 271m, 706m and 9137 (3c)

This provision creates a nonresident boat sticker of $15 with revenues deposited to the boat account of the conservation fund, effective January 1, 2010. This provision also requires the Department of Natural Resources to promulgate rules establishing procedures for issuing the boat stickers and regulating the activities of license agents authorized to issue the stickers; further, the department has the authority to use the emergency rule process without the finding of an emergency.

Comparative Summary of Budget Recommendations

2009 Act 28

Legislative Fiscal Bureau
August, 2009

2009-11 Wisconsin State Budget

Appropriation	Annual Estimated Expenditures
County Forest Loans Severance Payments	$100,000
County Forest Project Loans Severance Payments	350,000
Camping Reservation Fee Payments	1,150,000
DNR Rental Property-Land and Wildlife Management Facilities	450,000
DNR Rental Property- General Facilities	180,000
	$2,230,000

All of these appropriations are continuing appropriations which were listed in the Chapter 20 appropriations schedule at $0 although significant expenditures are made from each.

12. MANAGED FOREST LAW WITHDRAWAL

Joint Finance/Legislature: Specify that DNR issue a withdrawal order, upon request of an Indian tribe, to remove all tribal lands owned in fee title by that tribe from a managed forest law order. Further, specify that no withdrawal tax or withdrawal fee may be assessed if both of the following apply: (a) an Indian tribe has provided DNR, before the date of the withdrawal order, with documentation which demonstrates that the tribe intends to transfer land currently under a managed forest law order to the United States to be held in trust for the tribe and (b) the tribe and the Department have entered into a written intergovernmental agreement in which the tribe has agreed to comply with the existing forestry management plan and other MFL program requirements as specified, including continuing to pay all fees associated with the existing MFL order (acreage share fees, closed acreage fees, and yield taxes) until the date the order would have otherwise expired.

Veto by Governor [A-13]: The Governor's partial veto deletes the requirement that the land which an Indian tribe requests be removed from MFL be "all" land enrolled in MFL that is owned in fee title "by that tribe." Instead, DNR must issue a withdrawal order to remove any land, owned in fee, that a tribe requests be removed from MFL. The Governor's partial veto also modifies the requirement associated with the transfer of the land from the tribe to the federal government. Under the veto, the tribe must provide DNR the date of the order when the land will be transferred to the United States to be held in trust for the tribe, rather than proof of the tribe's intent to transfer the land. In addition, the veto deletes references to specific statutes related to MFL program requirements and fees. This is intended, in part, to remove a reference to a process for the collection of delinquent taxes on MFL lands that may have prevented a parcel from being placed into federal trust. However, the act retains the general requirement that the tribe and the Department enter an intergovernmental agreement under which the tribe agrees that the land shall continue to be treated as managed forest land until the date on which the MFL order would have otherwise expired.

[Act 28 Sections: 1872g and 1872r]

[Act 28 Vetoed Section: 1872r]