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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2019 Assembly Bill 856**

**Assembly Amendment 1**

### 2019 ASSEMBLY BILL 856

Assembly Bill 856 makes several changes to the law relating to the managed forest land (MFL) program administered by the Department of Natural Resources (DNR).

#### Minimum Acreage

Under current law, a parcel must consist of at least 20 contiguous acres to be eligible for the MFL program. Parcels enrolled before April 16, 2016 may renew their enrollment in the program one time without satisfying the 20-acre requirement. [s. 77.82 (1) (a) 1., Stats.]

The bill retains the 20-acre minimum acreage requirement, but allows the 20-acre parcel to be composed of two 10 contiguous acre portions, that are not contiguous to each other, if they are on a tract of land under the same ownership. This change would apply to land designated as MFL by an order issued on or after April 16, 2016.

#### Buildings and Improvements

Current law generally prohibits the enrollment of a parcel if there is any building or improvement associated with a building located on a parcel. An “improvement” is any accessory building, structure, or fixture that is built or placed on the parcel for its benefit or landscaping done on the parcel. However, “improvement” does not include: a public or private road; a railroad or utility right of way; certain fences; culverts; bridges; certain hunting blinds; or structures and fixtures needed for sound forestry practices. [s. 77.82 (1) (b) 3., and (bp), Stats.]

The bill removes the exemption from the definition of prohibited “improvements” for structures and fixtures needed for sound forestry practices but specifically allows a building used exclusively for storage to be on MFL land. This change would apply to land designated as MFL by an order issued on or after April 16, 2016.

#### Additions

Under current law, an MFL owner may apply to DNR to add contiguous parcels of at least three acres in size to an existing MFL order. [s. 77.82 (4), Stats.]

The bill removes the minimum three acre requirement and allows a parcel of any size to be added if it is contiguous to MFL land under the same ownership and meets the eligibility requirements under the original enrollment order. If the additional parcel is not contiguous to the MFL land under the same ownership, the additional parcel must be at least 10 acres in size.

#### Material Change

Under current law, the DNR is prohibited from amending or otherwise changing the terms of an existing MFL order or forest management plan to conform with changes made to the MFL statute after

the order was entered or the plan was approved. If a new statute is enacted or rule promulgated during the term of the order that materially changes the terms of the order, then the owner must elect to either accept the modified contract or to voluntarily withdraw from the MFL program without penalty. [s. 77.82 (11), Stats.]

The bill specifies that a statutory change does not constitute a material change to an MFL order unless the act that makes the change states that the act or a provision in the act makes a material change to orders entered under prior law. Similarly, the bill specifies that a promulgated rule does not constitute a material change to an order unless the rule includes a statement that it constitutes a material change to orders entered under prior rules, and DNR includes in its report to the Legislature a statement that the rule constitutes a material change to orders entered into under prior rules and an analysis of this determination. This change would first apply to a statutory change in an act that takes effect on the effective date of the bill.

## **Withdrawal Tax and Fee for Land Transfers**

Under current law, an owner may sell or otherwise transfer ownership of all or part of a parcel of MFL land.

Current law specifies that if the transferee does not provide DNR with the certification of their intent to comply with the existing management plan for the land, DNR is required to withdraw the land from the program and to assess the withdrawal tax and fee. In addition, if land remaining after a transfer does not meet eligibility requirements, DNR must withdraw the land from the program and must assess the withdrawal tax and fee. [s. 77.88 (2) (ac) and (c), Stats.]

The statutes allow an MFL owner to voluntarily withdraw an entire parcel, or part of a parcel, from the MFL program. However, current law is silent regarding whether the DNR may assess a withdrawal tax and fee under these circumstances. [s. 77.33 (3) (am) and (b), Stats.]

The bill authorizes, rather than requires, DNR to assess the withdrawal tax and fee under these two circumstances.

## **Withdrawal for Productivity or Sustainability**

Current law authorizes an owner to request to withdraw part of the owner's MFL land without paying the withdrawal tax or fee, and requires DNR to issue an order of withdrawal for such land, if the DNR determines that the parcel is unable to meet productivity requirements, or is unsuitable, due to environmental, ecological, or economical concerns or factors, for the production of merchantable timber. The order must withdraw only the number of acres necessary for the parcel to resume its productivity. [s. 77.88 (3k) and (3L), Stats.]

The bill clarifies that if the land remaining after either type of withdrawal will not meet the eligibility requirements under the owner's MFL order, the DNR must withdraw the entire parcel from the program. As under current law, no withdrawal tax or fee would be assessed.

## **Withdrawal for Small Land Sales**

Current law authorizes an MFL owner to voluntarily withdraw part of an MFL parcel (one to five acres) for purposes of selling the land or using the withdrawn portion of the parcel as a construction site. Such withdrawals are authorized one time during a 25-year order and two times during a 50-year order. An owner must pay the withdrawal tax and fee. [s. 77.88 (3j), Stats.] Current law separately allows an MFL owner to sell or transfer ownership of all or part of MFL land an unlimited number of times per order. [s. 77.88 (2) (am), (b) and (c), Stats.]

The bill removes the voluntary withdrawal for the sale of land, but retains the voluntary withdrawal option for use as a construction site.

## **Large Ownerships**

Current administrative rule authorizes DNR to modify management plan requirements for ownerships exceeding 1,000 acres in size after consideration of certain factors. [s. NR 46.18 (4), Wis. Adm. Code.]

The bill specifically authorizes DNR to promulgate rules that subject large ownerships to management plan requirements that are different from the plan requirements in the MFL statute. [See s. 77.82 (3), Stats.]

## **Taxation of Buildings on MFL Land**

Under current law, buildings on MFL land are assessed and taxed as personal property. [ss. 70.365 and 77.84 (1), Stats.]

The bill removes the directive to assess and tax buildings on MFL land as personal property.

## **Leasing**

2015 Act 358 repealed a broad prohibition on leasing closed MFL land and created a more specific provision allowing leasing. Specifically, current law authorizes an owner of MFL land designated as closed to enter into a lease or other agreement for consideration that permits persons to engage in recreational activity on the land, but does not specifically allow or prohibit leasing in other instances. [s. 77.83 (2) (ar), Stats.]

The bill repeals this provision. The effect of that change is to remove the remaining statutory restrictions on leasing land enrolled in the MFL program.

## **ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 includes the following changes to the bill:

- Retains the key substantive changes to minimum acreage requirements under the bill, but modifies the language in various provisions of the bill to provide greater clarity. Under the amendment, the term “parcel” applies throughout the MFL statute to land that is at least 10 acres in size. The amendment retains a requirement that newly enrolled land must contain at least a total of 20 acres in parcels located on a tract of land under the same ownership. The amendment makes corresponding changes to provisions of the bill relating to additions to existing orders and grounds for voluntary withdrawals from the program.
- Retains the provision of the bill allowing for buildings used exclusively for storage on MFL property, and removes the repeal of a provision allowing for “structures and fixtures that are needed for sound forestry practices” on MFL property. That change has the effect of allowing both certain structures and fixtures and buildings used exclusively for storage on MFL property.
- Removes a change that allowed, rather than required, DNR to assess a withdrawal tax and fee on MFL land withdrawn because a transferee failed to provide DNR with required certification of an intent to comply with the management plan for the land. Instead, the amendment allows, rather than requires, DNR to assess a withdrawal tax and fee on transferred MFL land that is withdrawn because it does not meet MFL eligibility requirements.

- Removes all provisions in the bill relating to the taxation of buildings on MFL property, with the effect of restoring current law with respect to the method of taxing such buildings.

## **BILL HISTORY**

Representative Mursau offered Assembly Amendment 1 on February 11, 2020. On February 12, 2020, the Assembly Committee on Forestry, Parks and Outdoor Recreation voted to recommend adoption of the amendment, and passage of the bill as amended, each by a vote of Ayes, 7; Noes, 4.

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