

# FORESTRY FACTS



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### Proposed Legislative Changes to the MFL: Focus on Local Government

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*This forestry facts reviews the proposed changes to the Managed Forest Law, a property tax incentive program for forest landowners, recommended by a Legislative Council Special Committee.*

#### WHAT IS IT?

Enacted in 1985, the Managed Forest Law (MFL) is a property tax incentive program for landowners. In exchange for reductions in annual property taxes, landowners agree to follow a Department of Natural Resources (DNR) approved management plan. They also pay a 5% yield tax on the value of commercial timber harvested. Landowners may enroll for either 25 or

50 years, with penalties and interest for early withdrawal. Current enrollment totals ~ 3,000,000 acres (19% of total forestland) and 44,052 individual parcels.

Land may be enrolled as “open” or “closed” to public access for recreation, but no more than 160 acres may be closed. The minimum enrollment size is 10 acres. Instead of property taxes, MFL participants pay an open “acreage fee” and, if appropriate, an additional closed “acreage fee” for their enrolled lands (Table 1). Forest management on enrolled land is subject to DNR oversight and must follow sound forestry practices. Nearly all MFL land is certified as environmentally sustainable and contributes to the state’s wood products sector—second among all sectors.

Unlike property tax payments that reflect local assessments and mill rates, open and closed acre fees are based on the statewide average with everyone paying the same per-acre fees regardless of assessed values. The amounts paid to local units of government also differ. Counties and towns share the open fee, while the closed fee is sent to the DNR (Table 2). School districts receive no portion of the MFL fees, but school aids are adjusted based on the amount of public and MFL lands in the district.

Table 1: MFL tax rates and acres enrolled, 2010

Tax rates for land entered before 2005	
Open	\$0.67 per acre (1,047,910 acres)
Closed*	\$0.67 + \$0.90 = \$1.57 per acre (1,472,023 acres)
Tax rates for land entered after 2004	
Open	\$1.67 per acre (100,533 acres)
Closed*	\$1.67 + \$6.67 = \$8.34 per acre (411,404 acres)
Enrollment Totals	
Open	1,148,443 acres (37.9%)
Closed	1,883,427 acres (62.1%)
TOTAL	3,031,870 acres

\*Closed lands pay the open rate plus an addition 4 times the open fee. Sources: DNR, DOR

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**WHY CHANGE NOW?**

Many outside of Wisconsin see the MFL as a highly successful forestry program. However, the Legislature has taken many opportunities to “tweak” the program to correct real and perceived problems. These changes, though, often have unintended consequences. Moreover, changes to other laws and programs (e.g., shared revenues, agricultural use valuation, etc.) have changed how the MFL is perceived. For example, prior to 2004, dynamic revenue sharing (i.e., state aids) made up any loss in property tax revenue for MFL lands.

In short, it is not difficult to find some interest that wants to change the MFL, or even do away with it. In one summary, the Wisconsin Council on Forestry identified ten concerns that, in their view, jeopardized the MFL’s future and would be worthy of legislative review (Table 3).

When faced with complex issues, the Legislature, through the Joint Legislative Council, may form special committees to explore and find solutions. Each special committee is tasked with studying topics and recommending comprehensive legislative fixes. Special committees are comprised of both Assembly and Senate legislators and public members who represent key interests or have relevant expertise. Committees are expected to dedicate substantial effort, and receive considerable testimony in preparing legislative proposal for consideration.

In mid 2010, the Joint Legislative Council approved the formation of the “Special Committee on Review of the Managed Forest Land Program.” This committee was *...directed to review the Managed Forest Land (MFL) Program in order to ensure the long-term management and sustainability of private forest lands and to increase participation in the program. The committee shall review the following issues:*

- (a) the scope and statutory purposes of the MFL program;
- (b) ways to increase public access on MFL lands;
- (c) the relationship between local zoning and the entry of parcels in the MFL program;
- (d) the impact of MFL enrollment on local and county revenues; and
- (e) trends in forest ownership and trends in forest product markets including biofuels.

Table 2: Distribution of MFL taxes, fees, and payments

Tax, fee, or payment	Current rate	Government recipient		
		DNR	Town	County
Open fee	see Table 1		80%	20%
Additional closed fee	see Table 1	100%		
State contribution	\$0.20 per acre		80%	20%
Yield tax	5% per harvest		80%	20%
Non-compliance fee	\$250		80%	20%
Withdrawal fee	\$300	100%		
Withdrawal tax	various		80%	20%

Source: Rickenbach & Saunders 2009

The committee included three Senators, one Representative, and fourteen Public Members. The public members represented landowner, industry, local government, academic, and NGO interests. Two former legislators familiar with forestry issues were also public members. Over the course of four full committee meetings and four subcommittee working meetings, the committee took written and oral testimony, derived and evaluated alternatives, and completed its work by voting on seven legislative changes to the MFL.

Table 3: Ten specific concerns identified by the Wisconsin Council on Forestry related to the MFL (2010)

Specific Concerns	
Contractual language	Scope of the program
Leasing	Tax levels
Local government involvement	Idle agricultural lands
Local government revenue	Program future and obsolescence
Parcelization and fragmentation	Public access

Source: Wisconsin Council on Forestry

**PROPOSED CHANGES**

The proposed changes include fixes (e.g., leases) and new directions (e.g., forest enterprise areas). All seven are described below.

**Leasing**

Landowners would be permitted to the leasing of MFL lands for recreational activities. Under language inserted into the 2007-2009 budget, leasing of MFL closed lands—is not permitted. Current law also limits the types of informal arrangements that a landowner and a user can enter into that might provide preferred access to that user. The proposed changes would repeal the leasing prohibition. Recreational activities under the MFL include hunting, fishing, hiking, sightseeing, cross-country skiing, horseback riding, and staying in cabins.

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## **Taxation**

Changes on how the closed acre fee is calculated and how it's distributed are proposed. First, for all new enrollments (including re-enrollments for plans that expire) the closed acre fee would be the greater of (a) current law, or (b) 25% of the actual taxes that would apply to the parcel based on current assessments. Second, the closed acre fee would be distributed among the town (32%), county (48%), and DNR (20%). Also under this change, counties would have to spend 5/6 of their share to provide public recreation via purchase, lease, easement, or other agreement. If 40% of the land in the county is already available for public recreation, the 5/6 must be used to improve resource management.

## **Board of Review**

If enacted, landowners who are dissatisfied with a DNR decision regarding a "sound forestry practice" would have an additional option for review. Under current law, landowners may only appeal DNR decisions through a contested case hearing. The proposed "Managed Forest Land Review Board" would provide an alternative, but only as it relates to the determination of a "sound forestry practice" (e.g., harvest practice, regeneration, etc.). The Board would be comprised of seven members including one landowner enrolled in the MFL. The Board would review the complaint, and make a recommendation to the State Forester, who makes a final determination. A landowner unsatisfied with the State Forester's decision could still seek redress through a contested case hearing.

## **Annual Allowable Cut**

Administratively, there are two categories of MFL enrollments: small and large. Small accounts are those held by woodland owners and are typically smaller than 1,000 acres. Small account landowners must have a DNR-approved, written management plan. Large accounts are comprised of forest industry and real estate investment trusts larger than 1,000 acres. These account holders must have a strong forest management capacity (e.g., foresters on staff, inventory data, etc.) and comply with DNR information requests, but operate with greater flexibility as to where and when to harvest. Both small and large account landowners must follow all applicable DNR rules.

Under this proposed change, the DNR would have to calculate how much timber large account holders would be allowed to harvest in a given year. Most likely, the allowable cut would provide a low and high value within which harvest volumes would fall.

## **Group Enrollments**

The DNR would be directed to create new rules that to allow for the creation of "MFL groups." A group would include any number of MFL enrollments whose total combined enrollment was 1,000 or more acres, and have sufficient management and oversight capacity to meet all MFL requirements. In exchange for group membership, landowners would be permitted greater flexibility in timing and coordinating forestry practices with other group members.

## **Forest Enterprise Areas**

The creation of "Forest Enterprise Areas" (FEAs) is also proposed. Towns or counties with designated FEAs would be eligible to receive payments totaling \$1.00 and \$0.50, respectively, for each MFL acre in an FEA. Towns and counties could spend this money on sustainable forestry and forest-based economic development. Under this proposal, the DNR is instructed to create administrative rules that allow the development of up to 10 "pilot" FEAs with an initial cumulative cap of 75,000 acres. Under full implementation, cumulative area would be capped at 200,000 acres. Payments to towns and counties would come from the forestry account of the conservation fund.

## **Adding to an Existing Order**

Lastly, a landowner with a current MFL enrollment could add fewer than 10 acres to that current enrollment. The addition would be subject to the current open or closed acreage fees rates, while the original portion would be subject to the fee rates applicable when initially enrolled. Under existing law, to add three acres or more, landowners must essentially re-enter the original area plus the addition as a new MFL enrollment (although they are not subject to the withdrawal fee or tax). This is particularly important to those landowners with parcels enrolled prior to 2005, when the acreage fees were lower (Table 1).

## **FISCAL IMPACTS ON TOWNS & COUNTIES**

Two recommendations of the Special Committee, if adopted, could directly impact local government finances. First, changes in how closed acre fees are calculated and distributed would increase the amount of money towns and counties might receive from closed MFL lands in their jurisdiction. Second, forest enterprise areas (FEAs) would create new, voluntary revenue options for forestry-related activities. Both are discussed in greater detail below.

**New Closed Acre Fee and Distribution**

A key provision of the proposed changes would increase the closed acre fee for new MFL enrollments. This would include, re-enrollment at the expiration of current agreements. Currently, MFL enrollees pay \$8.34 per acre (Table 1). This value is 25% of the statewide average for forestland, and reflects both the open acreage fee (5% or \$1.67) and the additional closed acre fee (20% or \$6.67). This value is recalculated every five years. Under this proposal, landowners would pay the greater of

- (a) the current method just described,
- (b) 25% of the actual taxes that would apply to the parcel based on current assessment.

The values from both approaches would be compared annually and the higher of the two paid.

More important to towns and counties, though, is the distribution of the additional closed fee. Under current law, all the proceeds from the closed fee go to the DNR. The purpose of these funds is to purchase recreational access; however, none of the money collected has yet to be spent for this purpose due to budget shortfalls. Under the Special Committee’s proposal, the additional closed fee would be split among the DNR, towns, and counties (Table 4).

Towns, which actually receive the payments from landowners, would send 20% of the additional closed fee to the DNR and 48% to the county, retaining 32% for municipal use. Counties must spend 5/6 of what they receive on public recreational access through purchases, easements, leases, or other agreements. However, if more than 40% of the county is open to public recreation (e.g., County Forest, open MFL, State Park, etc.), the 5/6 portions must be spent on activities that improve resource management (e.g., forestry, wildlife management).

**Forest Enterprise Areas (FEAs)**

The proposed legislation also would direct the DNR to write rules for the creation of FEAs. Similar to agricultural enterprise areas, towns and counties with this designation would be eligible to receive funds to support sustainable forestry or forest-based economic development activities. The DNR would need to specify the full range of

activities by administrative rule, but activities might include landowner outreach programs and MFL plan writing. Towns and counties in an FEA would annually receive \$1.00 and \$0.50, respectively, per acre of MFL land in the FEA and within their respective jurisdictions.

The minimum size of a FEA would be 5,000 acres. In addition, a FEA must also include at least 1,000 MFL acres. Initially, only 10 FEAs with a maximum combined area of 75,000 total acres (i.e., MFL + non-MFL) would be allowed. Beginning in 2013, the total area could grow to 200,000 total acres with no limit on the number of FEAs designated.

Towns and counties would apply to the DNR to create a FEA. In reviewing applications, the DNR would have to consider how the FEA fit with local use planning and zoning. In addition, a FEA could incorporate the “MFL group” concept that is also part of the proposed changes. Additional details would be determined through the rule-making process. The overall intent, though, is to provide a financial incentive for local government to pursue sustainable forestry and economic development.

Table 4: Distribution of MFL taxes, fees, and payments

Tax, fee, or payment	Current Distribution			Proposed Distribution		
	DNR	Town	County	DNR	Town	County
Open fee		80%	20%		80%	20%
Additional closed fee	100%			20%	32%	48%*
State contribution		80%	20%		80%	20%
Yield tax		80%	20%		80%	20%
Non-compliance fee		80%	20%		80%	20%
Withdrawal fee	100%			100%		
Withdrawal tax		80%	20%		80%	20%

\*Only 1/6 of the county closed fee distribution is for discretionary spending. 5/6 must be applied toward the public access or, in some cases, resource management.

**NEXT STEPS**

While these two might most directly affect local government, all the changes have implications for private forestry and those involved with it. However, the picture is far from clear. The proposed changes must complete the legislative process. And, it is fair to assume that changes will occur. Next, I describe the legislative process, and point out the key place where you can get involved and have an impact.

There are five steps for a Legislative Council Special Committee bill to become law:

1. Approval by the Legislative Council,

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2. Introduction to the Assembly and the Senate,
  3. Approval by the appropriate standing committee(s) in each chamber,
  4. Approval by each chamber, and
  5. Governor's signature into law.

As an interested party, you are likely to have your best chance to influence or change the proposed language in the committee process (#3).

Assuming the full Legislative Council approves the committee's proposal, it will likely be assigned to the Assembly Forestry Committee. In the Senate, the picture is less clear. A logical choice would be the Senate Agriculture, Forestry, and Higher Education Committee. However, it might also go to the Financial Institutions and Rural Issues Committee, as Senator Dale Schultz, Chair of Special Committee, also chairs that standing senate committee. I would recommend writing a letter to Chairs of these committees (and copying your local assemblyperson and senator), and testifying if you are able.

As to the timeline, it is expected that the Legislative Council will consider the Special Committee's report as early as late April 2011. After that, it depends on how full the docket is, and the level of interest among key individuals to move it forward. I will be tracking progress on my blog, <http://notcountingtrees.org>. In the end, any legislation is only as good as the process that creates it. Your involvement and opinion are a part of that. If you feel strongly, get involved!

*Additional information on the proposed changes and tracking of progress is at <http://notcountingtrees.org>.*

*Anticipated obsolescence, April 2012*

*Mark Rickenbach is associate professor and extension specialist, and was a public member of the special committee*

*Acknowledgement: I appreciate the reviews provided by Rachel Letzing and Scott Grosz, both Legislative Council Staff Attorneys. However, all errors or omissions are solely my responsibility.*

*more forestry information at <http://www.woodlandinfo.org>*