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Proposed Legislative Changes to the MFL: Implications for Current, New, & Renewing Landowners

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This forestry fact 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 ~ 44,000 individual parcels.

Land may be enrolled as “open” or “closed” to public recreational access, 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. 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

acreage 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. School districts receive no portion of the MFL fees, but school aids are adjusted based on the amount of public and MFL lands in a school district.

PROPOSED CHANGES

Proposed changes to the law include fixes and new directions. The Legislature is expected to consider these changes in Fall 2011. If passed as is, the changes would offer new tools for landowners, higher taxes for new participants, and greater flexibility. Below are likely effects on both existing and new /renewing participants.

SIMILAR EFFECTS ON BOTH EXISTING AND NEW/RENEWING LANDOWNERS

LEASING:

Leasing would be permitted for recreational activities such as hunting, fishing, hiking, sightseeing, cross-country skiing, horseback riding, and staying in cabins. Under language inserted into the 2007-2009 budget, leasing of MFL closed lands—is not permitted. Current

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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.

BOARD OF REVIEW:

Landowners could request a review of DNR decisions related to "sound forestry practices" (e.g., timber harvesting) under this provision. The Board of Review 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. Such a proceeding does not prevent legal recourse through contested case hearing, which is currently allowed.

GROUP ENROLLMENTS:

The DNR would be directed to create new rules to allow for the creation of "MFL groups." In exchange for group membership, landowners would be permitted greater flexibility in timing and coordinating forestry practices with other group members. Effects are unclear as substantial deference is given to the administrative rules process to set group enrollment eligibility. We presume that all MFL participants (i.e., current, new, renewing) will be eligible, but that is not certain.

ANNUAL ALLOWABLE CUT:

This provision would apply if a landowner is part of "Group enrollment." 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.

FOREST ENTERPRISE AREAS:

The creation of "Forest Enterprise Areas" (FEAs) is also proposed. MFL enrollments are the basis for local aid payments that support sustainable forestry and forest-based economic development. As conceived, enterprise areas could offer incentives to landowners. 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 then 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. Effects are unclear as deference is given to the administrative rules process to create forest enterprise area rules and application processes.

PRIMARY EFFECT ON NEW/RENEWING LANDOWNERS

TAXATION:

The open acreage fee remains the same, but new closed acreage fees are proposed. Closed acreage fees would be the greater of either (a) the current method, or (b) 25% of the actual taxes that would apply to the parcel based on current assessments. Most new and renewing landowners would pay more. Current MFL enrollees would continue under their present closed fee schedule.

Currently, 100% of the closed acreage fee is allocated to the DNR. Under the proposed change, it 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.

PRIMARY EFFECT ON EXISTING LANDOWNERS

ADDITION TO EXISTING ORDERS:

Landowners could add up to 10 acres to an existing MFL entry with only the addition subject to new MFL open and closed rates. This may affect new /renewing landowners at some

point in the future if they seek to add additional acreage. 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.

NEXT STEPS

All 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.

The Legislative Council approved the committee's recommendations on May 4, 2011. Four steps remain for the changes to become law:

1. Approval by the Legislative Council,
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). We recommend contacting your local assemblyperson or senator. We 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>.

More forestry information is at <http://www.woodlandinfo.org>.

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*This forestry fact should be reviewed in **April 2012** for continuing relevance.*