



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #465

### Managed Forest Law Timber Cutting Notices (DNR -- Parks and Forestry)

[LFB 2015-17 Budget Summary: Page 317, #11]

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#### CURRENT LAW

Current law requires a landowner with land enrolled in the MFL program who intends to cut merchantable timber to file a notice of intent to cut the timber and request DNR approval of the proposed cutting. All cutting specified in the notice is required to begin within one year after the date the proposed cutting is approved.

#### GOVERNOR

Delete 4.0 positions and \$324,500 forestry SEG annually. Further, specify that an owner who intends to cut merchantable timber on managed forest land (MFL) is not required to obtain approval from DNR if the owner is required under the terms of an approved management plan to cut merchantable timber and a cooperating forester provided the required notice of intent to cut to the Department. Also, specify that, if a cooperating forester submits the timber cutting notice, all cutting specified in the notice must begin within one year after the date on which the notice is filed.

#### DISCUSSION POINTS

1. The administration submitted an errata clarifying that the intent of the bill was for DNR approval to not be required for a cutting notice prepared by a cooperating forester for timber to be harvested on forest crop law (FCL) land as well as managed forest law (MFL) land. Under current law, for FCL land, DNR may examine the lands specified in the cutting notice, and after examination, may prescribe the amount of forest products to be removed. Under the bill as

modified, if the cutting notice is provided by a cooperating forester, DNR would not be allowed to prescribe the amount of timber cut. Under current law, landowners enrolled in FCL are not statutorily required to have a forestry management plan (MFL enrollment requires an MFL management plan). DNR indicates that landowners enrolled in FCL work with the Department under what the Department refers to as a management schedule to ensure that the landowner practices sound forestry management.

2. Under administrative rules, cooperating foresters must apply to DNR and, if approved, enter into a cooperating forester agreement with the Department. Generally, the cooperating forester agreements are between DNR and a forestry firm, although an individual may constitute a firm in some cases. To qualify, each cooperating forester is required to have a bachelor's or higher degree in forestry from a school with an approved forestry curriculum and each forester must complete at least 10 hours of DNR approved training annually. Examples of qualifying training include, but are not limited to: annual cooperating forester meeting, cross training for loggers and foresters; DNR regional or in-service training sessions pertaining to forest management activities; MFL training and updates; and insect and disease training. The Department refers landowner requests for forestry assistance to cooperating foresters to provide private forestry assistance.

3. The administration estimates that the elimination of the requirement of DNR review of certain cutting notices would result in a workload reduction of approximately 4.0 FTE. While long-term cutting notice data was not readily available, DNR indicates that the average number of cutting reports filed for MFL land (which would be similar to the number of cutting notices filed with the exception of those cases where a notice was filed but cutting did not take place) during fiscal year 2011-12, 2012-13, and 2013-14, was approximately 3,000. Based on the Division of Forestry work plan, DNR estimates that review of each cutting notice filed requires an average six hours of DNR forester staff time, meaning forestry staff spent approximately 18,000 hours annually reviewing cutting notices during the last three fiscal years. DNR indicates the number of cutting reports filed for FCL lands is generally less than 100 per year and does not comprise a large workload. (FCL enrollments have been declining as many enrollees convert to MFL, and the last FCL order expires in 2035.)

4. From September to December, 2014, a total of 1,414 cutting notices were filed, of which 59% were submitted by cooperating foresters, 23% by DNR foresters, 6% by landowners, 6% by private foresters, and 6% by loggers. Assuming a similar number of cutting notices were filed by cooperating foresters under the bill, DNR staff would review approximately 40% of cutting notices and would not be required to review 60% of cutting notices. This would result in a reduction in workload of approximately 10,800 hours or over five full-time equivalent staff. Therefore, the administration's estimate of 4.0 positions appears reasonable. It is possible that a larger number of cutting notices would be prepared by cooperating foresters under the bill than under current law with the elimination of departmental review. However, this is difficult to estimate. The Department indicates that some parts of the state, especially where there are large tracts of state and federal lands, do not have as many available cooperating foresters. Therefore, DNR foresters provide assistance to FCL and MFL landowners in those areas and would likely continue to do so under the bill. It is also likely that some DNR staff time would remain associated with notices prepared by cooperating foresters as the Department would still receive them and could review them.

Additionally, DNR may spend staff time responding to questions or concerns that may be raised regarding cutting practices.

5. The administration indicates the intent of the provision was to reduce DNR forestry workload and to streamline the process for landowners to conduct a timber harvest that has already been approved as part of their management plan. As of January 1, 2015, approximately 3.3 million acres (including approximately 1.1 million open for public recreation and 2.2 million closed to public recreation) were enrolled in MFL and 132,600 acres in FCL. Overall, DNR indicates that the majority of Wisconsin's approximately 16 million acres of forest land are held by private non-industrial landowners (approximately 10.4 million acres of woodland managed by 362,000 owners). Forestry staff indicate that the Division of Forestry has been working to identify efficiencies in the MFL program in order to shift these resources to landowners not currently receiving assistance from DNR. In addition, DNR estimated the backlog of incomplete timber harvests at approximately 34,500 acres as of December, 2014. The Committee could consider adopting the Governor's recommendation regarding the cutting notices, but could restore the 4.0 positions so that forestry staff could shift resources to other areas such as non-MFL landowner assistance or addressing the timber harvest backlog [Alternative 2].

6. Under the bill, cutting notices prepared by a cooperating forester for an MFL landowner who is required to cut timber under the terms of an approved management plan or notices prepared by a cooperating forester for an FCL landowner would continue to be submitted to the Department. However, DNR approval of the notice would not be required before the cutting takes place. The following table shows the 1,414 cutting notices submitted from September to December, 2014, by submittal type. As shown in the table, of the 829 cutting notices submitted by cooperating foresters, 723 (87%) were approved at first submittal; 83 (10%) of the total were approved after the applicant made changes required by DNR; 22 (3%) had not received approval during the time period; and one was withdrawn. According to DNR, the primary reason why the notices were not approved within the time period was that the Department determined the marked or designated timber was not approvable (37%), the cutting prescription (manner in which the timber would be cut) was incomplete or unclear (26%), or multiple sections were blank or incorrect (14%). The remaining 23% were not approved for other reasons including: invasive species prescription incomplete or unclear (9%), Natural Heritage Inventory prescription incomplete or unclear (9%), or owner/applicant signature incomplete or incorrect (5%).

**MFL Cutting Notices Submitted to DNR from  
September, 2014 to December, 2014 by Source**

	<u>Cooperating Foresters</u>		<u>DNR Foresters</u>		<u>Landowners</u>		<u>Private Foresters</u>		<u>Loggers</u>		<u>Total</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
Approved at 1st Submittal	723	87.2%	316	97.8%	54	60.0%	73	82.0%	69	83.1%	1,235	87.3%
Approved after 1st submittal	83	10.0	6	1.9	27	30.0	13	14.6	12	14.5	141	10.0
Not Approved within Study Period	22	2.7	1	0.3	8	8.9	3	3.4	1	1.2	35	2.5
Withdrawn	<u>1</u>	---	<u>0</u>	0.0	<u>1</u>	1.1	<u>0</u>	0.0	<u>1</u>	1.2	<u>3</u>	0.2
Total Submitted	829		323		90		89		83		1,414	

7. While the cutting notices filed by cooperating foresters for MFL lands exempt from DNR approval under the bill would be for timber harvested as part of an approved management plan, long-term forestry management plans are written when land is enrolled, and conditions may change over the 25, or 50-year period of the agreement. Therefore, it is important for a trained forester to walk the land and write a cutting notice that matches current conditions. Cutting notices also specify how equipment and timber will be moved. The Department indicates that DNR review of cutting plans helps ensure that loggers leave behind a forest that will regenerate a strong crop of timber for industry while preventing erosion and protecting wildlife habitat and recreational lands.

8. It could be argued that without sound forestry practices, landowners might remove the healthiest trees and leave inferior genetic stock behind. However, by signing the cooperating forester agreement, each forestry firm agrees that its cooperators will abide by DNR approved sound forestry standards (including DNR handbooks) in all forest management guidance and assistance that they provide. The agreements are in effect until the end of the calendar year and may be renewed annually. To renew, each firm must sign the agreement for the next year, complete a report of the firm's forestry accomplishments for the preceding 12 months (October 1 through September 30) describing all land management contacts with non-industrial private landowners in Wisconsin and specific work completed (such as MFL or other management plans, timber sales set up, and forest stands established), and each forester in the firm must complete the required 10 hours of professional continuing education (training) each year.

9. Concerns have also been raised regarding the Department's recourse if DNR determines that the timber harvested does not conform to the management plan or is inconsistent with sound forestry practices. Under current law and the bill, if DNR determines that the timber harvested on MFL land is cut in violation of the MFL management plan or is inconsistent with sound forestry practices, the landowner is subject to a forfeiture equal to 20% of the current value of the merchantable timber cut. Under current law, for FCL land, if timber is cut in excess of the amount prescribed by the Department, the owner is liable for double the severance (yield) tax on the timber harvested and subject to withdrawal from the FCL program. Under the bill, as modified by the administration's errata, if the cutting notice is submitted by a cooperating forester, DNR would not be allowed to prescribe the amount of forest products to be removed. If the Department finds that the cutting is inconsistent with sound forestry practices, the landowner would be liable for double the severance (yield) tax on the timber harvested and subject to withdrawal from the FCL program. The Department indicates that the magnitude of the violation would determine whether DNR pursued withdrawal of the land from the FCL or MFL program. For example, if the violation involved only a few acres, DNR indicates they would cite the landowner and pursue the 20% forfeiture (in the case of MFL land), but probably would not force landowner withdrawal, but if the violation involved a larger number of acres, the Department might force landowner withdrawal. [If DNR forces withdrawal of the land from the program, the landowner is subject to a withdrawal fee and withdrawal taxes.] Not more than a few withdrawals have been made for this reason over the past four years. However, as timber growth takes significant time, it could be argued that preventing the Department from intervening earlier in the process (through required approval of the cutting notice), could, in some circumstances, result in lasting damage to the timber resource. Alternative 3 would maintain current law.

## ALTERNATIVES

1. Adopt the Governor's recommendation to delete 4.0 positions and \$324,500 forestry SEG annually and specify that an owner who intends to cut merchantable timber on managed forest land (MFL) is not required to obtain approval from DNR if the owner is required under the terms of an approved management plan to cut merchantable timber and a cooperating forester provided the required notice of intent to cut to the Department. In addition, adopt the administration's suggested modification to specify that for land enrolled in the forest crop law (FCL) program, if the cutting notice is provided to DNR by a cooperating forester, DNR may not prescribe the amount of forest products to be removed, and if the Department finds that the cutting is inconsistent with sound forestry practices, the landowner is liable for double the severance (yield) tax on the timber harvested and subject to withdrawal from the FCL program. (The bill would also specify that, if a cooperating forester submits the timber cutting notice, all cutting specified in the notice must begin within one year after the date on which the notice is filed.)

2. Adopt the Governor's recommendation, as modified. However, restore \$324,500 forestry SEG annually and 4.0 positions.

ALT 2	Change to Bill	
	Funding	Positions
SEG	\$649,000	4.00

3. Delete provision. (Approval by DNR would continue to be required for all MFL cutting notices and the Department would remain allowed to prescribe the amount of forest products to be removed from FCL land after examining the land identified in the cutting notice).

ALT 3	Change to Bill	
	Funding	Positions
SEG	\$649,000	4.00

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