

Testimony on Senate Bill 161
Senate Committee on Agriculture, Forestry and Higher Education

Wisconsin Woodland Owners Association
February 9, 2012

Mr. Chairman and Committee Members:

The Wisconsin Woodland Owners Association (WWOA) is a statewide organization that represents the interests of the private woodland owners, woodland owners who manage 59% of Wisconsin's forest land and, importantly, provide 67% of the raw material needed to support Wisconsin's forest industry.

We were pleased that a Legislative Council Study Committee was appointed in 2010 to take a look at much needed changes to the Managed Forest Law and that a hearing has been scheduled today.

THE MANAGED FOREST LAW (MFL) HAS BEEN A GOOD PROGRAM

WWOA has long been a proponent of the MFL. A good majority of our members have woodland enrolled in the program. Tree farmers have strongly embraced the program since its inception over 25 years ago. They've found it to be a way that allows them to sustainably grow trees and keep land in forest. In exchange for agreeing to keep their land as a productive forest, for the next 25 years or more, they are provided a differential tax rate that recognizes that growing a crop of trees requires a long term commitment. These tree farmers also agree, in return, to follow a management plan that commits them to provide wood for our forest products industry and maintain their woods in a sustainable fashion.

Evidence of how successful this program has been can be found in the fact that Wisconsin now has the largest group of certified wood producers in North America. With that certification, awarded in 2008, we are also now well positioned to help meet the growing demand from the industry for products that are certified and come from sustainable and well managed forests.

In addition to these long term benefits, it's important to recognize that during the recent recession, wood coming off of MFL lands was a major factor in helping to keep our forest products industry alive. While overall lumber production has recently declined by 50%, saw timber coming from managed forest law lands have declined by only 12%, and cordwood by only 1%.

WWOA POSITIONS ON THIS BILL

First, we want to acknowledge the work done by many fine people over the past 2 years. Much good dialogue occurred and progress was made. Unfortunately WWOA must state its opposition to the bill in its current form. Some elements we support, some we do not, and some changes we feel are needed were not included in this bill.

Elements of the Bill WWOA Supports

Committee members have been provided copies of WWOA's Position Statement so we won't go into these very extensively. Briefly,

- We support the idea of establishing forest enterprise zones. However, we still wonder why tree farming has not already been recognized as an agricultural product and integrated into existing programs setting up similar zones. This bill takes a step in the right direction.
- We support the idea that additional land should be allowed to be added to lands currently in the program, although we'd like to see this language simplified so that that added land would not have to be taxed and tracked separately.
- We support the proposed language that would offer landowners a bit more flexibility in when they must harvest timber.
- We support the need to have an appeal process put in place that would allow tree farmers an opportunity to contest a determination by a DNR forester regarding the need for certain management practices, if that problem cannot be solved administratively.
- We support the repeal of the leasing ban law passed in 2007.

What WWOA Does Not Support

We do not support the bill's language that raises taxes, or rather acreage shares, on new land being enrolled into the MFL.

Understanding why we are opposed to the current language requires a bit more explanation.

First, let's go back to why the MFL has been such a successful program. When making a decision to first enroll, tree farmers did not commit their land to the MFL because they wanted to tie it up for 25 years or more. They did not enroll it because they wanted to follow a prescribed management plan or be required to follow specific management practices. They did not enroll their land because they liked the idea of having to pay a 5% or more tax on the sale

of their product. The reason they initially enrolled is simple. It provided them the needed property tax rate that could allow them to grow a long term crop.

On maintaining sustainable forest lands in Wisconsin, this bill takes a big step backwards. For the MFL to remain an attractive option to allow tree farmers to grow long term crops, understanding the property tax system as it stands today is important.

Ten years after the MFL was put into statute, the legislature, in 1995, recognized that farmers who grew corn, beans and raised animals, could not continue to keep their land in agriculture under the property tax system in place at that time. The law was changed and property taxes are now based upon what is called the use value of the land. In the year 2000, this law was fully implemented and it dramatically reduced taxes paid by many landowners. However, the Department of Revenue's Administrative Rule on this, TAX 18, did not include the growing of trees for saw logs or pulp as an agricultural use. The only major exceptions to that definition are forest land that is devoted to the growing of Christmas trees or for the production of maple syrup.

Then in 2004, the law was again changed. This change reduced, by 50%, the tax rate on open lands such as wetlands, prairies and other fallow land. In addition, this law changed, by 50%, the taxes paid on forest land, but only if this woodland met certain criteria and was associated with lands meeting the Department of Revenue's definition of what comprised agricultural land. Under the current tax system productive forest land not associated with cropland or pasture remains being assessed at 100% of full fair market value.

There's something else important to note on these changes. Unlike lands in the MFL, these more recent property tax changes required the landowner to do nothing else. Landowners, who receive the agricultural forest tax rates do not have to follow prescribed management plans, agree to 25 year commitments, pay yield taxes on crops they sell, or allow public access. Additionally they do not have any special restrictions placed on them for selling or developing their land.

Today, what our state tree farmers are requesting of you is a program that once again provides a tax system that encourages trees to be planted and which allows tree farmers the certainty they need to keep productive, well managed, forest lands as part of our landscape.

To understand this, let's use one example to identify the problem tree farmers are facing today. We've provided the committee with 20 other example towns but for now, let's take a look at the situation for land located in the Town of Dodgeville, Iowa County. For those who are not familiar with this beautiful area, it is a place in our state that provides high quality hardwoods, trees used both as saw logs and veneer. Importantly, forests in the driftless area also provide good wildlife habitat and they provide the replenishment of groundwater needed to support the quality trout stream fishery found in this region of the state.

Here's some example data.

Town of Dodgeville, Iowa County Wisconsin

Land Type	Current Taxes	Proposed MFL Rate
Pastured Woodland	\$1.45/acre	--
Crop Land (average)	\$3.23/acre	--
Agricultural Forest	\$36.16/acre	--
Productive Forest	\$72.33/acre	--
MFL land post 2004	\$8.37/acre	--
New MFL enrollments as proposed by SB161	--	\$18.00/acre

While looking at these numbers let's ask a few questions.

If you owned land in this town, would you ever decide to plant trees on marginal cropland knowing your taxes would increase by almost 50 times, going from \$1.45/acre up to \$72.33/acre? Alternatively, would you consider planting trees because you could then enroll in the MFL, tie your land up for 25 years and then have to pay \$18.00/acre?

Let's ask one more question. Would you consider clearing your woodland or putting cows back into the woods? Many people are now doing that despite the fact it's not a good idea.

The bottom line is that this bill takes a step backwards at solving the problem. Legislation designed to improve the MFL must start by providing tree farmers with a property tax rate that's comparable to that being paid by farmers growing shorter term crops or pasturing livestock. As noted by the Wisconsin Farm Bureau, the current statewide average use value based tax of about \$3.50/acre more than covers the cost of the police, fire, and road services they require. Similarly, a study by the National Woodland Owners Association has shown that cost/benefit ratios for private woodlands rarely justify tax rates of more than \$3/acre.

WFOA asks that a tax rate comparable to that currently applied to other agricultural uses be established to protect existing woodland and to encourage more forest land to be enrolled into the MFL.

Finally, on this topic, we're sure you will hear about the fiscal implications, more land being taken off the tax roll, etc. The bottom line is changing the tax rate for new entries into the program will have a minimal effect, even if it is at a pasture use value rate. If land coming out of MFL is re-enrolled then there will essentially be no change from the present. And if new land is added, it will occur gradually over time. Finally, as the committee can see by looking at the other examples provided, the total acres of land in MFL is small in comparison to the 9 million

acres of agricultural land currently receiving a tax rate more in line with that needed to support the local services required for open, undeveloped land.

Other Changes WWOA Recommended That Are Not Addressed By This Bill

Contracts

Since 1985 there have been 17 statutory changes to the law, and many more administrative rules changes to NR 46 and others. As a result, the MFL has become, like many other programs that have been in existence for a long time, very complicated. It is now to the point where it is difficult, if not impossible, to explain all its nuances to a landowner considering enrolling in the program. It's also become very demanding of administrative time by the state and local government staff required to manage it. SB 161 does not help with this problem. Rather than simplifying the rules, it makes them even more complicated.

Of these 17 law changes over the past 25 years, many have been quite beneficial. Other changes, including tax rate changes, were normally applied to new entries only. And as mentioned earlier, a very positive change was the one that led to all MFL lands being certified. When this law was changed, tree farmers were correctly given an option to participate or decline. The vast majority of MFL landowners agreed this was a good opportunity and they now are currently participating in this certification program.

But unfortunately, in 2008, every MFL landowner received a letter telling them the law had been changed. The letter went on to say that they were no longer allowed to lease their land, or receive compensation of any kind, for allowing others to use their farm for various recreational purposes. Landowners were told they could no longer even ask their guests for help doing such things as maintaining trails or to help fix the fences needed to keep their neighbor's cows out of the woods. This time, the law change applied to everyone, even those who had earlier entries into the MFL where the word contract was still being used. Then, to add fuel to the fire, they were told they did not have an option to withdraw their lands, unless of course they wanted to pay huge penalties to do so. This current system is broken and needs to be fixed. Landowners are no longer trusting that what they think they've agreed to will be what they actually will be required to do. Despite the fact both WWOA and the Council on Forestry testified that we need to return these agreements into real contracts, this recommendation was not addressed by the study committee and the current bill is silent on this.

Yield Taxes

First, consider that we believe yield taxes should become a thing of the past. They are no longer relevant given the changed property tax landscape we now have. Back in 1985 when land enrolled in the MFL actually received a significant tax break, yield taxes were relevant.

Now they are not. Other agricultural commodities grown on land that is no longer taxed at full fair market value do not pay yield taxes. Sale of timber should not be specially taxed either.

In previous testimony on SB126, we discussed with you the problem associated with catastrophic losses. We recommended that, in the interim, yield taxes be based on the actual price a tree farmer received for the product sold. The current law requires yield taxes be based on stumpage rates. Stumpage rates are simply book values calculated to represent the average sales value of timber sold in various regions of the state. Unfortunately this has led to problems and tree farmers cannot understand why they often have to pay 10%, sometimes more, based on what they actually received from their sale. The problem is that the stumpage numbers often do not reflect sales of wood from private woodland owners, often being calculated more from sales of timber from larger blocks of land that received higher prices. Some have argued that use of stumpage rates will keep people from cheating. Today all loggers are required to provide the IRS with 1099 forms showing the sale. If people are going to cheat they'll find a way. What we don't need is having precious state forester time being spent on a lot of paperwork that's set up to solve a non-existent problem. Better they spend their time doing something more productive.

Perhaps stumpage rate based yield taxes work for the industrial forestlands. They do not work well for the vast majority of private woodland owners. Again this issue was not addressed by the study committee and the bill is silent on this topic.

Rollovers

WVOA recommends that landowners whose "agreements" are now expiring after 25 years, be allowed to more easily re-enroll their land into the MFL. These lands already have management plans associated with them which could be updated to meet new requirements. Currently these landowners are required, just like everyone else, to hire a private consultant to develop new plans. Prior to 2004 DNR foresters were allowed to write most MFL plans. Now these plans must be done by an outside professional. We've been told DNR field foresters no longer have the time to do that, not surprising perhaps, given the amount of paperwork they're required to do to administer the current program.

Summary

Once again, thank you for this opportunity to testify.

It's unfortunate that WVOA cannot support this bill -- as it is currently written. HOWEVER, we very much want to see critical changes made to the program and very much want dialog to continue on this topic. Wisconsin cannot afford losing neither its forested landscape nor the forest products industry it supports.

Thank you.

Addendum to Testimony

EXAMPLES OF HOW OPEN LAND TAXES COMPARE IN SAMPLE TOWNS

Property tax laws have shifted a disproportionate amount of the tax burden to forest lands in Wisconsin. According to the Wisconsin Farm Bureau, the current average use value based tax of about \$3.50/acre on farmland covers more than the cost of the police, fire, and road services they require. This compares to the statewide average \$34/acre tax paid on productive forest lands. The following tables are intended to provide general information on how property taxes on woodland compare to other lands. Unlike land in agricultural, agricultural forest, and undeveloped classifications that receive preferential taxation, productive forest lands are taxed at full fair market value.

Under state law, acreage and valuation of all taxable land in each town must be placed into one of eight different classes and then be reported to the Wisconsin Department of Revenue (DOR). The following tables provide information on four of these classes, classes that are often referred to as “open” land. Total valuation of property in a town provides a perspective on how the value of “open lands” affects an overall tax base. The total valuation of the town includes values associated with other classes, e.g. residential, commercial, and manufacturing. Acres of forest land enrolled in MFL are shown in the tables for informational purposes. They are not included in DOR statistics since they are not subject to a direct property tax assessment. Note: These examples are approximate since they are based upon 2011 assessment data and 2010 effective tax rates and do not account for differences in assessment ratios.

Town of Dodgeville, Iowa Co.

Agricultural – 34,928 acres; \$5,710,700	(\$3.23/acre)
Undeveloped - 1567 acres; \$590,500	(\$7.45/acre)
Ag Forest - 3927 acres; \$7,470,700	(\$37.59/acre)
Forest – 2176 acres; \$8,172,400	(\$72.33/acre)
MFL - 5820 acres	
Mill Rate: 0.01976 (\$19.76/\$1000)	
TOTAL TOWN VALUATION \$198,579,000	

Town of Two Creeks, Manitowoc Co.

Agricultural - 6,275 acres; \$1,523,800	(\$1.82/acre)
Undeveloped - 561 acres; \$476,600	(\$6.38/acre)
Ag Forest - 173 acres, \$347,500	(\$15.09/acre)
Forest - 116 acres; \$411,100	(\$26.62/acre)
MFL - 379 acres	
Mill Rate: 0.0751 (\$7.51/\$1000)	
TOTAL TOWN VALUATION \$46,366,700	

Town of Decatur, Green Co.

Agricultural - 16,273 acres; \$3,708,400	(\$3.95/acre)
Undeveloped - 1,384 acres; \$221,600	(\$2.77/acre)
Ag Forest - 743 acres; \$561,100	(\$13.09/acre)
Forest - 336 acres; \$504,800	(\$26.05/acre)
MFL – 490 acres	
Mill Rate: 0.01734 (\$17.34/\$1000)	

TOTAL TOWN VALUATION \$130,956,440

Town of Bradley, Lincoln Co.

Agricultural – 1,229 acres; \$138,800 (\$1.95/acre)
Undeveloped – 5,508 acres; \$2,163,900 (\$5.88/acre)
Ag Forest - 19 acres, \$17,400 (\$13.71/acre)
Forest - 12,794 acres; \$23,288,100 (\$27.25/acre)

MFL - 5,785 acres

Mill Rate: 0.01497 (\$14.97/\$1000)

TOTAL TOWN VALUATION: \$448,135,400

Town of Watertown, Jefferson County

Agricultural – 15,494 acres; \$3,950,000 (\$3.75/acre)
Undeveloped – 3093 acres; \$2,070,000 (\$9.85/acre)
Ag Forest – 1266 acres; \$1,311,400 (\$15.25/acre)
Forest – 514 acres; \$987,400 (\$28.28/acre)

MFL – 290 acres

Mill Rate: 0.01472 (\$14.72/\$1000)

TOTAL VALUATION: \$ 203,724,700

Town of Spring Brook, Dunn Co.

Agricultural – 26,566 acres; \$4,231,600 (\$3.55/acre)
Undeveloped – 2,162 acres; \$992,600 (\$10.24/acre)
Ag Forest – 3,260 acres; \$4,281,500 (\$29.29/acre)
Forest – 1,333 acres; \$3,087,200 (\$46.82/acre)

MFL – 1583 acres

Mill Rate: 0.02023 (\$20.23/\$1000)

TOTAL VALUATION: \$110,818,900

Town of Grover, Taylor Co.

Agricultural – 1,333 acres; \$193,800 (\$2.78/acre)
Undeveloped – 307 acres; \$138,900 (\$8.66/acre)
Ag Forest – 1,222 acres; \$1,025,000 (\$16.05/acre)
Forest – 6,336 acres; \$10,269,000 (\$31.04/acre)

MFL – 1870 acres

Mill Rate: 0.01913 (\$19.13/\$1000)

TOTAL VALUATION: \$31,552,900

Town of Yorkville, Racine Co.

Agricultural – 14,032 acres; \$3,265,400 (\$4.13/acre)
Undeveloped – 1,186 acres; \$775,700 (\$11.60/acre)
Ag Forest – 0 acres
Forest – 436 acres; \$1,857,100 (\$75.52/acre)

MFL – 22 acres

Mill Rate: 0.01773 (\$17.73/\$1000)

TOTAL VALUATION: 473,768,750

Town of Fairchild, Eau Claire Co.

Agricultural – 4,747 acres; \$794,000	(\$3.07/acre)
Undeveloped – 1,525 acres; \$819,350	(\$9.86/acre)
Ag Forest – 1721 acres; \$1,636,500	(\$17.45/acre)
Forest – 3,438 acres; \$6,619,500	(\$35.33/acre)
MFL – 2,185 acres	
Mill Rate: 0.01835 (\$18.35/\$1000)	
TOTAL VALUATION: \$25,347,744	

Town of Warren, Waushara Co.

Agricultural – 7,945 acres; \$1,216,908	(\$2.56/acre)
Undeveloped – 6,458 acres; \$4,033,283	(\$10.45/acre)
Ag Forest – 1,482 acres, \$1,905,494	(\$21.51/acre)
Forest - 2,319 acres; \$5,838,693	(\$42.12/acre)
MFL = 1,294 acres	
Mill Rate: 0.01637 (\$16.73/\$1000)	
TOTAL VALUATION: \$46,489,109	

Town of Johnson, Marathon Co.

Agricultural – 13,955 acres; \$2,822,600	(\$3.69/acre)
Undeveloped – 2,968 acres; \$1,533,900	(\$9.44/acre)
Ag Forest – 3,072 acres; \$3,057,000	(\$18.17/acre)
Forest - 434 acres; \$795,900	(\$33.48/acre)
MFL = 1,023 acres	
Mill Rate: 0.01826 (\$18.26/\$1000)	
TOTAL VALUATION: \$51,399,900	

Town of Bristol, Dane County

Agricultural – 16,401 acres; \$4,708,300	(\$4.71/acre)
Undeveloped – 1,542 acres; \$1,761,800	(\$18.72/acre)
Ag Forest - 369 acres, \$732,000	(\$32.51/acre)
Forest - 48 acres; \$222,600	(\$76.01/acre)
MFL - 0 acres	
Mill Rate: 0.01639 (\$16.39/\$1000)	
TOTAL VALUATION: \$391,255,300	

Town of Garfield, Jackson Co

Agricultural – 7,342 acres; \$706,100	(\$1.89/acre)
Undeveloped – 1,564 acres; \$764,350	(\$9.61/acre)
Ag Forest – 4,746 acres, \$3,461,500	(\$14.35/acre)
Forest - 4,140; \$5,959,800	(\$28.32/acre)
MFL - 3,308 acres	

Mill Rate: 0.01967 (\$19.67/\$1000)
TOTAL VALUATION: \$37,541,190

Guidance Provided to Woodland Owners to Ensure Their Land is Properly Classified

Property taxes for next year are based on how land was classified on January 1. It is important that your lands are properly classified to avoid over payment of taxes. Although "Productive Forest" land is taxed at full fair market value, land meeting the definition of "Undeveloped" or "Agricultural Forest" is taxed at 50% of fair market value.

Unfortunately assessors are not able to get out and field-inspect every parcel of land, often having to utilize air photos to make determinations of how land should be classified and taxed. Quite often lands that are poorly drained and support mainly marsh and lowland brush species can appear to be growing trees from an air photo. As a result they are miss-classified as "Productive Forest" when they more accurately meet the definition of "Undeveloped". Your tax bill will not normally show how your land is classified so you will need to ask your assessor or local official to get this more detailed information.

If your woodland is in the managed forest law and subject to a separate tax calculation does it still matter? Yes. If the land is ever withdrawn from the MFL penalties will be based upon how the land was classified. If your woods meet the definition of agricultural forest or if your 20% unproductive land was classified as productive forest, you would end up with a significantly higher penalty than if it was properly classified.

Definition of "Undeveloped" Land.

Undeveloped land is defined by statute to include bog, marsh, lowland brush, uncultivated land zoned as shoreland under Section 59.692, Wis. Stats. and shown as a wetland on a final map under Section 23.32, Wis. Stats. or other non-productive lands not elsewhere classified. This class includes areas commonly called marshes, swamps, thickets, bogs, or wet meadows; areas with soils of the type identified on soil maps as mineral soils that are "somewhat poorly drained," "poorly drained," or "very poorly drained," or "water," and areas where aquatic or semi-aquatic vegetation is dominant. This class also includes fallow tillable land (assuming agricultural use is the land's highest and best use), road right of way, ponds, depleted gravel pits, and land that, because of soil or site conditions, is not producing or capable of producing commercial forest products. Undeveloped land is assessed at 50% of its full value. After determining the full value of qualifying undeveloped land in accordance with Section 70.32(1), Wis. Stats., state case law, and professionally accepted appraisal practices, the value is reduced by 50% under section 70.32(4), Wis. Stats.

Definition of "Agricultural Forest" Land.

Effective for the 2005 assessment year, 2003 Wisconsin Act 230 amended the statutory definition of "agricultural forest." Section 70.32(2)(c)1d, Wis. Stats. now defines "agricultural forest" as land that is producing or is capable of producing commercial forest products, if the land satisfies any of the following conditions:

a) The forest land is contiguous to a parcel that has been classified in whole as agricultural land. The forest land and the contiguous agricultural parcel must have the same owner. Contiguous includes separated only by a road.

b) The forest land is located on a parcel that contains agricultural land for the January 1, 2004 assessment, and on January 1 of the current assessment year.

c) The forest land is located on a parcel where at least 50 percent of the acreage was converted to agricultural land for the January 1, 2005, assessment year or thereafter.

“Agricultural forest” land is assessed at 50% of its full value. After determining the full value of qualifying “agricultural forest” land in accordance with Section 70.32(1), Wis. Stats., state case law, and professionally accepted appraisal practices, the value is reduced by 50% under Section 70.32(4), Wis. Stats.

Definition of Productive Forest Land as found in Wisconsin Statutes

70.32 (2)(c) 2. *“Productive forest land” means land that is producing or is capable of producing commercial forest products and is not otherwise classified under this subsection.*

Additional Information

The agricultural data provided in the example tables is an average of grade 1, 2, and 3 cropland and pasture values. To find a more detailed breakdown of these calculated use values look under Agricultural Assessment on the Reports page.

To learn more about how land is classified and assessed, the Wisconsin Department of Revenue has several excellent publications. These publications can be found by going to the Department of Revenue’s home page and looking for Publications under Quick Links. Property Tax publications are found under the Government heading. Publications which may be of particular interest include the Agricultural Assessment Guide and Guide for Property Owners. For those really wanting detail on how property is assessed, land values determined, and the process assessors must follow, the entire Wisconsin Property Assessment Manual is also available on this site.

Links

DOR’s Home Page: <http://www.revenue.wi.gov/>

Reports: <http://www.revenue.wi.gov/report/index.html>

Property Tax Publications: <http://www.revenue.wi.gov/html/govpub.html#property>