Mary Hubler

State Representative

Hubler Testimony on Assembly Bill 531

Exception to the penalties and taxes for withdrawing land from the Managed Forest Law for public safety purposes

Assembly Committee on Forestry
November 18, 2009

Thank for receiving my testimony on Assembly Bill 531.

I introduced this bill as a result of Barron County's struggle to find a suitable site for a communication tower. County law enforcement and other emergency services needed the tower to facilitate communications with all corners of the county.

All options were investigated. Finally, the only viable solution was to put the tower on private land. The landowners provided a parcel of less than five acres to the county for siting the tower.

The land was enrolled in the Managed Forest Law program. The county and the landowners attempted to remove only the land necessary for the tower from the Managed Forest Law program. The Wisconsin Department of Natural Resources was compelled by the statutes to order the withdrawal of the entire 40-acre parcel and to charge the corresponding withdrawal taxes and penalties. The bill will come to more than $34,000 and the landowner will lose the tax benefit for the future.

I appreciate that MFL delivers a tax benefit in exchange for keeping land forested and, to some extent, available for public use. In this case, however, the land is not being transferred to a developer or being cleared for agriculture. The bulk of it would remain forested while a corner of it is devoted to the safety and welfare of the community and those who visit or travel through the county.

Current law provides for other public purpose exceptions when property is removed from the Managed Forest Law program. Withdrawal taxes and fees may not be assessed when an owner transfers MFL land to a municipal government for the purposes of a road, railroad or utility right of way.

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AB 531 would create an additional exception for land transferred for the purposes of siting a public safety communications tower. The bill further bars the DNR from ordering the removal of the remainder of the parcel from the program, unless, of course, the remaining land fails to meet the MFL standards.

The benefits of this bill may well extend to other counties or municipal governments that encounter their own difficulties in developing modern communications facilities. It provides a way for landowners to aid public safety and avoid significant financial penalties while keeping the remaining land in the program and available for limited public use.

Thank you for considering this proposal.

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LRB 34.50

TO: State of Wisconsin Forestry Committee

The citizens of Barron County need your help! Providing law enforcement and emergency services to all citizens of Barron County is critical. Unfortunately, up until recently, not all Barron County residents have had the same advantages as others merely because wireless communications were not possible in all areas given terrain issues. While we all appreciate the beauty of the hills and valleys, those same hills and valleys made it impossible to provide adequate communication capabilities to certain geographic areas. After an extended search of appropriate communications sites, an ideal location was identified and arrangements were made for the construction of a communications tower which would assist in meeting the needs of areas where communications had not previously been available. Unfortunately, that location was situated on a parcel covered by the Managed Forest Law. As a result of complying with its statutory requirements, the Department of Natural Resources has provided notice of a withdrawal tax and withdrawal fee in excess of $34,000.

Here in Northwest Wisconsin, we appreciate the benefits of maintaining our forests and the value provided both ascetically and economically. Nevertheless, the 5 acres needed for the communication tower and the resulting safety provided to our citizens trumps the benefits of the Managed Forest Law in this limited circumstance.

The Legislature has already recognized instances which exempt the withdrawal fee against an owner who transfers ownership of Managed Forest Land for a public road or railroad or utility right-of-way. This is also true for the owner who transfers ownership for a park, recreational trail, wildlife or fish habitat area or a public forest to the federal government, the state or a local government unit. All of these exceptions relate to the benefit of the public at large. To create an exception for a public safety communications tower is a logical, appropriate, and necessary extension. On behalf of the citizens of Barron County, we encourage you to consider this Bill and take appropriate action to benefit not only Barron County but others as well who will some day face this same issue.

Respectfully Submitted,

Jeffrey S. French

Jeff French, Interim Barron County Administrator

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Assembly Bill 531

Assembly Committee on Forestry

Department of Natural Resources Testimony
Kathryn J. Nelson, Forest Tax Section Chief
Division of Forestry
Bureau of Forest Management
November 18, 2009

Mr. Chairman and Committee Members:

Good morning. My name is Kathy Nelson and I am the Forest Tax Section Chief within the DNR's Bureau of Forest Management. I appreciate this opportunity to appear before you to discuss Assembly Bill 531.

AB 531 expands the exceptions for exempt withdrawals so that a withdrawal tax and fee cannot be assessed against an MFL landowner who transfers ownership to a county, city, village, or township for siting a public safety communications tower on MFL lands. AB 531 also provides that the department may not assess the withdrawal tax and fee on landowners on or after September 22, 2009.

Public safety communications towers are an important infrastructure in order for counties, municipalities and the state to provide a safe and effective way to communicate between county dispatch, sheriff, fire, medical and other emergency response units. Public safety communications towers allow for these emergency services to respond quickly in the event of an emergency.

AB 531 does not support the purpose of the MFL program, which is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes. That being said, it is expected that there will be limited withdrawals for public safety communication towers. The department estimates that use of this provision will likely not exceed one per year.

The legislature has allowed for exempt withdrawals that result in:

a. Public transportation (road, highway, railroad, etc.) or transmission of services (electricity, gas, and other services that are transferred by power line, pipe, cable, or other devise).
b. Timber harvesting on public lands.
c. Wildlife habitat management on public lands.
d. Recreational activities on public lands.
e. Conversion of Indian lands to trust status, provided that a conservation easement or contract is established with the tribe to treat the lands as if they were MFL.

Providing for exempt withdrawals to place structures of any kind had historically been prohibited.

Pros of AB 531

Landowners who sell lands to a public agency for use as a public safety communications tower will benefit by AB 531. These landowners will be allowed to sell their lands to a county, township, village, city, state or federal agency and have lands withdrawn from the MFL program without payment of a withdrawal tax or fee. Some of these withdrawal taxes can be high depending upon the acreage of the withdrawal and length of time in the MFL program.

Public agencies that are purchasing land in fee simple or easement for placement of a public safety communications tower will also benefit from AB 531 since they will no longer have to negotiate payment of the withdrawal tax and fee on behalf of the landowner. This streamlines the negotiation process.

Cons of AB 531

AB 531 would prevent a local municipality from receiving any part of a withdrawal tax for lands that are no longer held for forestry purposes. Since it will likely be county or state offices that purchase MFL lands for public safety communications towers, it will be the local municipality, usually a township, which will be financially impacted the most. Local municipalities will lose 80% of any withdrawal tax on top of not having had the ability to collect regular ad valorem property taxes while the lands were enrolled in the MFL program.

Allowing exempt withdrawals for public safety communication towers as a result of AB 531 might encourage additional legislation as long as a public benefit can be referenced. The department currently receives many requests for exempt withdrawals and many of these requests reference a public benefit, including fire stations, water treatment plants, schools, school parking lots, town halls, wind turbines, cable and DSL relay stations, and other uses. It would be unfortunate if AB 531 set the stage for more legislation to be written to allow exempt withdrawals and allow the MFL program to become a program where landowners pay a reduced property tax until a more lucrative land use comes along.

It should be noted that AB 531 is somewhat limiting with respect to exempting public safety communications towers. This legislation is written so that there would be exempt withdrawals for lands that are *transferred* to a public agency for siting a public safety communications tower. This legislation would not apply to land that is leased for this purpose. As a result, if a lease is determined to be the best way to proceed, the land would have to be withdrawn from the MFL program because a land use change had occurred and a structure that was not compatible with the tax law program was erected. To address this issue, an amendment to AB 531 may be needed to include lands in which an easement has been obtained.

In summary, although the Department is concerned about the precedent of exempting from withdrawal penalties structures built on MFL land, the narrow focus of this bill, its clear public safety connection, and the limited impact the bill will have on forests under MFL mitigate these concerns.

Thank you for allowing me to share the Department's thoughts on AB 531. I'd be willing to answer any questions that you may have.