Form 1100-001
(R 2/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.2

SUBJECT: Adoption of Board Order FR-02-07 - Contracting for timber sale establishment services on state land

FOR: JUNE 2007 **BOARD MEETING**

TO BE PRESENTED BY: Paul Pingrey, Sustainable Forest Certifcation Coordinator

SUMMARY:

Section 28.025, Wis. Stats., created by of 2005 Act 166, directs the Department to establish an annual allowable timber harvest for state forest lands. The statute instructs the department to develop a timber sale contracting program with private "cooperating foresters" for assistance in meeting allowable harvest goals. The proposed rule in section NR 1.26 identifies timber sale related tasks that can be contracted and a method for calculating the portion of timber sale revenue that would pay for the services. Section NR 1.21(2) (e) would also be revised to make the educational requirements for cooperating foresters consistent with those for department foresters under §28.045(1), Wis. Stats.

This is a follow up to emergency order FR-01-07E adopted in January 2007.

RECOMMENDATION: Adopt FR-02-07 to create section NR 1.26 and revise section NR 1.21(2)(e), Wis. Adm. Code, relating to contracting for timber sale setup assistance.

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes ☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes ☐	Attached
No	☐	Background Memo	Yes ☑	Attached

APPROVED:

Robert J. Mather — Bureau Director, — Date 05/03/07

Paul DeLong — Administrator, — Date 5/9/07

Mary Holsey Schlueter — for Secretary, Scott Hassett — Date 6/13/07

cc: Laurie J. Ross - AD/5
Carol Turner - LS/5
Quinn Williams - LS/5
Teague Prichard - FR/4
Robert Mather - FR/4
Allison Hellman - FR/4
Paul Pingrey - FR/4
Jeff Barkley - FR/4

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: May 2, 2007 FILE REF: 2400

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Adoption of FR-02-07 creating section NR 1.26 and revise section NR 1.21(2)(e), Wis. Adm. Code, to contract for timber sale setup assistance on state forestland.

1. Why is rule being proposed?

Section 28.025, Wis. Stats., created by of 2005 Act 166, directs the Department to develop a timber sale contracting program with private "cooperating foresters" for assistance in meeting allowable harvest goals on state land. The timetable established by the statute necessitated an emergency rule (FR-01-07E), which was adopted in January 2007. Hearings on the permanent rule have been held. The final rule is ready for consideration by the Board.

2. Summary of the rule.

Section 1 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Section 2 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services.

3. How does this proposal affect existing policy?

This rule addresses one of the elements in section 28.025, Wis. Stats., created by 2005 Act 166, directing the department to establish an annual allowable timber harvest for state forest lands and to prepare a biennial report on conformance with the established harvest goals. Timber harvesting can be a critical tool for maintaining the health of forests or for achieving the purposes for which the state acquired the land. The primary purpose for the law is to assure that adequate resources are available for the state to be a good land steward.

An analysis in 2005 by the Department estimates a backlog in timber sales and forest inventory on state-owned land would require 43 full-time-equivalent (FTE) positions to bring up to date and another 28.75 FTEs annually to keep current with resource needs. Since it is not practical to add enough state employees or to reallocate enough time to address the entire demand, the Legislature directed creation of a program to utilize private enterprise foresters and to pay for the foresters' services from a "portion of the proceeds received from each timber sale". The Department has always had authority to contract for timber sale assistance services, but in the past had to pay the expense from operating funds. The ability to pay for contracted timber sale assistance directly from timber harvest revenue will be a new tool for Department

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land managers.

4. Hearing Synopsis.

A video conference hearing was conducted March 21, 2007 in public meeting rooms located in Madison, Eau Claire and Rhinelander. There were no personal appearances related to this rule. No written comments were received.

5. Response to the Legislative Council Rules Clearinghouse.

All of the comments and recommendations in Clearinghouse Rule 07-011 have been addressed. One change is the addition of NR 1.26 (6) to further clarify the method used to determine the portion of timber sale proceeds to be paid to cooperating foresters for their services. It specifies that costs are to be paid from an appropriation account (s. 20.370 (1) (cy), set up in the 2007-2009 State Budget) and prorated among the administrative functions such as Forestry, Fish, Wildlife, and Parks that receive the timber sale revenue.

The Clearinghouse commented that original language about establishing pre-qualification lists for contractors was confusing and vague. The Department agrees and deleted the term. The proposed rule is revised to say that cooperators serving the area where timber sale assistance is needed would be contacted for bids. Any other conditions can be established in Requests for Proposals per state purchasing regulations. The last sentence of s. NR 1.26 (5) is revised to provide examples of bid evaluation criteria, but it is not restrictive.

6. Information on environmental analysis, if needed.

The Environmental Analysis and Review Specialist in the Division of Enforcement and Science, Office of Energy determined that these rules are a Type III action under s. NR 150, Wis. Admin. Code and that an environmental analysis is not required.

7. Final Regulatory Flexibility Analysis.

Does the proposed rule have a significant economic impact on a substantial number of small businesses? Yes, the rule would create an opportunity for private consulting forestry firms to expand into providing more services on state-owned land; but the rule does not impose any new regulatory or reporting requirements on small businesses. The proposed change in the educational requirements for cooperating foresters is more flexible than the definition that was adopted under NR 1.21(2) (e) in 1989. The revised educational requirement would clarify that the Chief State Forester can identify college training that is equivalent to accreditation by the Society of American Foresters. While training equivalency is allowed under statute for Department foresters, the existing rule for cooperating foresters does not specifically address equivalent degree programs. The rule revision would correct the discrepancy.

Cc: Quinn Williams – LS/5
Carol Turner – LS/5
Robert Mather – FR/4
Paul Pingrey – FR/4

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: May 2, 2007

FROM: Paul Pingrey, Division of Forestry

SUBJECT: Response to Wisconsin Legislative Council Clearinghouse Rule 07-011 Related to Natural Resources Board Order FR-02-07 (initially adopted as FR-01-07E)

1. ***Statutory Authority***
   a. Reference to s. 28.05 (3), Stats., was added.
   b. The method used to determine the portion of timber sale proceeds to be paid to cooperating foresters for their services is established in s. NR 1.26 (5) and clarified with the addition of s. NR 1.26 (6).

   When legislators considered developing a program to contract with private consulting foresters for timber sale assistance on state lands, they were familiar with different methods that consulting foresters use to charge for similar services on private lands. Those methods typically include a percentage of gross timber sale revenue or fees based on rates per hour, acre or by project. Practical experience with consulting foresters getting a percentage of timber sale proceeds indicates that method can be very costly and poorly correlated to a contractor's actual time and expense. Fees per hour, acre or project are authorized in s. NR 1.26 (5), depending on which the Department deems to be most appropriate for the service needed. For example, log scaling (measuring cut trees at a collection point), might be most efficiently contracted on a per hour basis. A per acre fee would give flexibility to expand or contract a sale area depending upon observed conditions. A per project fee might work best where the site conditions or harvest boundaries are well known.

   Regarding method, DNR's Finance Bureau pointed out that an appropriation account is needed to handle the money flow from timber sale proceeds to pay for contracted harvest assistance services. The 2007-2009 State Budget Bill sets up the appropriation account [s. 20.370 (1) (cy)]. Section NR 1.26 (6) of the proposed Administrative Rule explains how DNR would make periodic allocation requests from that appropriation to pay for Cooperator contracting. This further defines the "method" by prorating the costs among the administrative functions (Forestry, Fish, Wildlife, Parks, etc) that receive the timber sale revenue.

2. ***Form, Style and Placement in Administrative Code***

   a. The plain language description was revised to list the rule sections in the correct order.
   b. The rule sections were renumbered as recommended.
   c. The word "given" is now used instead of "defined".
   d. Changes were made in the use of "may", "will" and "shall" to be consistent with the guidelines. Active verbs are now used in s. NR 1.26 (4).
   e. The Clearinghouse referenced sentence about establishing lists of pre-qualified cooperators was dropped. See additional comment below under the Clarity and Grammar section.

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3. ***Adequacy of References to Related Statutes, Rules and Forms***

Section NR 1.26 (2) drops the reference to NR 1.21 (2) (e), which the Rules Clearinghouse found unnecessary.

4. ***Clarity, Grammar, Punctuation and Use of Plain Language***

a. The Department agrees that the language about establishing pre-qualification lists was confusing and vague. The proposed rule is revised to say that cooperators serving the area where timber sale assistance is needed would be contacted for bids. Any other conditions can be established in Requests for Proposals per state purchasing regulations.

The last sentence of s. NR 1.26 (5) is revised to provide examples of additional bid evaluation criteria, but it is not restrictive. Specialized training is one type of additional criteria that is mentioned. For example, if a timber harvest is to be set up in an area suspected to have northern goshawk (a candidate endangered species) nests, the request for bids could require training in goshawk nest identification.

b. The above change eliminates the need to define "check cruise" or "cruising" in the rule.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 1.26 (FR-0107E & FR-0207)

Subject

Contracting with cooperating foresters for timber sale establishment services on state land

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☒ Increase Costs — May be possible to absorb within agency's budget. ☒ Yes ☐ No

☐ Decrease Costs

Local: ☒ No Local Government Costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

s. 20.370 (1)(cy)

Assumptions Used in Arriving at Fiscal Estimate

Section 1

A fiscal estimate about contracting for timber sale establishment services and increasing the timber harvest from state forest lands was completed for 2005 Act 166. That detailed analysis (LRB Number 05-0195/3 - 2005 AB 254) is the basis for this estimate and is incorporated as Attachment 1.

Two opportunities for increasing timber sale revenue from state land were identified. One from "inventoried" state lands and the other from "un-inventoried" state lands. The inventoried properties are typically State Forests and larger Wildlife properties that have been subject to active management in the past. Un-inventoried state lands are mostly Wildlife, Fishery, Parks and Natural Area tracts. Any increase in harvesting timber would not be allowed unless useful as a tool for achieving property objectives and consistent with property master plans or the purposes for which the land was acquired by the state.

Inventoried State Lands Impacts: 2005 Act 166 requires the Department to maintain an "allowable timber harvest" on all lands. To sustain the level of activity and to prevent sliding into a future backlog of timber sales, about 18,000 acres requiring 35 FTE for timber harvest and inventory maintenance would be needed annually. Currently, there is 10 FTE worth of activity on 8,500 acres/yr. There is a net need for an additional 25 FTE of services costing $1,720,625/yr to fill the gap. Potential revenues would be $9.2 million annually or $4.98 million/yr more than currently being generated.

Un-inventoried State Land Impacts: In the long term, there is an estimated potential to increase timber harvests from "un-inventoried" state lands by additional 1,989 acres annually. Services associated with the timber harvest and inventory work would require an additional 3.75 FTE costing $258,093/yr. Net revenue from the additional harvest activity would increase an estimated $758,823/yr.

Combining inventoried and un-inventoried categories results in a potential long-range estimated cost increase of $1,978,718/yr for 28.75 FTE of services and a revenue increase of $5,738,823/yr.

Long-Range Fiscal Implications

Contracting for 18.75 FTE of timber sale and related forest inventory services would cost about $1,290,468/yr and increase revenue an estimated $3,742,710/yr in the long term.

Prepared By:	Telephone No.	Agency
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Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12-21-06

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 1.26 (FR-0107E & FR-0207)

Assumptions Used in Arriving at Fiscal Estimate – Continued

As a result of efficiencies gained from changes in how Managed Forest Law enrollments are administered, the Department anticipates about 10 FTE* of agency staff time can be reallocated in the long term from private forestry assistance to sustaining an allowable timber harvest on state land. **This would leave a potential for contracting about 18.75 FTE of timber sale set up and related forest inventory services. If such level of time were available from cooperating foresters, the proportional cost (and impact of this rule) would be $1,290,468 and the proportional revenue from contracting would be $3,742,710.**

As detailed in Attachment 1, the Department also estimates that in 2005 there was a backlog of 170,175 acres of timber sale and inventory work on state land. These lands would require approximately 43 FTE at a cost of $2,959,475 to bring management needs up to date. Contracting with cooperating foresters could play a role in dealing with the backlog, but in the short term the Department plans to address the backlog through internal reallocation of time (see footnote). This fiscal estimate only speaks to the cost and revenue associated with the long-range maintenance of the annual allowable harvest.

In practice, it will take a decade or longer for cooperating foresters to develop the capacity to substantially increase private forestry assistance related for MFL *and* to contract for state timber sale set up services. Those two demands would call for about 35 FTE of additional forestry services from the private sector. In the short term, DNR will encourage cooperators to focus on growing MFL capacity. Initially, contracting for state land assistance would proceed at a trial level, only about 1 FTE/yr.

Regarding the s. 20.370 (1)(cy) appropriation, this is a new category that was included on page 206 of the 2007-2009 DNR Biennial Budget Request dated October 3, 2006. A 2007 Bill would set up the appropriation as directed in section 28.025, Stats., to pay the costs for services contracted from cooperating foresters from an equal portion of the timber sale proceeds.

Section 2

The proposed rule amends NR 1.21(2) (e) to make the educational requirements for cooperating foresters consistent with those for department foresters under section 28.045(1), Wis. Statutes. The minor definition change is technical in nature and would result in no fiscal impact.

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*DNR anticipates saving about 20 hours of MFL plan writing time per application on about 1,500 applications per year. Instead of DNR staff preparing the plans, statute changes require landowners to hire cooperating foresters for that task. The change will free up about 16 FTE of DNR staff time. About 6 FTE will be needed for MFL administration and other private forestry assistance. That leaves about 10 FTE of DNR staff time to reallocate to state lands timber sale/forest inventory services. Currently, that freed time is being directed to clear up a 43 FTE backlog of harvest and inventory work on state lands.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 1.26 (FR-0107E & FR-0207)

Subject

Contracting for timber sale establishment services on state land

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations — Other Costs	1,290,468	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
Total State Costs by Category	$ 1,290,468	$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS		-
SEG/SEG-S	1,290,468	-
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S	3,742,710	-
Total State Revenues	$ 3,742,710	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$ 1,290,468	$
Net Change in Revenues	$ 3,742,710	$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
Joe Polasek	266-2794	12/12/2006

Attachment 1

Fiscal Analysis Assumptions from LRB Number 05-0195/3 - 2005 AB 254

Description of Legislation: The bill covers a number of issues impacting the Forests of Wisconsin including the management of emergencies that threaten both public and private forested lands of the state, the management of state owned forested lands, and the Right to Practice Forestry within the state.

Section 1 (23.114 WI Stats.) In this section, the chief state forester would manage emergencies that threaten state forest lands other than those declared by the Governor. After discussion with the author of this bill, it was determined that for this portion of the bill "state forest lands" intended to include all forestlands in the state of Wisconsin impacting over 16 million acres of urban and rural forests. It is not clear of the intent of which lands are to be included in this section.

The section of the bill also requires that the chief state forester report directly to the Secretary of the Department.

Fiscal Estimate Section 1 (23.114 WI Stats.): No fiscal effect identified regarding emergency management authorities for the chief State Forester. However, if an emergency developed it is assumed that programs similar to gypsy moth would need to be developed. For example DNR and DATCP are utilizing approximately 11 FTE's at a cost of 748,000 and $849,000 for limited term assistance, education, surveys, etc. to cooperatively manage the gypsy moth programs.

Section 2 (23.135 WI Stats.) The bill requires that an inventory be undertaken and maintained on all forested lands owned by the Department greater than 10 acres in size. It also requires the Department to prepare a report every 15 years that contains a projection of the long-term health effects and economic effects on the forested lands where the Department prohibits the use of active management techniques.

Fiscal Estimate Section 2 (23.153 WI Stats.): Current inventory data on "state forest land", including "forested" acres is completed on 1,083,812 acres of the 1,374,244 acres or 78.9% (see Table 1 attachment). An additional 290,000 acres needs recon inventory. Given that a significant percentage of this acreage is non-forested, it is estimated a forester could do the field work and enter the data at a rate of 120 acres per day. It is therefore estimated that it would take approximately 2417 days of dedicated staff time to complete the work (2417 x 8 hrs. = 19,336 hrs. @ 1820 hrs./FTE = 10.6 FTE). Cost to hire full time DNR staff to complete this is: 10.60 FTE's x $68,825 (includes fringe and expenses) = $729,545 one-time cost.

It should be noted that the division has identified, through this bill and the certification process, that our inventory needs to be updated and remain current. A 15 year cycle would meet the needs of the Department and the certification of our forests. 1,374,244 acres/15 years = 91,616 acres per year. Assuming 100 acres of recon per day it would require 916 days per year x 8 hrs per day = 7,328 hrs@ 1820 hrs/FTE = 4 FTE. At $68,825 x 4, the annual cost would be $275,300.

For State lands, approximately 547,826 of the total 1,374,244 acres (39.9%) are non-forested (see Table 1 attachment) including grass, open water, brush, developed and agriculture and would not be considered available for "active" management and would be excluded from the harvestable acreage on the property. The remaining 826,418 acres are classified as "forested". The property objectives and presence of designated natural areas, wild river zones, wilderness areas, developed recreation areas and old growth management determine how much of the "forested" acreage (826,418) might be available for "active" management. This is typically determined during the Master Planning process. It is our estimate that 78% of the forested acreage, or 647,500 acres (see Table 1 attachment), is available for "active" management.

It is not clear in what format the long-term health and economic effects report is requested, however a report by land classification (e.g. state natural areas, wild river zones, wilderness, etc.) might be the most practical. It is assumed such a far-reaching report would require a reevaluation of the forested acres not being actively managed plus staff time to compile the data. This would require a one-time concentrated effort to determine baseline data. Currently it is estimated there are approximately 178,000 acres of forested land in DNR ownership not being actively managed (826,418 forested acres minus 647,500 being actively managed). To collect and upload the data at 100 acres per day, it would require approximately 14,240 hours of staff time (7.8 FTE). Cost at $68,825/FTE + 80 hours of staff time to compile the report = $540,000 one-time.

Section 3 (28.025 WI Stats.) The bill requires the Department to develop an annual allowable harvest for all Department owned forested lands greater than 10 acres in size. The Department must report annually by January 1 to the Council on Forestry if the timber harvest for the previous year on each of those parcels was less than 90

percent or more than 110 percent of the established allowable harvest. The Council on Forestry shall then prepare a report to the Governor and the appropriate standing legislative committees with recommendations on methods of ensuring that the timber harvest for that parcel is consistent with the annual allowable harvest.

Fiscal Estimate Section 3 (28.025 WI Stats.): Development of an annual allowable timber harvests (AAC) for a parcel implies the property is large enough to regulate. Individual State Forests and some of the larger Wildlife properties are large enough to develop such sustainable target figures. Isolated parcels encompassed within those properties are included with the total property AAC and managed as a part of the larger property.

Smaller Fish, Wildlife, Parks, and other properties are similar to these isolated parcels in that they are too small to have a regulated annual harvest. Harvest activities on these properties is much more sporadic and depends primarily on the attributes of the forest stand (age, density, health) and the silvicultural prescription of the forester working with the property manager and within the property objectives. Even on larger properties, harvest activities on timber types that are less than 400 acres in size are based solely on the forester's prescription.

The DNR could report on harvest activity comparisons with AAC for larger properties. On smaller properties, harvest activities can be reported but it will not be possible to compare them to regulated AAC figures. Generalized harvest figures by property type (Wildlife areas, Fisheries areas, Natural Areas, etc.) could be compiled and compared with anticipated harvests from these miscellaneous DNR properties. Cost is $29.82/hr. at the senior level forester including fringe x 80 hrs = $2,385 annually.

It is important to note that the larger public lands in Wisconsin are managed under "area control", whereby a certain number of acres (as opposed to volume) will be targeted in a specific year. Harvest scheduling identifies those forest stands to be "examined for harvest", and does not equate to how many acres will be harvested. For that reason, comparisons to AAC on the larger properties will include two figures; the actual harvest acres, plus acreage where the forest recon was updated because the stand had not developed as anticipated and was not ready for a silvicultural prescription to be implemented.

Peaks and valleys in harvest activity due to insect and disease, storm damage, market fluctuations and staff vacancies are common. State timber harvest record keeping is also based on completed timber sales, not on what was actually harvested in a particular year. There are no centralized ledgers tracking a running total of wood harvested. Completing a number of sales in any one year may therefore distort harvests beyond the 110% figure, even when the actual acreage harvested has remained constant over a period of years. Comparing the timber sale establishment activity (acres established + recon updated in lieu of sale establishment) with the AAC would be more reflective of the effort to put timber on the market in a particular year.

Under this bill, the Council on Forestry would be drafting reports regularly even when the harvest was regular and sustainable over a 3-4 year stretch. This would require significant administrative time. Speculation is that it would take approximately 100 hours of DNR staff time annually to prepare the background information for the Council's reports on the various properties / parcels. Cost is $29.82/hr at the senior level forester including fringe x 100 hrs. = $2,982 annually.

This bill appears to encourage active and increased timber management on forested lands under DNR management. There are fiscal impacts of doing so. Annual timber harvests on State Forests have averaged 1.63% of the total estimated harvestable acreage in the last five calendar years. Expanding that figure to all DNR forested lands would indicate an estimated harvest on State lands of 10,550 acres annually. (1.63% x 647,500 acres available for harvest). Over the last 5 years the State Forests and other State lands have averaged 8565 cut acres annually. This would indicate a shortfall of 1,989 acres per year (attributed only to the extra harvests needed on un-inventoried land).

Cost to establish and administer the additional 1,989 acres annually would be 3.75 FTE x $68,825 per FTE = $258,093.

Potential revenues for establishing and administering an additional 1,989 acres annually would be 1989 acres x $511.27/acre = $1,016,916/yr.

Potential net revenue to State from harvesting at present levels on un-inventoried lands:
$1,016,916 (stumpage revenue) - $258,093 (cost of establishment and administration) = $758,823/yr.

In addition to the effort detailed above to address those un-inventoried State lands, there remains a backlog of timber harvest and inventory work to complete. AB254 requires the Department to maintain the "allowable timber harvest" on all lands. At present, there is an estimated 170,175 acres of backlogged timber sale/inventory work on State land. To address this over a 5 year time frame, it would require 43 FTE at a cost of $2,959,475.

To sustain the level of activity required in this bill and to prevent future backlog of timber sales it is estimated that there is a need of activity on 18,000 acres requiring 35 FTE. Currently, there is 10 FTE worth of activity on 8,500 acres. There would be a net need of 25 FTE costing $1,720,625. Potential revenues would be $9.2 million annually or $4.98 million more than currently being generated.

Section 4 through Section 9 (28.04 WI Stats.) The bill changes the word "Department" to the word "Division" in all of Chapter 28.04. The interpretation by department legal staff is that these sections apply only to those lands designated as state forest identified in 28.03 WI Stats. All other forested lands owned by the Department are not impacted by this proposed change.

Fiscal Estimate Section 4 through Section 9 (28.04 WI Stats): No fiscal cost associated with this portion of the bill.

Section 10 (28.05 WI Stats.) The bill establishes authority for the Department to develop a program to utilize private cooperating foresters as agents of the state to assist with the harvesting and sale of timber from state forest lands in exchange for a portion of the proceeds.

Fiscal Estimate Section 10 (28.05 WI Stats.): This has fiscal ramifications since the revenues from timber sales currently are deposited into the conservation account of the program charged with management of the property. For example, revenues from timber sales on Wildlife areas go into the Fish & Wildlife Account, timber sales on Natural Areas goes into Endangered Resources). The accounts in the conservation funds are critical for funding operations of the various DNR disciplines. By paying a portion of the proceeds to a consultant forester it would effectively require additional harvesting to generate the same amount of revenue into the conservation fund. Currently, a DNR forester's time in establishing and administering a sale is not billed back to the individual program in charge of the property.

The costs of hiring a private consultant would vary with the breadth of the tasks requested. On one end it might entail hiring a private forester to simply mark a designated area for harvest. Applied more intensively, it could include establishing sale boundaries, marking for harvest, determining volumes, and administering the sale. It is estimated costs of a private consultant forester would be 5% to 30% of the total sale value. How much this would impact the fiscal outlook for AB254 would depend on to what extent and what intensity private foresters are used. This is difficult to anticipate. A certain amount of administrative time would still be required by Department employees to work with and oversee the consultant foresters.

This tool is likely to have limited applicability, at least in the short-term, given the fact that we are facing ever-increasing workloads and staff reductions in private forestry that necessitate an increase in the capacity of the private sector to accomplish the sizable unmet workload in just one component of that area. Our ability to fulfill needs for private sector forests in private forestry could be compromised if we pull those same resources away for use on state lands. Furthermore, there are some real questions about efficiency of using private sector contractors for this kind of work under many situations, given the increased administrative workload this would entail. Assuming private consultant foresters are readily available and costs for setting up sales is similar between Department foresters and consultants, for purposes of this fiscal impact it is estimated that contracting with private consultant foresters would be $0 for the Department.

It should be noted that increased timber sale activity on Department lands would cost an estimated at $258,000, whether by Department personnel or contracting services. However, as indicated earlier, there would be a net increase of timber sale revenue to the conservation fund estimated at $758,900.

Section 11 through Section 13 and Section 15(59.69, 60.61, 62.23 & 823.075 WI Stats.) The bill provides that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Also, under this bill, no political subdivision may enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices. Note: This identical language is found in 2005-2006 Legislature AB 59.

Fiscal Estimate Section 11 through Section 13 (59.69, 60.61, 62.23 & 823.075 WI Stats.): Implementation of the bill would require maintenance of information and guidelines such as that contained in the Wisconsin Forest Management Guidelines (Wisconsin Department of Natural Resources publication PUB-FR-226) that defines generally accepted forest management practices. These practices change over time in response to new scientific information, changes in technology, or changes in society. Maintenance could occur through typical Department procedures for updating Handbooks using interdisciplinary teams. We estimate that the work of such a team would approximate the salary and support costs of one FTE = 68,825 annually.

Section 14 (94.025 WI Stats.) This section is connected with section 1, relating to emergencies on state forest lands. The chief state forester would specifically be the authority for managing invasive species or pest infestations that threaten forestlands.

Fiscal Estimate Section 14 (94.025 WI Stats.): No fiscal effect is identified regarding emergency management authorities for the chief State Forester.

Summary of Costs and Revenues can be found in attached Table 2.

RECON STATUS - STATE LANDS

Table 1

Property designation	Total Acreage (fee title) 6/30/04 [1]	Wiscland Cover type [2]						Est. # of Acres of "Active" Mgt.[4]	Total Recon acreage [3]	% of acreage with Recon
		Deciduous	Coniferous	Mixed Deciduous / Coniferous	Forested Wetland	Non-forested	Forested Acres & %Forested			
Wildlife Areas	490,738	89,707	7459	7,165	86,271	300,136	190,602 38.8%	171,500 (90% of forested)	381,289	77.7%
Natural Areas	45,050	15,249	2,338	2,865	8,374	16,224	28,826 64.0%	7000	0	0.0%
Fishery and Wild River Areas	222,383	68,839	11,596	14,125	43,659	84,164	138,219 62.2%	90,000 (65% of forested)	135,209	60.8%
Parks	96,168	48,064	6,434	4,106	4,818	32,746	63,422 65.9%	25,000 (40% of forested)	71,733	74.6%
Northern Forests	456,116	198,502	74,894	46,341	47,208	89,172	366,945 80.4%	330,000 (90% of forested)	445,877	97.8%
Southern Forests	56,166	19,781	6,543	0	7,133	22,709	33,457 59.6%	22,000 (65% of forested)	45,785	81.5%
Other	7,623	3,709	285	351	602	2,676	4,947 64.9%	2000 (40% of forested)	3,919	51.4%
TOTAL	**1,374,244**	**443,851**	**109,549**	**74,953**	**198,065**	**547,826**	**826,418 60.1%**	**647,500**	**1,083,812**	**78.9%**

[1] Acreages current as of 6/30/2004 – Facilities & Lands records.
[2] Wiscland cover types from 2001 data was used to determine current forest type coverage
[3] Recon data derived from Forest Recon data on Oracle database
[4] Acres of "active" management are estimates based on selected property queries of Recon database and Master Plan levels

Table 2				
SECTION	COST	REVENUE	# of FTE	DESCRIPTION
1 &14	$0	$0	0	Emergency management authorities to chief state forester on state forest lands
2	$729,545 one-time	$0	10.6	Compile reconnaissance on additional 290,000 acres. (1 year with full staffing)
	$275,300 annual	$0	4.0	Maintaining the currency of reconnaissance work on Department lands.
	$540,000 one-time	$0	7.8	Evaluating 178,000 acres of land and developing for the council on forestry.
3	$2,385 annual	$0	0	Developing annual allowable harvest for all Department lands.
	$2,982 annual	$0	0	Compiling information and developing report for the council on forestry.
	$258,093 annual	$1,016,916 annual	3.75 *	Cost and Revenue associated with establishing additional timber sales on 1,989 acres [from currently un-inventoried state properties].
	$2,959,475 annual for 5 years	$8,566,000 annual for 5 years	43 *	Eliminating timber sale backlog over a five-year period.
	$1,720,625 annual	$4,980,000	25 *	Net FTE's needed to sustain timber sale activity so backlog does not occur [from inventoried state properties].
4 through 9	$0	$0	0	No fiscal effect associated with changing the word Department to Division.
10	$0	$0	0	No fiscal effect using cooperating foresters for state lands timber sales. Cost would be the same and offset by revenue.
11 through 13	$68,825 annual	$0	1	Maintenance of information, updating handbooks, tracking changes in technology.
The highlighted rows, above, are addressed in the long-range fiscal impact for creating NR 1.26.				

* These costs and associated FTE's are additional to those directly related to the bill but have indirect impact on what the bill is trying to accomplish.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 1.21(2)(e) pertaining to the educational requirements for cooperating foresters and to create NR 1.26 relating to contracting for timber sale establishment services on state land.

FR-02-07

Summary Prepared by the Department of Natural Resources

1. **Statutes interpreted**: Section 28.025, Wis. Stats., created by of 2005 Act 166.

2. **Statutory authority**: Sections 28.025 and 28.05 (3), Wis. Stats.

3. **Explanation of agency authority**: Section 28.025, Wis. Stats., directs the Department to develop a timber sale contracting program with private "cooperating foresters" for assistance in meeting allowable harvest goals on state land. The statute also directs the Department to pay for the foresters' services from a portion of the proceeds received from each timber sale.

4. **Related statute or rule**: Sections 28.04, 28.042, and 28.05, Stats., give authority to the Department to hold and acquire forestland, to manage it for numerous purposes and benefits, and to harvest timber. Section 28.045, Stats., establishes educational requirements for Department foresters.

5. **Plain language analysis**: Section 1 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

   Section 2 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services.

6. **Summary of and comparison with existing or proposed federal regulation**: There are no federal regulations regarding forestry contracting that apply to state-owned lands, but U.S. Forest Service regulations provide for a similar program to contract for technical forestry assistance on National Forests in Wisconsin and were used as a model for this rule.

7. **Comparison with rules in adjacent states**: Adjacent states have regulations that allow for contracting of services on state-owned land, as did Wisconsin prior to the enactment of 2005 Act 166. What is unique about the Wisconsin program in Section 28.025, Stats., is authorization to pay for the contracted services from an appropriation of timber harvest revenue rather than the annual operating budget of the agency.

8. **Summary of factual data and analytical methodologies**: A detailed analysis was completed in 2005 by the Department and Legislative Fiscal Bureau as part of 2005 Act 166. It estimates a backlog in timber sales and forest inventory on state-owned land would require 43 full-time-equivalent (FTE) positions to bring up to date and an additional 28.75 FTEs annually to keep current with resource needs. Since it is not practical to add enough state employees or to reallocate enough time to address the entire demand, enabling contracting and payment from harvest revenue could be an effective option. The legislative analysis found that implementing a program to contract for timber sale assistance has the potential to increase state revenue by approximately $6 million/yr at a cost of about $2 million/yr (actual costs based on bidding could be significantly lower). Following through with allowable harvest goals would also improve forest health and help the Department

better manage the land. Any increase in harvesting timber would not be allowed unless useful as a tool for achieving property objectives and consistent with property master plans or the purposes for which the land was acquired by the state.

9. **Summary of the methodologies used in support of the proposed rule:** In developing 2005 Act 166, the Legislature considered forest inventory and timber harvest accomplishment data collected since mid-1900. Testimony was received from stakeholders at hearings across the state. Testimony supported the need for assistance and an effective way to pay for contracted services to complement the forest management efforts of agency employees.

10. **Effect on small business:** This rule does affect small business. It would create an opportunity for private consulting forestry firms to add an estimated 18.75 positions as explained in the fiscal analysis and expand into providing more services on state-owned land; but the rule does not impose any new regulatory or reporting requirements on small businesses. The proposed change in the educational requirements for cooperating foresters is more flexible than the definition that was adopted under NR 1.21(2) (e) in 1989. The revised educational requirement would clarify that the Chief State Forester can identify college training that is equivalent to accreditation by the Society of American Foresters. While training equivalency is allowed under statute for Department foresters, the existing rule for cooperating foresters does not specifically address equivalent degree programs. The rule revision would correct the discrepancy.

Agency contact person: Paul E. Pingrey, Private Forestry – Sustainable Forest Certification Coordinator; Ph: 608-267-7595; e-mail: paul.pingrey@wisconsin.gov

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SECTION 1. NR 1.21(2) (e) is amended to read:

NR 1.21(2)(e) "Forester" means a person other than one employed by the department who has received a ~~forestry degree in an accredited forest management curriculum from a university or college with a 4-year curriculum, or accredited graduate degree in the management of forest resources~~ a bachelor's or higher degree in forestry from a school of forestry with a curriculum accredited by the Society of American Foresters or an equivalent degree, as determined by the chief state forester.

SECTION 2. NR 1.26 is created to read:

NR 1.26 Contracting with cooperating foresters for timber sale establishment. (1) PURPOSE. The department may contract with private cooperating foresters to assist the state in the harvesting and sale of timber from state forest lands to meet the annual allowable timber harvest established under s. 28.025, Stats.

(2) DEFINITION. "Cooperating forester" has the meaning given in s. NR 1.21(2) (b).

(3) CONTRACTED TASKS. Tasks included in cooperating forester contracts for state land timber harvests may include updating of forest reconnaissance, marking of trees and harvest boundaries, estimating volume, preparing maps, recommending timber sale contract terms or operational specifications, providing data on cutting notices and reports, scaling cut products, and inspecting active harvests. The department shall determine which of these services are appropriate to contract for on individual timber sales.

(4) DEPARTMENT TASKS. The department shall select areas to harvest, determine silvicultural harvest systems to be applied, and define any additional timber sale procedures or precautions necessary to achieve objectives in approved master plans or other department policies. The department shall review and approve cutting notices and reports, prepare contracts, advertise for timber sale bids, award sales, receive stumpage payments and performance bonds, and administer timber sale contracts. The department shall monitor the performance of cooperating foresters contracting on state forest timber harvests for quality of service and conformance to department standards.

(5) BIDS FOR SERVICES AND PAYMENTS TO COOPERATING FORESTERS. Cooperating foresters shall be compensated at the department's choice of a rate per hour, acre or project established by bids. When a need for timber sale assistance is identified, the department shall issue a request for bids to cooperating foresters serving the area. Bids shall include labor, travel, equipment and any supplies such as marking paint not identified as being provided by the department that a contractor would need to do the work. Timber sale assistance contract awards shall be determined on price alone unless additional evaluation criteria such as specialized training or experience are included in the request for bids.

(6) METHOD TO ALLOT TIMBER SALE REVENUE. As provided in s. 28.05, Stats., payments to cooperating foresters for timber harvesting and selling assistance on state-owned land shall be paid from an allocation of timber sale proceeds. The department of natural resources shall make periodic requests to the department of administration for allocations of funding to the cooperating foresters appropriation, s. 20.370(1)(cy), Stats. The size of the requested allocation shall be based on outstanding purchase requisitions for the contracted timber harvest assistance. The appropriation shall be split-funded with the proportionate splits coming from the administrative function accounts where the timber sale revenues are deposited.

SECTION 3. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)