

MFL bill to open land for vehicles dead for now, but could it resurface?

By Steve Ahrenholtz

SB 999/AB 1093 was introduced Feb. 7, 2024, by Sens. Felzkowski, Quinn and Stafsholt, and co-sponsored by Reps. Green and Schmidt. The proposed legislation was referred to the Committee on Financial Institutions and Sporting Heritage. A public hearing on SB 999 occurred in Madison on Feb. 14, 2024. SB 999/AB 1093 (*docs.legis.wisconsin.gov/2023/proposals/sb999*) failed to move forward in the 2023-2024 legislative session.

WWOA encourages members to discuss these bills with their legislators this fall when representatives and senators are in their home districts and campaigning. Your legislators may not be familiar with these proposed changes to the Managed Forest Law (MFL) program. A concern is these proposals will resurface in the future. This may be a good time to educate your legislators about this proposal and why it's important to you.

These proposed bills required owners of woodlands designated as open MFL with roads or trails maintained for vehicular travel at a width of at least 9 feet to permit public access to roads and trails for the operation of any noncommercial motor vehicle with a gross weight of 8,000 pounds or less and any all-terrain vehicle, utility terrain vehicle or snowmobile registered for public use or operated by a nonresident as authorized by a trail pass or trail use sticker. The bill disallows woodland owners of MFL program woodlands from prohibiting use of motor vehicles on any open MFL lands with roads or trails meeting the previously specified criteria.

Currently, MFL landowners with lands designated as open shall permit public access to the land for the purposes of hunting, fishing, hiking, sightseeing and cross-country skiing per Wisconsin Statute 77.83(2). An owner may restrict public access to any area of open managed forest land that is within 300 feet of any building or within 300 feet of a



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commercial logging operation that conforms to the management plan. An owner may prohibit the use of motor vehicles, as defined under s. 340.01 (35), or snowmobiles, as defined under s. 340.01 (58a), or both on any open managed forest land. At the request of an owner, the WDNR may provide assistance in enforcing the prohibition.

Testimony of the WDNR Tax Law Section Chief noted that while promoting further public access to private lands for recreational purposes and potentially providing other benefits that additional access and tourism brings, it is a significant departure from current access requirements. He noted this statutory change potentially creates some unintended consequences impacting MFL landowners and the public that include:

- Increased MFL lands designated as closed to public access.
- Increased MFL lands withdrawn with tax and fee.
- Increased burden on MFL landowners with lands open to public access to practice sound forestry.
- Increased burden on MFL landowners with lands open to public access to meet requirements of lands designated as open to public access.

Testimony provided by the Wisconsin Off-Highway Motorcycle Association requested amending the bill to include allowing off-highway motorcycles access to MFL roads. This was because they are currently excluded among the listed

eligible motorized vehicles.

WWOA President Don Hoffman testified at the public hearing accompanied by WWOA Executive Director Nancy Bozek. President Hoffman's testimony assembled input from the WWOA Board of Directors and regional Chapter Chairs. WWOA's testimony pointed out the serious negative impacts on our ability to sustainably care for our private woodlands including

- These activities do not tread lightly on fragile landscapes.
 - It is not reasonable to assume that woodland roads are built to accommodate up to 8,000-pound vehicles.
 - Private roads are not marked for trail riding and may contain hazards not known to the public or even the landowner.
 - Opening these roads to the public will result in compaction of soils, introduce invasive species and create erodible ruts on slopes.
 - Impromptu traffic off trail to turn around, avoid an obstacle or extract a vehicle will further damage delicate regeneration and wildlife habitat.
 - Funding of a proposed Department of Transportation grant program with conservation fund dollars acknowledges that there will be damage to private woodlands.
 - The proposed grant program does not cover additional damages such as bringing in invasive species, possibility of wildfires or illegal dumping.
 - Serious question of liability for the participating MFL woodland owner.
- President Hoffman's full testimony is available in the Summer 2024 issue of Wisconsin Woodlands (pg. 19) or at wisconsinwoodlands.org/category/government-affairs/. Although the bill died with the end of the 2023-2024 legislative session, WWOA anticipates this issue will reappear.

Numerous WWOA members and supporters provided WWOA copies of their personal communications sent to their legislative representatives regard-

ing concerns about the impact of this proposed legislation. These communications presented first-hand and first-person concerns and experiences encountered by WWOA members participating in the MFL program who have woodlands that are open and closed.

Concerns identified regarding SB 999/AB 1039 included:

- Potential increased timber theft, particularly for absentee landowners.
- Changes in liability assumptions for individuals entering MFL lands with the introduction of motor vehicles.
- Introduction of visitors having differing interests and objectives from those of the non-vehicular uses historically permitted – potential for more vandalism, partying, etc.
- Increased public access to unmonitored and unoccupied structures or equipment located within the MFL open land and on non-MFL land within or adjacent to MFL land.
- Incompatibility of vehicular traffic with currently allowable quiet and low-impact public uses – concurrent pedestrian and vehicular traffic in the same space.
- Destruction of vegetative trail and road ground cover currently preventing erosion and providing habitat due to increased vehicular traffic, rutting and soil loss.
- Facilitating enhanced opportunities to introduce adverse activities in MFL woodlands counterproductive to fundamental best management practices (BMP).
- Diversion of Forestry Fund monies subsidizing woodlands to uses inconsistent with BMPs (the proposal creates a Department of Transportation fund compensating woodland owners with repairs to damaged trails and roads from public vehicular use).
- Increased potential for armed confrontations between users and woodland owners associated with the ubiquity of firearms.
- Issues associated with the introduction of underage vehicle operators and riders or driving while impaired operators in situations presenting poor sight distances, obstructed visibility, tortuous and unmarked trails.
- No deterrents to prevent users from taking/making paths around submerged sections or obstructed trails and roads.
- Increased resource demands on owners for maintenance/repair/damage assessment and documentation for potentially repetitive remedial and restorative measures unnecessarily and involuntarily imposed upon them (and excluded from grant program coverage).
- Absence of provisions in bill for damage done to private forest land other than to the designated roads/trails.
- Illegal dumping of appliances, tires, garbage and refuse that may otherwise have disposal requirements.
- Acceleration of Wisconsin woodland parcelization for other uses.
- Why is current allowance of driving ATVs/UTVs on township roads and official ATV trails insufficient?
- Questionable net benefit of allowing vehicular traffic in MFL woodlands compared to the overall state objective of woodland BMPs preserving state woodlands/wildlife/environmental resources/support for woodland products industries.
- Why isn't opening up tax subsidized agricultural land to vehicular traffic being considered as well?
- Accompanying road and trail deterioration due to vehicular traffic rendering them impassable for currently permitted foot traffic uses.
- Absence of accountability of public users responsible for vehicular damage when there are already abuses encountered with currently permitted uses.
- No provisions for closures at other times of the year because roads/trails may be impassable (legislation proposed closing of trails and roads from April 1 to the first Saturday in May of each year).
- Loggers must post a bond for damages incurred and not corrected. Why do vehicular users not have to cover the damages they incur?
- What cost comparisons exist regarding the tax savings of MFL open lands vs. the costs of road/trail maintenance/repair/collateral damage/habitat destruction/liability?
- There appear to be no enforcement mechanisms or responsibilities placed on users – what are the costs for implementing that effectively?
- Bill doesn't allow for off-road/off-trail access, but what are the deterrents to

prevent it?

- Increased fire risk from campfires, fireworks, smoking materials, malfunctioning exhaust and spark arrestors along with fire spread to adjacent properties not in MFL – additional liability risk. Wisconsin's strict liability standard for wildfires not only pertains to direct damages, but also for fire-fighting costs incurred. Who assumes increased potential fire liability?
- No restriction on hours of use.
- Vague offer of reimbursement based on an undefined process for unspecified damages only to the right-of-way is not just compensation.
- Demise of fire lane maintenance on MFL open woodlands.

The bill would have placed additional financial, personnel and administrative demands on the WDNR while diverting resources from sound forest management practices. Grant compensation program for landowner road repairs would have drawn \$1.5 million per year from the WDNR Forestry Fund, amounting to an average of \$46,875 for each of Wisconsin's 32 rural counties (\$20,833 per county if applied across all 72 WI counties). Grant reimbursement must be formally requested with payouts processed on a first-come-first-served basis until the year's funds are exhausted. No provisions existed for funding increases.

Thank you to all WWOA members who took the time to write or call their legislators regarding these bills. Thank you also for sharing your comments with WWOA. Your comments helped WWOA share woodland owner concerns about this proposed legislation.

In summary, WWOA predicts if this proposal becomes law in the future there will be a substantial reduction in lands designated as open under the MFL program, which will actually decrease opportunities for the currently allowed activities. The additional burdens and damage will also discourage new enrollments in the MFL program, which will decrease sustainably managed forest acres in Wisconsin and the economic benefits and jobs it provides to our citizens.

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