

Only allow leasing of MFL lands directly owned by “natural persons,” NOT artificial beings, invisible intangible and existing only in contemplation of the law. These types of excluded ownership types include, but are not limited to, public or private corporations, firms, joint ventures, joint stock companies, associations, limited liability companies, partnerships, associations, cooperatives, unincorporated cooperative associations, private or public utilities, municipal power districts, estates or trusts.

Pros	Cons
Specifically targets the issue of circumvention of the intent of the law by corporations and large land owners of the MFL closed acreage restrictions.	Still leaves some restriction on access to hunting and recreation via the MFL program.
Provides for a fairly simple check by DNR staff to determine whether or not the ownership type meets the exclusion.	Is not as administratively easy as banning all leasing on MFL acreage.
Lower number of parties affected by the change given that there are a significant number of private “natural persons” landowners that lease, albeit on smaller ownerships.	Provides problems in interpretation for trusts that are created to bypass probate court and where the original owners are the trustees of their lands. At issue is the ability to still consider them “natural persons.”
May prevent additional subdivision of lands to allow closure of large blocks by entities who intend to lease lands for hunting.	

Legal Issues: Equal protection

Equal protection guarantees that similarly-situated persons are treated similarly, and is the main issue for this approach, in addition to the issue of vested rights and retroactive application of the law highlighted in the “Option 2 Legal Issues” above. As long as the Department’s statute bears a rational relation to some legitimate end, such as encouraging more industrial MFL landowners to keep their land open, Option 3 should be able to meet any constitutional challenge based on equal protection

Under Wisconsin law, the equal protection provision of Fourteenth Amendment extends to corporations as well as to natural persons. Simanco, Inc. v. Wisconsin DOR, 57 Wis.2d 47 (Wis. 1973)

When no suspect class or fundamental right is involved, court employs a rational basis test to determine whether a challenged legislative act is constitutional under the equal protection clause; in employing this test, court will uphold the legislative enactment or classification so long as it bears a rational relation to some legitimate end. Eby-Brown Co., LLC v. Wisconsin Dept. of Agriculture, 295 F.3d 749 (7th Cir. 2002)

Rational basis review is the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause, and affords state and local governments leeway to draw imprecise lines that

may result in some inequity. Listle v. Milwaukee County, 138 F.3d 1155 (7th Cir. 1998) Under a review of equal protection claim, there is no constitutional violation if there is any reasonably conceivable state of facts that would provide rational basis for the government's conduct. Nabozny v. Podlesny, 92 F.3d 466 (7th Cir. 1996)

In essence, the rational basis standard for equal protection review asks whether there are any real differences to distinguish the favored class from other classes who are ignored by the statute. The court, when applying the rational basis test for equal protection review, must probe beneath the claims of the government to determine if the constitutional requirement of some rationality in the nature of the class singled out has been met. Ferdon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund, 284 Wis.2d 573 (2005)

Under rational basis scrutiny, the legislature may attack a problem one step at a time without violating equal protection; it need not pursue the most comprehensive approach to the presented goal, only one that rationally furthers that goal. Brown v. City of Lake Geneva, 919 F.2d 1299 (7th Cir. 1990) This would counter any arguments that, by excluding individual "natural person" owners, the statute is not as comprehensive as it should be, and therefore not "rational" enough.

The Department will only need to demonstrate that the policy reasons stated above in Option 3 are relevant in making the distinction between "natural persons" and all others. Equal protection does not require that all persons be dealt with identically but that distinction made have some relevance to purpose for which classification is made. Hill v. Burke, 422 F.2d 1195 (7th Cir. 1970), cert. denied, 400 U.S. 944 (1970)

Conclusion:

While equal protection remains an issue under Option 3, a well crafted purpose statement, detailing the potential for circumvention of the intent of MFL by large landowners for restricting hunting and access opportunities, will most likely provide a sufficient rational basis for the statute. The law was designed to allow limited closure of land under the law by those who own greater than 80 or 160 acres of land in a township; efforts to reduce circumvention are consistent with the law's intent.