

Forestry

CHAPTER 88

DIVISION OF FORESTRY

88.01	DEFINITIONS.	88.38	CONTRACTS FOR IMPROVEMENTS; DUTIES OF COUNTY AUDITOR; SEEDING OF CLEARED LANDS.
88.02	CITATION, WILDFIRE ACT.	88.39	WORK OF IMPROVEMENT; DUTIES OF ENGINEERS; PAYMENTS TO CONTRACTORS.
88.03	CODIFICATION.	88.40	BOND ISSUES TO PAY FOR IMPROVEMENTS.
88.04	FIREBREAKS; PREVENTION OF FIRES.	88.41	COUNTY AUDITORS; TABULAR STATEMENTS; POWERS AND DUTIES.
88.041	WILDFIRE PREVENTION AND SUPPRESSION AGREEMENTS.	88.42	IMPROVEMENTS BY TOWNS AND CITIES; LIMITATION OF INDEBTEDNESS.
88.05	ROADSIDES, CLEARING; FIREBREAKS.	88.43	FIREBREAKS; CLEARING LANDS.
88.06	DEAD OR DOWN TIMBER; REMOVAL.	88.44	ACQUISITION OF PROPERTY.
88.065	EQUIPMENT FURNISHED.	88.45	MUNICIPALITIES TO COOPERATE.
88.067	GRANTS TO LOCAL FIRE DEPARTMENTS.	88.46	LAWS APPLICABLE.
88.08	WILDFIRE PROTECTION DISTRICTS.	88.47	AUXILIARY FORESTS; TAXATION.
88.09	FIRE PROTECTION, LANDS, ACQUISITION.	88.48	APPLICATION.
88.10	AUTHORITY OF STATE FOREST OFFICERS.	88.49	CONTRACTS.
88.11	ASSISTANCE FOR FIGHTING FIRES.	88.491	RESTRICTIONS ON NEW AUXILIARY FORESTS, EXTENSIONS OF EXISTING CONTRACTS.
88.12	COMPENSATION OF FIGHTERS OF WILDFIRES; EMERGENCY EXPENSES.	88.50	TAXATION.
88.14	DISPOSAL OF SLASHINGS AND DEBRIS.	88.51	AUXILIARY FORESTS; TAX RATE, SPECIAL TAXES.
88.15	CAMPFIRES.	88.52	CUTTING TIMBER; TAXATION.
88.16	STARTING AND REPORTING FIRES.	88.523	AUXILIARY FOREST CONTRACTS; SUPPLEMENTAL AGREEMENTS.
88.17	PERMISSION TO START FIRES; PROSECUTION FOR UNLAWFULLY STARTING FIRES.	88.53	LAND HELD AS AUXILIARY FOREST; AMOUNT, DISPOSAL AFTER CEASING TO BE AUXILIARY FOREST.
88.171	OPEN BURNING PROHIBITIONS.	88.641	DEFINITIONS.
88.18	FIRE WARDENS.	88.642	DECORATIVE MATERIALS.
88.195	PENALTIES.	88.6435	BOUGH BUYERS.
88.20	RAILROAD COMPANIES TO PROVIDE PATROL OFFICERS.	88.645	ENFORCEMENT.
88.21	RAILROADS; DUTIES; PENALTIES.	88.647	RELATION TO EXISTING LAWS.
88.22	WILDFIRE PREVENTION; PROHIBITIONS, BANNING; PENALTIES.	88.648	CRIMINAL PENALTIES; MISDEMEANOR.
88.28	LAW DIVIDED INTO PARTS.	88.73	ADMINISTRATION; DELEGATED POWERS AND DUTIES.
88.29	COUNTY BOARDS; JURISDICTION, POWERS.	88.75	VIOLATIONS; PENALTIES.
88.30	CLEARING AND IMPROVEMENT OF LANDS.	88.76	REWARDS.
88.31	SURVEYS AND PLATS.	88.77	DISPOSAL OF FINES AND PENALTIES.
88.32	APPRASERS; ASSESSMENT OF BENEFITS AND DAMAGES; STATEMENTS AND REPORTS.	88.78	APPEALS.
88.33	HEARINGS; NOTICE; SERVICE; DATE; ADJOURNMENTS.	88.79	STATE FOREST SERVICE TO PRIVATE OWNERS.
88.34	HEARING ON PETITION; ELIMINATION OF LANDS.	88.80	ASPEN RECYCLING PROGRAM.
88.35	REREFERENCE OF PETITION.	88.81	FOREST MANAGEMENT PRACTICES IN LITIGATION.
88.36	ORDER FOR IMPROVEMENTS.	88.82	MINNESOTA RELEAF PROGRAM.
88.37	APPEALS FROM ORDERS FOR IMPROVEMENTS.		

88.01 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of chapter 88, the terms defined in this section have the meanings given them.

Subd. 2. **Division.** "Division" or "the division" means the Division of Forestry in the Department of Natural Resources.

Subd. 3. **Commissioner.** "Commissioner" means commissioner of natural resources.

Subd. 4. **Person.** "Person" includes any natural person acting either personally or in any representative capacity, a corporation, a firm, a copartnership, or an association of any nature or kind.

MINNESOTA STATUTES 2006

3199

DIVISION OF FORESTRY

88.01

Subd. 5. Timber. "Timber" means and includes trees, saplings, bushes, seedlings, and sprouts from which trees may grow, of every size, nature, kind and description.

Subd. 6. Wildfire areas. Every county now or hereafter having within its boundaries any tract or area of 1,000, or more, contiguous acres of trees, brush, grasslands, or other vegetative material where the potential for wildfire exists, is hereby declared to be a wildfire area.

Subd. 7. Forest land. "Forest land" means land which is at least ten percent stocked by trees of any size and capable of producing timber, or of exerting an influence on the climate or on the water regime; land from which the trees described above have been removed to less than ten percent stocking and which has not been developed for other use; and afforested areas.

Subd. 8. Backfire. "Backfire" means a fire intentionally started ahead of, or in the path of, an approaching wildfire for the purpose of burning back toward the wildfire so that when the two fires meet both will die for lack of fuel.

Subd. 9. [Repealed, 1955 c 699 s 2]

Subd. 10. [Repealed, 1955 c 699 s 2]

Subd. 11. [Repealed, 1955 c 699 s 2]

Subd. 12. [Repealed, 1955 c 699 s 2]

Subd. 13. [Repealed, 1955 c 699 s 2]

Subd. 14. County board and town board. "County board" means the board of county commissioners; and "town board" means the board of town supervisors.

Subd. 15. Improvement. "Improvement" includes any act or thing done, or which may be done, and any construction made or structure erected or which may be made or erected, and any removal from any land of trees, brush, stumps, or other debris, which reasonably tend to prevent or abate wildfires.

Subd. 16. Forest. "Forest" means a plant association predominantly of trees and other woody vegetation occupying an extensive area of land.

Subd. 17. Auxiliary forest. "Auxiliary forest" is used in relation to state forest, and includes any privately owned tract of land, including roads and camp or work sites, set apart for, and chiefly devoted to, the production of timber or forest products under the restrictions, and subject to the provisions, of sections 88.47 to 88.53.

Subd. 18. Forest products. "Forest products" means and includes all products derived from timber.

Subd. 19. Merchantable timber. "Merchantable timber" means a tree or stand of trees which may be disposed of at a profit through conversion to a salable product.

Subd. 20. Owner. "Owner" includes the person owning the fee title to any tract of land, but does not include an owner of timber thereon or of minerals or any other thing therein when such ownership is separate from the ownership of the surface.

Subd. 21. County recorder. "County recorder" includes the county recorder of the county in which the land referred to is located, or the registrar of titles in case the title to the land has been registered.

Subd. 22. Forest officer. "Forest officer" means an employee of the Natural Resources Department designated by the commissioner.

Subd. 23. Open fire; open burning. "Open fire" or "open burning" means a fire burning in matter, whether concentrated or dispersed, which is not contained within a fully enclosed firebox, structure or vehicle and from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney.

Subd. 24. Wildfire. "Wildfire" means a fire requiring suppression action, burning any forest, brush, grassland, cropland, or any other vegetative material.

Subd. 25. Campfire. "Campfire" means a fire set for cooking, warming, or ceremonial purposes, which is not more than three feet in diameter by three feet high, and has had the ground five feet from the base of the fire cleared of all combustible material.

MINNESOTA STATUTES 2006

88.01

DIVISION OF FORESTRY

3200

Subd. 26. Snow-covered. "Snow-covered" means that the ground has a continuous, unbroken cover of snow, to a depth of three inches or more, surrounding the immediate area of the fire sufficient to keep the fire from spreading.

History: (4031-1, 4031-2, 4031-35 1/2, 4031-57, 4031-72, 5887-42) 1925 c 263 s 22; 1925 c 407 s 1,2; 1927 c 247 s 13; 1929 c 218 s 1; 1935 c 331 s 12; 1955 c 699 s 1; 1963 c 418 s 1; 1967 c 146 s 1; 1967 c 905 s 5; 1969 c 6 s 18; 1969 c 54 s 1,2; 1969 c 1129 art 10 s 2; 1976 c 181 s 2; 1978 c 735 s 1; 1986 c 444; 1993 c 328 s 1-8

88.02 CITATION, WILDFIRE ACT.

Sections 88.02 to 88.22 may be cited as the Wildfire Act.

History: (4031-1) 1925 c 407 s 1; 1993 c 328 s 9

88.03 CODIFICATION.

Sections 88.03 to 88.22 shall be deemed and construed as a codification, revision, and expansion of, and as supplementary to, and taking the place of, the laws which existed at the time of the passage of Laws 1925, chapter 407, relating to forestry and to wildfires, including Laws 1911, chapter 125, and acts amendatory thereof and supplemental thereto; Laws 1913, chapter 159; Laws 1915, chapter 325; Extra Session Laws 1919, chapters 32 and 33, but without abridging or destroying any rights, obligations, liabilities, or penalties from, or under, any of such laws prior to the taking effect of Laws 1925, chapter 407. Sections 88.03 to 88.22 shall apply to all the wildfire areas of this state. In any civil or criminal prosecution action commenced under sections 88.03 to 88.22, or proceeding thereunder, it shall not be necessary to prove that any county is included in a wildfire area, but the contrary may be proven by any party to such action or proceeding.

History: (4031-1) 1925 c 407 s 1; 1993 c 328 s 10

88.04 FIREBREAKS; PREVENTION OF FIRES.

Subdivision 1. Local cooperation. The commissioner shall cooperate with the state highway authorities and with the supervising officers of the various towns and cities in the construction of firebreaks along section lines and public highways.

Subd. 2. Firebreak authorization. All cities in the state situated in any wildfire area are hereby authorized to clear off all combustible material and debris and create at least two good and sufficient firebreaks of not less than ten feet in width each, which shall completely encircle such municipalities at a distance of not less than 20 rods apart, between which backfires may be set or a stand made to fight wildfires in cases of emergency.

Subd. 3. Local responsibility; tax. All towns and cities shall take necessary precautions to prevent the starting and spreading of wildfires and to extinguish them. They may levy a tax annually on all taxable property in the city or town. The tax when collected shall be known as the fire fund and kept separate from all other funds and used only to pay all necessary and incidental expenses incurred in enforcing the provisions of sections 88.03 to 88.22. Up to \$500 shall be expended in any one year from any such fire fund for the support of any municipal fire department. No municipality shall make any levy for its fire fund at any time when the fund contains \$5,000 or more, including cash on hand and uncollected taxes that are not delinquent.

Subd. 4. General supervision. In all towns constituted within any of the wildfire protection districts which may be established by the commissioner, the respective town and city officers and employees shall cooperate with, and be under the general supervision and direction of, the commissioner.

History: (4031-11) 1925 c 407 s 11; 1949 c 676 s 1; 1967 c 146 s 2; 1973 c 123 art 5 s 7; 1973 c 773 s 1; 1989 c 277 art 4 s 5; 1993 c 328 s 11; 1994 c 505 art 3 s 2

MINNESOTA STATUTES 2006

3201

DIVISION OF FORESTRY

88.067

88.041 WILDFIRE PREVENTION AND SUPPRESSION AGREEMENTS.

The commissioner may enter into agreements with other states, the Canadian or provincial governments to cooperatively prevent and suppress wildfires.

History: 1985 c 112 s 1; 1993 c 328 s 12

88.05 ROADSIDES, CLEARING; FIREBREAKS.

All highways, roads, and trails within wildfire areas are declared to be established fire-breaks and for that purpose the state, through the Department of Natural Resources, is authorized to clean up all dead and down timber, all underbrush, rotting logs, stumps, and all other combustible refuse and debris along each side of these highways, roads, and trails for a distance of 200 feet on each side from the center thereof, all of this material to be burned or disposed of under the supervision of a forest officer in such manner as not to injure the growing timber.

All dead and usable timber taken out of these roadsides shall be piled for the immediate removal thereof by the owners of the land from which the same was removed.

History: (4031-11 1/2) 1933 c 320 s 1; 1937 c 113 s 1; 1967 c 146 s 3; 1969 c 1129 art 10 s 2; 1993 c 328 s 13

88.06 DEAD OR DOWN TIMBER; REMOVAL.

The commissioner may permit, under the commissioner's direct supervision and control, any Civilian Conservation Corps, Works Progress Administration, or other state or federal relief agency actually engaged in the improvement and conservation of state trust fund lands within the boundaries of any state forest to clean up and remove all dead or down timber, underbrush, rotting logs, stumps, and all other combustible refuse and debris which is deemed to be a fire hazard, or the removal of any trees in forest stand improvement and cultural operations which is advisable in the interest of good forest management; and to use so much of these cuttings for firewood and other forest development needs while these camps are thus actively engaged in the improvement and care of these forests.

History: (4031-11 1/2a) 1933 c 320 s 1; 1937 c 113 s 2; 1967 c 146 s 4; 1986 c 444; 1993 c 328 s 14

88.063 [Repealed, 1994 c 578 s 2]

88.065 EQUIPMENT FURNISHED.

Subject to applicable provisions of state laws respecting purchases, the commissioner of natural resources may purchase for and furnish to any governmental subdivisions of the state authorized to engage in natural disaster relief materials or equipment therefor, and may transport, repair, and renovate natural disaster relief materials and equipment for governmental subdivisions of the state. The commissioner may use any funds available for the purchase of natural disaster relief equipment or for its repair, transportation, and renovation under federal grants, if permitted by the terms thereof, or under state appropriations, unless otherwise expressly provided. Except as otherwise authorized or permitted by federal or state laws or regulations, the governmental subdivision receiving any such materials or services shall reimburse the state for the cost. All moneys received in reimbursement shall be credited to the fund from which the purchase, transportation, repair, or renovation was made, and are hereby reappropriated annually and shall be available for the same purpose as the original appropriation. As used in this section, "natural disaster relief" includes wildfire prevention or suppression, hazardous material discharge control or clean-up, and flood or wind-storm relief.

History: 1945 c 521 s 1; 1969 c 1129 art 10 s 2; 1984 c 613 s 1; 1987 c 404 s 108; 1993 c 328 s 15; 1995 c 36 s 1

88.067 GRANTS TO LOCAL FIRE DEPARTMENTS.

The commissioner may make grants for procurement of fire suppression equipment and training of fire departments in techniques of fire control. These grants will enable local fire

departments to assist the state more effectively in controlling wildfires. The commissioner may require a local match for any grant. Fire suppression equipment may include, but is not limited to, fire suppression tools and equipment, protective clothing, dry hydrants, communications equipment, and conversion of vehicles to wildfire suppression vehicles. Training shall be provided to the extent practicable in coordination with other public agencies with training and educational responsibilities.

History: 1982 c 511 s 32; 1993 c 328 s 16; 1999 c 231 s 113

88.07 [Repealed, 1967 c 146 s 16]

88.08 WILDFIRE PROTECTION DISTRICTS.

The commissioner may create and establish wildfire protection districts, including all lands of both state and private ownership, upon which there is a probability of wildfires starting, and establish forest officers over these districts. All such wildfire districts heretofore established and now in existence are hereby continued until and unless hereafter abolished by the commissioner.

History: (4031-14) 1925 c 407 s 14; 1967 c 146 s 5; 1993 c 328 s 17

88.09 FIRE PROTECTION, LANDS, ACQUISITION.

Subdivision 1. Acceptance of lands. The commissioner may on behalf of the state accept the title to any tract of land, not exceeding 40 acres in area, or to accept any easement in or upon any tract of land, which the commissioner deems necessary or convenient for the use of the state as locations for fire lookout towers, warehouses, or other buildings of any kind, or as locations for firebreaks, or for other use which the commissioner may deem suitable.

Subd. 2. Purchase, lease, or condemnation. The commissioner may on behalf of the state, where no suitable state lands are available, purchase, lease or acquire easements on small tracts or parcels of lands, not exceeding 40 acres in area, to be used as locations for fire lookout towers, warehouses, or other buildings of any kind, or as locations for firebreaks, or for any other use which the commissioner may deem suitable; also acquire by condemnation any tract of land, not exceeding 40 acres, for these purposes; also acquire, by gift, purchase, or condemnation, any easement or right-of-way that may be necessary to provide access to any tract of land so acquired.

History: (4031-14a, 4031-14b) 1927 c 329 s 1,2; 1929 c 220 s 1,2; 1933 c 302 s 1,2; 1935 c 332 s 1; 1953 c 148 s 1; 1959 c 471 s 1; 1967 c 146 s 6; 1986 c 444; 1993 c 328 s 18

88.10 AUTHORITY OF STATE FOREST OFFICERS.

Subdivision 1. General authority. Under the direction of the commissioner, forest officers are charged with preventing and extinguishing wildfires in their respective districts and the performance of such other duties as may be required by the commissioner. They may arrest without warrant any person found violating any provisions of sections 88.03 to 88.22, take the person before a court of competent jurisdiction in the county charging the person so arrested, and the person so charged shall be arraigned and given a hearing on the complaint. The forest officers shall not be liable in civil action for trespass committed in the discharge of their duties. All authorized state forest officers, fire wardens, conservation officers, smoke chasers, fire supervisors or individuals legally employed as firefighters, may in the performance of their duties of fire fighting go onto the property of any person, company, or corporation and in so doing may set backfires, dig or plow trenches, cut timber for clearing fire lines, dig water holes, remove fence wires to provide access to the fire or carry on all other customary activities necessary for the fighting of wildfires without incurring a liability to anyone, except for damages arising out of willful or gross negligence.

Subd. 2. Arrest authority. Any forest officer may serve any warrant for the arrest of any person violating any provision of sections 88.03 to 88.22.

History: (4031-15) 1925 c 407 s 15; 1957 c 322 s 1; 1967 c 146 s 7; 1978 c 735 s 2; 1986 c 444; 1993 c 328 s 19

88.11 ASSISTANCE FOR FIGHTING FIRES.

Subdivision 1. Firefighting personnel. At any time forest officers, with the approval of the commissioner, may employ suitable persons to prevent and extinguish any fires. Each forest officer so employed shall be supplied with the necessary equipment. The commissioner, or any forest officer, may summon any person of the age of 18 years and upward to assist in stopping any fire burning in the district under the care of such state employee and may incur any other necessary and reasonable expense for this purpose, but shall promptly report the matter to the next superior officer or other state employee over the forest officer.

Subd. 2. Failure to assist; penalty; commandeered property. Any able-bodied person so summoned who refuses or neglects or otherwise fails to assist in extinguishing such fire or who fails to make all reasonable efforts to that end, until released by the summoning state employee, shall be guilty of a misdemeanor. The forest officer shall have power to commandeer, for the time being, equipment, tools, appliances, or other property in the possession of any person either summoned to assist in extinguishing the fire or in the vicinity thereof, and to use, and to require the persons summoned to use, the commandeered property in the fighting and extinguishing of the fire. The owner of any property so commandeered shall be promptly paid just compensation for the use thereof and all damages done to the commandeered property while in this use by the forest officer from any money available for these expenses under sections 88.03 to 88.22.

History: (4031–16) 1925 c 407 s 16; 1967 c 146 s 8; 1986 c 444; 1987 c 49 s 2; 1993 c 328 s 20

88.12 COMPENSATION OF FIGHTERS OF WILDFIRES; EMERGENCY EXPENSES.

Subdivision 1. Limitation. The compensation and expenses of persons temporarily employed in emergencies in suppression or control of wildfires shall be fixed by the commissioner of natural resources or an authorized agent and paid as provided by law. Such compensation shall not exceed the maximum rate for comparable labor established as provided by law or rules, but shall not be subject to any minimum rate so established. The commissioner is authorized to draw and expend from money appropriated for the purposes of sections 88.03 to 88.22 a reasonable sum and through forest officers or other authorized agent be used in paying emergency expenses, including just compensation for services rendered by persons summoned and for private property used, damaged, or appropriated under sections 88.03 to 88.22. The commissioner of finance is authorized to draw a warrant for this sum when duly approved by the commissioner. The commissioner or agent in charge shall take proper subvouchers or receipts from all persons to whom these moneys are paid, and after these subvouchers have been approved they shall be filed with the commissioner of finance. Authorized funds as herein provided at any time shall be deposited, subject to withdrawal or disbursement by check or otherwise for the purposes herein prescribed, in a bank authorized and bonded to receive state deposits; and the bond of this bank to the state shall cover and include this deposit.

Subd. 2. Contracts for services for forestry or wildfire prevention work; commissions to persons employed. The commissioner is hereby authorized and empowered to contract for or accept the services of any and all persons whose aid is available, temporarily or otherwise, in forestry or wildfire prevention work, either gratuitously or for compensation not in excess of the limits provided by law with respect to the employment of labor by the commissioner. At the request of another emergency response agency, trained forestry wildfire fighting resources may be used to support search and rescue operations. The commissioner may issue a commission, or other written evidence of authority, to any such person whose services are so arranged for; and may thereby empower such person to act, temporarily or otherwise, as fire warden, or in any other capacity, with such powers and duties as may be specified in the commission or other written evidence of authority, but not in excess of the powers conferred by law on forest officers.

MINNESOTA STATUTES 2006

88.12

DIVISION OF FORESTRY

3204

History: (4031-17, 4031-17a) 1925 c 407 s 17; 1927 c 280 s 1; 1955 c 218 s 1; 1967 c 146 s 9; 1969 c 1129 art 10 s 2; 1973 c 492 s 14; 1985 c 248 s 70; 1986 c 444; 1993 c 328 s 21; 2000 c 495 s 8

88.13 [Repealed, 1987 c 109 s 13]

88.14 DISPOSAL OF SLASHINGS AND DEBRIS.

Subdivision 1. **Order to dispose.** Where and whenever in the judgment of the commissioner or any forest officer there is or may be danger of starting and spreading of wildfires from slashings and debris from the cutting of timber of any kind and for any purpose, or from any accumulation of sawdust, shavings, chips, bark, edgings, slabs, or other combustible refuse from the manufacture of lumber or other timber products the commissioner, or forest officer, shall order the person by or for whom the timber or timber products have been or are being cut or manufactured to dispose of such slashings, debris, or refuse as the state employee may direct. Where conditions do not permit the burning of the slashings, debris, or refuse over the entire area so covered, the commissioner may require such person to dispose of the same in such a way as to establish a safe fire line around the area requiring such protection, the fire line to be of a width and character satisfactory to the commissioner, or otherwise to dispose of the same so as to eliminate the wildfires hazard therefrom.

Subd. 2. **Penalty.** When any person who has been directed by the commissioner, or forest officers to dispose of such slashings, debris, or refuse fails to comply with these directions the person shall be deemed guilty of a misdemeanor.

Subd. 3. **Entry to dispose; lien.** When any such slashings, debris, or refuse are not disposed of or are left unattended for a period exceeding 30 days, contrary to the instructions of the commissioner, or forest officer, the commissioner, or any forest officer or fire warden, may go upon the premises with as many workers as may be necessary and burn or otherwise dispose of the same and the expense thereof shall be a lien upon the land on which they are situated and upon all contiguous lands of the same owner, and also upon all logs and other timber products cut or manufactured upon all these lands. This lien shall have the same effect and may be enforced in the same manner as a judgment in favor of the state for money. An itemized statement verified by the oath of the commissioner, or forest officer, of the amount of the costs and expenses incurred in burning or otherwise disposing of these slashings, debris, or refuse shall be recorded, within 90 days from the time the disposal thereof is completed, in the office of the county recorder, or, if the property is registered, in the office of the registrar of titles of the county in which the timber or timber products were cut or manufactured; and the amount of the lien shall be a valid claim that may be collected in a civil action from the person who cut or manufactured the wood, timber, or timber products from which the slashings, debris, or refuse were produced. Any moneys so collected shall be paid into the state treasury and credited to the general fund.

Subd. 4. **Disposal requirement; roadbed or right-of-way.** Any person who cuts or fells trees or bushes of any kind in clearing land for any roadbed or right-of-way for any railroad, highway, or trail shall, in the manner and at the time as above prescribed, properly dispose of all combustible material.

Subd. 5. **Fire prohibition.** Any person who cuts or fells trees or bushes of any kind in clearing land for any purpose is hereby prohibited from setting fire to any slashings, brush, roots, or excavated stumps or other combustible material on such land and letting the fire run; but the same must be disposed of pursuant to the rules or directions of the commissioner.

Subd. 6. **Public road contractor.** Any contractor who enters into a contract for the construction of a public road or other work, which involves the cutting or grubbing of woods, standing timber, or brush, shall properly dispose of such slashings and debris without damage to adjoining timber or woods. The foregoing provisions shall not prevent the leaving of such trees along roads as will be useful for ornamental and shade purposes and which will not interfere with travel.

Subd. 7. **Contract terms.** Every contract made by or on behalf of any municipality or political subdivision of this state which involves the cutting of any timber on the right-of-

way of a public highway shall provide in terms for compliance with the foregoing provisions, but the failure to include this provision in the contract shall not relieve the contractor from the duty to dispose of these slashings.

Subd. 8. Disposal requirement; forest land. In all cases not herein provided for, where timber is cut in, upon, or adjoining any forest land and no specific directions are given by the commissioner, or forest officer, for the disposal of slashings and debris resulting therefrom, all such slashings and debris within 200 feet of any adjoining timber land or any public highway, railroad, portage, or lake shore, shall be properly disposed of by the person by or for whom the timber was cut.

Subd. 9. Prohibited deposits. No sawdust, shavings, chips, bark, edgings, slabs, or other combustible refuse that the commissioner or an agent of the commissioner determines to be a wildfire hazard shall be made or deposited upon any public highway, portage, railroad, or lake shore, or within 100 feet thereof.

History: (4031-19) 1925 c 407 s 19; 1929 c 360 s 1; 1967 c 146 s 11; 1976 c 181 s 2; 1985 c 248 s 70; 1986 c 444; 1989 c 335 art 4 s 106; 1993 c 328 s 22; 2005 c 4 s 13

88.15 CAMPFIRES.

Subdivision 1. Extinguishment. Any forest officer, conservation officer, or other peace officer who finds that any person has left a campfire burning shall take measures to extinguish the fire and take action against the person or persons responsible for leaving the campfire burning.

Subd. 2. Not to be left burning. Every person who starts a campfire shall exercise every reasonable precaution to prevent the campfire from spreading and shall before lighting the campfire clear the ground of all combustible material within a radius of five feet from the base of the campfire. The person lighting the campfire shall remain with the campfire at all times and shall before leaving the site completely extinguish the campfire.

History: (4031-20, 4031-21) 1925 c 407 s 20,21; 1929 c 261 s 1; 1981 c 37 s 2; 1986 c 444; 1993 c 328 s 23

88.16 STARTING AND REPORTING FIRES.

Subdivision 1. Written permission required. Except as provided in subdivision 2, and section 88.17, it shall be unlawful to start or have any open fire without the written permission of the commissioner, a forest officer, or an authorized fire warden.

Subd. 2. Exceptions. No permit is required for the following fires:

(a) A fire started when the ground is snow-covered.

(b) A campfire.

(c) A fire contained in a charcoal grill, camp stove, or other device designed for the purpose of cooking or heating.

(d) A fire to burn dried vegetative materials and other materials allowed by Minnesota statutes or official state rules and regulations in a burner of a design which has been approved by the commissioner and with which there is no combustible material within five feet of the base of the burner and is in use only between the hours of 6:00 p.m. and 8:00 a.m. of the following day, when the ground is not snow-covered.

Subd. 3. Report of fire; penalty. The occupant of any property upon which any unauthorized fire is burning, whether the fire was started by the occupant or otherwise, shall promptly report the fire to the nearest forestry office, fire department, or other proper authority. Failure to make this report shall be a misdemeanor and the occupant of the premises shall be deemed *prima facie* guilty of negligence if the unreported fire spreads from the property or causes damage, loss, or injury to another person, that person's property, or the state.

History: (4031-22) 1925 c 407 s 22; 1967 c 146 s 12; 1969 c 410 s 1; 1978 c 735 s 3; 1986 c 444; 1993 c 328 s 24

MINNESOTA STATUTES 2006

88.17

DIVISION OF FORESTRY

3206

88.17 PERMISSION TO START FIRES; PROSECUTION FOR UNLAWFULLY STARTING FIRES.

Subdivision 1. Permit required. (a) A permit to start a fire to burn vegetative materials and other materials allowed by Minnesota Statutes or official state rules and regulations may be given by the commissioner or the commissioner's agent. This permission shall be in the form of:

(1) a written permit issued by a forest officer, fire warden, or other person authorized by the commissioner; or

(2) an electronic permit issued by the commissioner, an agent authorized by the commissioner, or an Internet site authorized by the commissioner.

(b) Burning permits shall set the time and conditions by which the fire may be started and burned. The permit shall also specifically list the materials that may be burned. The permittee must have the permit on their person and shall produce the permit for inspection when requested to do so by a forest officer, conservation officer, or other peace officer. The permittee shall remain with the fire at all times and before leaving the site shall completely extinguish the fire. A person shall not start or cause a fire to be started on any land that is not owned or under their legal control without the written permission of the owner, lessee, or an agent of the owner or lessee of the land. Violating or exceeding the permit conditions shall constitute a misdemeanor and shall be cause for the permit to be revoked.

Subd. 2. [Repealed, 1993 c 328 s 32]

Subd. 3. **Special permits.** The following special permits are required at all times, including when the ground is snow-covered:

(a) **Fire training.** A permit to start a fire for the instruction and training of firefighters, including liquid fuels training, may be given by the commissioner or agent of the commissioner. Except for owners or operators conducting fire training in specialized industrial settings pursuant to applicable federal, state, or local standards, owners or operators conducting open burning for the purpose of instruction and training of firefighters with regard to structures must follow the techniques described in a document entitled: Structural Burn Training Procedures for the Minnesota Technical College System.

(b) **Permanent tree and brush open burning sites.** A permit for the operation of a permanent tree and brush burning site may be given by the commissioner or agent of the commissioner. Applicants for a permanent open burning site permit shall submit a complete application on a form provided by the commissioner. Existing permanent tree and brush open burning sites must submit for a permit within 90 days of the passage of this statute for a burning permit. New site applications must be submitted at least 90 days before the date of the proposed operation of the permanent open burning site. The application must be submitted to the commissioner and must contain:

(1) the name, address, and telephone number of all owners of the site proposed for use as the permanent open burning site;

(2) if the operator for the proposed permanent open burning site is different from the owner, the name, address, and telephone number of the operator;

(3) a general description of the materials to be burned, including the source and estimated quantity; and

(4) a topographic or similarly detailed map of the site and surrounding area within a one mile circumference showing all structures that might be affected by the operation of the site.

Only trees, tree trimmings, or brush that cannot be disposed of by an alternative method such as chipping, composting, or other method shall be permitted to be burned at a permanent open burning site. A permanent tree and brush open burning site must be located so as not to create a nuisance or endanger water quality.

Subd. 4. **Account created.** There is created in the state treasury a burning permit account within the natural resources fund where all fees collected under this section shall be deposited.

MINNESOTA STATUTES 2006

3207

DIVISION OF FORESTRY

88.171

Subd. 5. Permit fees. (a) The annual fees for an electronic burning permit are:

(1) \$5 for a noncommercial burning permit; and

(2) for commercial enterprises that obtain multiple permits; \$5 per permit for each burning site, up to a maximum of \$50 per individual business enterprise per year.

(b) Except for the issuing fee under paragraph (c), money received from permits issued under this section shall be deposited in the state treasury and credited to the burning permit account and, except for the electronic licensing system commission established by the commissioner under section 84.027, subdivision 15, is annually appropriated to the commissioner of natural resources for the costs of operating the burning permit system.

(c) Of the fee amount collected under paragraph (a), \$1 shall be retained by the permit agent as a commission for issuing electronic permits.

(d) Fire wardens who issue written permits may charge a fee of up to \$1 for each permit issued, to be retained by the fire warden as a commission for issuing the permit. This paragraph does not limit a local government unit from charging an administrative fee for issuing open burning permits within its jurisdiction.

History: (4031-23) 1925 c 407 s 23; 1967 c 146 s 13; 1969 c 410 s 2; 1978 c 735 s 4; 1986 c 444; 1987 c 271 s 1; 1993 c 328 s 25,26; 1Sp2005 c 1 art 2 s 66-68; 2006 c 281 art 1 s 18

88.171 OPEN BURNING PROHIBITIONS.

Subdivision 1. Continual. Open burning prohibitions specified in this section are in effect at all times of the year.

Subd. 2. Prohibited materials; exceptions. No person shall conduct, cause, or permit open burning of rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke including, but not limited to, tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, or paint filters. The commissioner may allow burning of prohibited materials when the commissioner of health or the local board of health has made a determination that the burning is necessary to abate a public health nuisance. Except as specifically authorized by the commissioner of the Pollution Control Agency as an emergency response to an oil spill, no person shall conduct, cause, or permit open burning of oil.

Subd. 3. Hazardous wastes. No person shall conduct, cause, or permit open burning of hazardous waste as defined in section 116.06, subdivision 11, and applicable commissioner's rules.

Subd. 4. Industrial solid waste. (a) No person shall conduct, cause, or permit open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial structure.

(b) The commissioner may allow open burning of raw untreated wood if the commissioner determines that reuse, recycling, or land disposal is not a feasible or prudent alternative.

Subd. 5. Demolition debris. No person shall conduct, cause, or permit open burning of burnable building material generated from demolition of commercial or institutional structures. A farm building is not a commercial structure.

Subd. 6. Salvage operations. No person shall conduct, cause, or permit salvage operations by open burning.

Subd. 7. Motor vehicles. No person shall conduct, cause, or permit the processing of motor vehicles by open burning.

Subd. 8. Garbage. (a) No person shall conduct, cause, or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food, unless specifically allowed under section 17.135.

(b) A county may allow a resident to conduct open burning of material described in paragraph (a) that is generated from the resident's household if the county board by resolu-

MINNESOTA STATUTES 2006

88.171

DIVISION OF FORESTRY

3208

tion determines that regularly scheduled pickup of the material is not reasonably available to the resident.

Subd. 9. Burning ban. No person shall conduct, cause, or permit open burning during a burning ban put into effect by a local authority, county, or a state department or agency.

Subd. 10. Smoldering fires. Fires must not be allowed to smolder with no flame present, except when conducted for the purpose of managing forests, prairies, or wildlife habitats.

History: 1993 c 328 s 27; 1995 c 240 art 2 s 1; 1996 c 295 s 1,2

88.18 FIRE WARDENS.

The commissioner may appoint local government officials, authorized Minnesota pollution control agents, fire chiefs, or other responsible persons to be fire wardens in their respective districts.

History: (4031-24) 1925 c 407 s 24; 1967 c 146 s 14; 1973 c 123 art 5 s 7; 1993 c 328 s 28

88.19 [Repealed, 1993 c 328 s 32]

88.195 PENALTIES.

Subdivision 1. Failure to extinguish a fire. Any person who starts and fails to control or extinguish the fire, whether on owned property or on the property of another, before the fire endangers or causes damage to the property of another person or the state is guilty of a misdemeanor.

Subd. 2. Failure to control a permit fire. Any person who has a burning permit and fails to keep the permitted fire contained within the area described on the burning permit or who fails to keep the fire restricted to the materials specifically listed on the burning permit is guilty of a misdemeanor.

Subd. 3. Careless or negligent fires. Any person who carelessly or negligently starts a fire that endangers or causes damage to the property of another person or the state is guilty of a misdemeanor.

Subd. 4. Careless or negligent acts. Any person who participates in an act involving careless or negligent use of motor vehicles, other internal combustion engines, firearms with tracers or combustible wads, fireworks, smoking materials, electric fences, torches, flares, or other burning or smoldering substances whereby a fire is started and is not immediately extinguished before the fire endangers or causes damage to the property of another person or the state is guilty of a misdemeanor.

Subd. 5. Internal combustion engines. Any person who operates a vehicle in a wildfire area when the ground is not snow-covered with an open exhaust cutout, without a muffler, without a catalytic converter if required, or without a spark arrestor on the exhaust pipe; or any person who operates a tractor, chainsaw, or other internal combustion engine not equipped to prevent fires is guilty of a misdemeanor.

History: 1993 c 328 s 29

88.20 RAILROAD COMPANIES TO PROVIDE PATROL OFFICERS.

After making a judgment that there is danger of the setting and spreading of fires from locomotive engines, the commissioner of natural resources shall order any railroad company to provide patrol officers with the necessary equipment to follow each train throughout such fire patrol district or districts as the commissioner deems necessary to prevent fires. When the commissioner has so notified a railroad company to provide such a patrol after trains, the railroad company shall immediately comply with the requirements of this notice throughout the territory designated; and, upon its failure so to do, the commissioner may employ patrol officers with the necessary equipment to patrol the rights-of-way of the railroad, and the expense shall be charged to the railroad company and may be recovered in a civil action in the

MINNESOTA STATUTES 2006

3209

DIVISION OF FORESTRY

88.21

name of the state of Minnesota; and in addition thereto the company shall be guilty of a misdemeanor. All money so recovered shall be paid into the state treasury and credited to the appropriation from which expenses were paid.

The commissioner may prescribe such other measures as are considered by the commissioner to be essential for the immediate control of fire.

It is made the duty of any railroad company, acting independently of the commissioner, to patrol its right-of-way after the passage of each train when necessary to prevent the spread of fires and to use the highest degree of diligence to prevent the setting and spread of fire, to cause the extinguishment of fires set by locomotives or found existing upon their respective rights-of-way.

History: (4031-26) 1925 c 407 s 26; 1939 c 427 s 1; 1967 c 207 s 1; 1969 c 1129 art 10 s 2; 1986 c 444

88.21 RAILROADS; DUTIES; PENALTIES.

Subdivision 1. Written report of inspection. On having reason to believe that a certain locomotive caused a fire the commissioner may require the railroad company to forward to the commissioner at once a written report covering the inspection of the fire-protective appliances of such locomotive made next after the occurrence of the fire. Such written report shall be copied from the inspection book required to be kept by the railroad company under subdivision 6.

Subd. 2. Cleared right-of-ways; reporting fires; fire prevention. All railroad companies operating railroads within this state shall keep their right-of-way cleared of all combustible material and safely dispose of same within limits of their right-of-way, as the commissioner may direct.

This section shall not be construed to prevent or prohibit any railroad company from piling or keeping upon the right-of-way cross ties or other material necessary in the operation or maintenance of such railroad.

No railroad company or its employees shall leave a deposit of fire or live coals or hot ashes in the immediate vicinity of forest lands or lands likely to be overrun by fires, and whenever engineers, conductors, or train workers discover unintended fires along the right-of-way, or in woodlands adjacent to the railroad, they shall report the same promptly by the most expeditious means available to the nearest station at which an operator is on duty, or to the first available section crew. In season of drought, railroad companies shall give particular instruction to their employees for the prevention and prompt extinguishment of fires, and they shall cause warning signs furnished by the commissioner of natural resources to be posted at their stations, and where a fire occurs along the line of the road, they shall concentrate such help and adopt such measures as shall be available to effectively extinguish it.

Subd. 3. Experimental devices. The commissioner of natural resources may permit the railroad to use devices and appliances for experimental purposes only by written permission during such limited periods and upon such terms and conditions as the commissioner may prescribe; this written permission shall be subject to revocation by the commissioner at any time, and such experimental devices or appliances shall not be permanently adopted unless authorized by law.

Subd. 4. Spark arresters. Except when the ground is covered with snow, no steam or internal combustion engine shall be operated in the vicinity of forest, brush, peat, or grass lands, unless and until the same is provided with a practical and efficient spark arrester device or its equivalent. The railroad company or other owners of such engine shall be held responsible for the good condition of spark arresters.

Subd. 5. Inspection. Any locomotive inspector appointed by the commissioner is authorized to inspect any locomotive operated in the vicinity of forest, brush, peat, or grass lands, and to enter upon any property for such purpose when the inspector may deem it necessary in order to see that all the provisions of law relating to the subject matter are duly complied with. The inspector shall have access to the records of every person operating a railroad

MINNESOTA STATUTES 2006

88.21

DIVISION OF FORESTRY

3210

for any purpose, and authority to make copies thereof, showing the locations and movements of all locomotive engines within this state, and is authorized to use such methods as the inspector may deem advisable in making up records and substantiating the inspector's findings.

Subd. 6. Record keeping. A record shall be kept of all examinations required by this section, in a book to be furnished, by every person operating a railroad for any purpose, showing:

(1) The place and number of each engine inspected;

(2) The date and hour of day of such inspection;

(3) A detailed statement, signed by the employee making the same, of any and all repairs, replacements, or renewals made at any time on, or in connection with, spark arresters.

The book shall always be open for inspection by the commissioner or other authorized officer appointed by the commissioner. A record of all examinations required by this section which is contained in official inspection records of a railroad company, when such records are regularly required by other governmental authority, may constitute a proper record of examinations required by this section in the discretion of the commissioner.

Subd. 7. Penalty. Any failure of the railroad company and its employees to comply with this section shall be a misdemeanor; and in addition thereto the railroad company shall be liable for all expenses and damages directly and proximately caused by or resulting from such failure of duty. The provisions of this section shall not relieve anyone from any duty or liability under any other law.

Subd. 8. Written report of fire. Any person operating a railroad for any purpose shall make written report to the commissioner, in such form as the commissioner may prescribe, covering each fire in the open on or adjacent to the right-of-way of the railroad, within one week after the occurrence of the fire, unless such time shall be extended by written permission of the commissioner; provided, that the provisions of this subdivision shall not be construed to relieve any person from the duty of reporting such fire as required by any other law.

History: (4031-27) 1925 c 407 s 27; 1939 c 427 s 2; 1945 c 68 s 1; 1957 c 135 s 1-3; 1967 c 207 s 2; 1969 c 1129 art 10 s 2; 1986 c 444

88.22 WILDFIRE PREVENTION; PROHIBITIONS, BANNING; PENALTIES.

Subdivision 1. Imposition of restrictions. (a) **Road closure.** When the commissioner of natural resources shall determine that conditions conducive to wildfire hazards exist in the wildfire areas of the state and that the presence of persons in the wildlife areas tends to aggravate wildfire hazards, render forest trails impassable by driving thereon during wet seasons and hampers the effective enforcement of state timber trespass and game laws, the commissioner may by written order, close any road or trail leading into any land used for any conservation purposes, to all modes of travel except that considered essential such as residents traveling to and from their homes or in other cases to be determined by the authorized forest officers assigned to guard the area.

(b) **Burning ban.** The commissioner may also, upon such determination, by written order, suspend the issuance of permits for open fires, revoke or suspend the operation of a permit previously issued and, to the extent the commissioner deems necessary, prohibit the building of all or some kinds of open fires in all or any part of a wildfire area regardless of whether a permit is otherwise required; and the commissioner also may, by written order, prohibit smoking except at places of habitation or automobiles or other enclosed vehicles properly equipped with an efficient ash tray.

Subd. 2. Dumping ban. The commissioner may close any public or private dumping area, by posting such area as closed to dumping, whenever the commissioner deems it necessary for the prevention of wildfires. Thereafter no person shall deposit refuse of any kind within or adjacent to such closed area, or along the road leading thereto.

The commissioner shall establish such minimum standards governing public and private dumping areas as the commissioner deems necessary for the prevention of wildfires.

MINNESOTA STATUTES 2006

3211

DIVISION OF FORESTRY

88.30

Subd. 3. Penalty. Any violations of this section is a misdemeanor.

History: (4031-34a) 1937 c 114 s 1; 1957 c 201 s 1; 1959 c 37 s 1; 1969 c 1129 art 10 s 2; 1978 c 735 s 5; 1986 c 444; 1993 c 328 s 30

88.23 [Renumbered 18.432]

88.24 [Renumbered 18.433]

88.25 [Renumbered 18.434]

88.26 [Renumbered 18.435]

88.27 [Repealed, 2005 c 146 s 52]

88.28 LAW DIVIDED INTO PARTS.

Sections 88.28 to 88.46 are hereby divided into three parts. Sections 88.28 to 88.41 relate exclusively to counties. Sections 88.42 and 88.43 relate exclusively to towns and cities. Sections 88.44 to 88.46 contain provisions relating both to counties and to towns and cities.

History: (4031-36) 1925 c 263 s 1; 1973 c 123 art 5 s 7

88.29 COUNTY BOARDS; JURISDICTION, POWERS.

It is hereby proposed to grant to the county boards of the several counties of this state jurisdiction within their respective counties to exercise all the powers and authority of sections 88.28 to 88.46 relative to the prevention and abatement of forest fires and the clearing and improvement of land by the removal from such land of trees, brush, stumps, and all other similar substances which contribute to the danger of forest fires; including the power to make any given area of improvement under sections 88.28 to 88.46 impervious to fire by any means now known or hereafter invented or discovered.

History: (4031-37) 1925 c 263 s 2

88.30 CLEARING AND IMPROVEMENT OF LANDS.

Before any improvement authorized by sections 88.28 to 88.46 shall be ordered or caused to be constructed by the county board of any county, there shall first be filed with the auditor of the county a petition signed by two or more parties owning land in the county, which land shall be described in the petition. The petition shall describe each tract of land, of which any portion is to be improved, by 40-acre tracts or by number of lots as designated under government survey; specify the number of acres of each tract that it is proposed to improve, which shall be not less than five, nor more than 20, acres in each 40-acre tract and a proportionate amount in smaller subdivisions; and set forth the nature of the title of the petitioners to each particular tract, in general terms, specifying whether the land is held by the petitioners as owners or under contract, and if the latter, with whom, and the balance remaining unpaid of the purchase price. The lands described in the petition must be situated in the same locality or part of the county, but not more than 40 acres in any quarter-section owned by the same petitioner shall be improved under sections 88.28 to 88.46 except by unanimous consent of the members of the county board. The petition shall further set forth a general description of the proposed improvement. Upon the filing of the petition, duly verified, with the auditor of the county, together with a bond by the petitioners, or by one or more of them, or some one in their behalf, with sufficient security, in a sum of not less than \$500, conditioned to hold the county harmless from all expense in the event the improvement petitioned for is not granted, the auditor shall designate the proceeding as "County Land Improvement No.," and in all subsequent proceedings in relation thereto the same may be designated and referred to by such title and number.

Any petition heretofore filed under Laws 1921, chapter 155, and any proceedings taken thereunder, may be continued and completed in conformity with the provisions of sections 88.28 to 88.46, at the discretion of the county board. No lands shall be so improved under sections 88.28 to 88.46 except upon petition of the owner or owners thereof.

History: (4031-38) 1925 c 263 s 3

88.31 SURVEYS AND PLATS.

Upon the filing of the petition and bond, as provided in section 88.30, with the auditor of any county, the auditor shall notify the county board of the county, and the county board shall, within 30 days thereafter, appoint a competent civil engineer and direct the engineer to proceed to examine the land described in the petition and make the necessary surveys to enable the engineer to report and file with the auditor a plat, therein describing each 40-acre tract or governmental lot covered by the petition and marking thereon the portion of the land proposed to be cleared and improved. The engineer shall, as a part of the report, describe the kind of trees, brush, stumps, or other similar materials or debris located upon the land and proposed to be removed by the proceedings, together with an estimate of the cost thereof, and the probable value of the material, if any, when removed, and shall accompany the report with specifications as to the manner of performing and completing the improvement. The engineer shall specifically describe the nature of the soil of each tract and any other conditions affecting the value, location, or use of the land. This report shall be in tabulated form and furnish the county board with an estimate of the cost of the improvement of each particular tract of land described, which report by the engineer shall be filed with the auditor within 30 days after appointment of the engineer, unless for good cause shown further extension of 30 days is granted by the auditor. This engineer before entering upon duties shall execute to the county board a bond in the sum of \$1,000, conditioned for the faithful performance of the duties.

History: (4031-39) 1925 c 263 s 4; 1986 c 444

88.32 APPRAISERS; ASSESSMENT OF BENEFITS AND DAMAGES; STATEMENTS AND REPORTS.

At the time of the appointment of the engineer, as provided in section 88.31, by the county board, or within 30 days thereafter, the board shall appoint three appraisers, residents of the state, but not interested in any of the land described in the petition or affected by the proposed improvement, who, upon the filing of the engineer's report, or within ten days thereafter, shall be furnished by the auditor with a copy of the report; and, after taking oath as such appraisers to faithfully perform their duties in making these appraisals and report, shall personally visit the several tracts of land and examine the trees, brush, timber, or similar material thereon to be removed, and especially examine the nature and quality of the soil and the benefits or damages resulting or to result from the improvement. These appraisers within 30 days from the date of their appointment or from the date of filing the engineer's report, shall make and file in the office of the auditor a tabulated statement and report, therein describing each 40-acre tract or governmental lot described in the petition, reporting the condition thereof and the amount thereof already cleared or under cultivation; the amount proposed to be cleared; the value of the land at the time of the appraisal; the value after the completion of the improvement; and the aggregate benefits or damages that will result to each 40-acre tract or governmental lot in consequence of the improvement; and shall, by their report, show the total cost of the improvement and the total benefits or damages that will result therefrom, together with any other facts affecting the value or use of the land or the advisability of the proposed improvement.

History: (4031-40) 1925 c 263 s 5

88.33 HEARINGS; NOTICE; SERVICE; DATE; ADJOURNMENTS.

Upon the filing of this report, the auditor shall, within ten days thereafter, fix a date for final hearing on the petition and the engineer's and appraisers' reports and call a special meeting of the county board for that date by giving notice, as required by law therefor, which hearing shall be not less than 30 days from the date of the notice. The notice shall specify the time and place for the hearing upon the petition and the reports of the engineer and the appraisers, and shall notify and require all parties in any manner interested to show cause before the county board, at the time and place specified in the notice, why an order should not be made confirming the reports of the engineer and the appraisers and ordering and directing

that the improvement petitioned for be made, and fixing and determining the amount and extent of the improvement and the amount and value of the benefits or damages resulting to any land in consequence of the improvement. This notice shall contain the names of the owners of the land as shown in the petition, together with a description of the land by 40-acre tracts or governmental lots, the amount of the estimated benefits and damages to each tract or parcel, and state that the engineer's and the appraisers' reports have been filed in the office of the auditor subject to inspection by any parties interested. Copies of this notice shall be mailed by the auditor to all parties named in the petition, if their addresses are known to the auditor, at least 15 days prior to the date of the hearing. This notice shall also be served by publication for three successive weeks in any legal newspaper published in the county, which newspaper shall be designated by the auditor. In all cases in which for any cause the notice shall not be given or is legally defective, as given, the auditor shall fix another date for hearing in accordance with sections 88.28 to 88.46, so that the hearing upon the petition and the engineer's and the appraisers' reports may be held at the earliest possible date, at either a special or a regular meeting of the county board. When any final order of the county board in any case shall have been set aside, annulled, or declared void by any court by reason of failure to give proper notice of the hearing, the county board may, at any time within one year after the rendering of such judgment, upon application of the petitioners, order a special hearing before it upon the petition and the reports: and, thereupon the auditor shall cause a new and proper notice to be published and mailed, as hereinbefore specified, for rehearing upon the petition and these reports. At the rehearing the county board may proceed as in cases of original hearing.

Any hearing may be adjourned from day to day until completed.

History: (4031-41) 1925 c 263 s 6; 1986 c 444

88.34 HEARING ON PETITION; ELIMINATION OF LANDS.

Upon due publication and mailing of notice of hearing, the county board shall have jurisdiction of all matters named or referred to in the petition as originally presented, or as afterwards amended, and of each tract of land and of all parties in any manner interested therein, as named or described in the petition and in the engineer's and the appraisers' reports. The county board may, at the time and place specified in the notice, receive all evidence offered relative to matters contained in the petition and these reports, including the amount of benefits and damages reported by the appraisers; and the county board shall have authority to amend or modify these reports, and may amend or permit the amendment of the petition to conform to any requirements of the statute, and may order stricken therefrom, and from the reports of the engineer and the appraisers, any land found by the county board not suitable for the required purposes or for other reasons not suitably adapted to the improvement. The elimination of any such land or the names of any such petitioners or the withdrawal thereof shall not in any manner affect the jurisdiction of the county board; but the original petitioners, at any time before the date of hearing, may cause the dismissal of the proceedings upon the payment of all costs and expenses.

History: (4031-42) 1925 c 263 s 7

88.35 REREFERENCE OF PETITION.

If, at such hearing, after the presentation of the evidence on behalf of all parties interested, it shall appear to the satisfaction of the county board that the appraisers have made unequal or improper assessments or estimates of benefits or damages, or for any reason the estimates of benefits or damages, as reported by the appraisers, are not fair and just, or are not in the proper proportion, or that the engineer's report is incorrect or for any reason not according to facts, it may refer back to the appraisers and to the engineer, or to either of them, their reports for correction and amendment; or, at the hearing, it may order them amended to conform to the facts and, upon the amendments being made, the amended reports shall be treated as the final reports of the engineer or the appraisers, as the case may be.

History: (4031-43) 1925 c 263 s 8

88.36 ORDER FOR IMPROVEMENTS.

If, at the final hearing, or adjournment thereof, the county board, after due consideration of the original or amended reports of the engineer and the appraisers and of such other evidence as may be produced, shall find that the proposed improvements will be of public benefit and aid in preventing or abating forest fires, it may order such improvements to be made in accordance with the petition and these reports. This order shall fix and determine the rights of all persons connected with or affected by the proposed improvements, subject to the right of appeal, as provided in section 88.37.

History: (4031-44) 1925 c 263 s 9

88.37 APPEALS FROM ORDERS FOR IMPROVEMENTS.

Any person aggrieved thereby may appeal from any such order of the county board upon any of the following matters:

- (1) The amount of benefits to any property in which such person so appealing is interested;
- (2) The amount of any damages allowed in which such person so appealing is interested; or
- (3) The refusal of the county board to establish or order the improvement to be made.

The appeal shall be made and taken to the district court in and for the county, under the conditions and in the manner provided by law for like appeals in county ditch proceedings, particular reference being made to General Statutes 1923, Section 6687, and the appeal shall be determined with like effect as provided therin.

History: (4031-45) 1925 c 263 s 10

88.38 CONTRACTS FOR IMPROVEMENTS; DUTIES OF COUNTY AUDITOR; SEEDING OF CLEARED LANDS.

Within ten days after the filing in the office of the auditor of the order of the county board establishing and ordering any improvement under the provisions of sections 88.28 to 88.46, the auditor shall give notice of a time and place for receiving bids for the making of the improvement in accordance with the provisions of General Statutes 1923, section 6689, and the provisions of that section, so far as applicable, shall govern the receiving of bids and the letting of contracts for the making of the improvement. The auditor may let separate contracts for each separate tract upon which any part of the improvement is to be made, or may let one contract for the whole thereof, or for the clearing of land on the whole or on any number of such tracts. The contract shall specifically provide for the removal of the trees, brush, stumps, and other similar material located on the tracts of land covered by the contract, and shall specify what disposition shall be made of all such clearing debris in accordance with the direction of the county board. The county board may order and require that the contract shall contain provisions for the burning or destruction of all such debris or materials, or for the removal thereof, or for the use of that material where use can be made thereof. Where the material removed from any tract of land can be utilized for any purposes that will result in advantage to the owner of the land, the county board in the contract may provide for making such use of the trees or other products, and the assessments against such tract of land shall be lessened accordingly. To prevent the return of the land to its wild state and the consequent danger of forest fires, the county board may require that the land so cleared shall be seeded to grasses and clover, when it appears that the owner does not contemplate cropping the land so cleared at the next planting season following the completion of the clearing thereof.

History: (4031-46) 1925 c 263 s 11

88.39 WORK OF IMPROVEMENT; DUTIES OF ENGINEERS; PAYMENTS TO CONTRACTORS.

It shall be the duty of the engineer from time to time as occasion may require to visit the premises and examine the work performed by the contractor and when and as often as ten

MINNESOTA STATUTES 2006

3215

DIVISION OF FORESTRY

88.41

percent or more of the work is completed the engineer may issue a certificate to the contractor and a duplicate to the county auditor, therein certifying the amount of work that has been done by the contractor and the value thereof. Upon the filing by the contractor of such certificate with the county auditor, the auditor may draw a warrant in favor of the contractor for a sum not to exceed 75 percent of the contract price of the work done since the last report. When the contractor shall have notified the engineer of the completion of the work, the engineer shall make careful examination and report findings of fact to the county auditor; and, on finding the contract to be completed in accordance with the terms thereof, the engineer shall so certify. Thereupon the county auditor shall notify the owners of the land that a hearing will be had upon the report of the engineer that the contract is completed, which hearing shall be held by the county board at the next meeting following the filing of the report, if not less than 15 days thereafter; otherwise, as soon as possible. At the hearing all parties interested may appear before the county board; and, if the county board shall find the contract fully completed, it shall order payment of the balance owing under the contract.

History: (4031-47) 1925 c 263 s 12; 1986 c 444

88.40 BOND ISSUES TO PAY FOR IMPROVEMENTS.

The county board of each county wherein any improvement is ordered constructed under the provisions of sections 88.28 to 88.46 is hereby authorized to issue the bonds of the county in such amount as may be necessary to defray, in whole or in part, the expense incurred or to be incurred in establishment and completion of the improvement, together with all expenses incidental thereto; and the provisions of General Statutes 1923, section 6696, shall apply thereto and the county board is hereby authorized to exercise all the authority specified in General Statutes 1923, section 6696, in providing the funds for the completion of any improvement authorized by the provisions of sections 88.28 to 88.46; and where the term "drainage ditch" or "drainage bond" appears in General Statutes 1923, section 6696, the same, for the purposes of sections 88.28 to 88.46, shall be construed as reading "improvement" or "land improvement bond," as the case may be. In the event the bonds authorized under the terms of sections 88.28 to 88.46 are not sold at advertised sale, the county board may let contracts as herein provided when the contractor is willing to accept payment for the contract in bonds at par; provided, that no county may incur any indebtedness for the purposes of sections 88.28 to 88.46 in excess of five percent of its taxable valuation, exclusive of money and credits.

History: (4031-48) 1925 c 263 s 13

88.41 COUNTY AUDITORS; TABULAR STATEMENTS; POWERS AND DUTIES.

At as early a date as possible after letting the contract or contracts under any improvement authorized by sections 88.28 to 88.46, and as soon as the cost of the improvement and expenses connected therewith can be ascertained, the auditor of the county shall make in tabular form a list and statement as provided by General Statutes 1923, section 6703, and the cost of making the improvement of each tract, together with its proportionate share of the total expense, shall be assessed against such tract, and the provisions of General Statutes 1923, section 6703, so far as applicable, shall govern the proceedings under sections 88.28 to 88.46. The auditor is hereby authorized to exercise all the rights and authority granted by General Statutes 1923, section 6703, and in all places where the term "ditch" or "drainage ditch" shall appear therein, the same, for all purposes of sections 88.28 to 88.46 shall be construed as reading "improvement," and General Statutes 1923, section 6703, used and applied accordingly. The auditor, after preparing this statement, shall cause a duplicate thereof to be recorded in the office of the county recorder in and for the county, as provided in General Statutes 1923, section 6705, and the provisions thereof shall apply to the proceedings under sections 88.28 to 88.46. The auditor and county recorder are hereby authorized to exercise the rights and authority and perform the duties here specified, and the provisions of General Statutes 1923, sections 6712 and 6713, shall apply to and govern the proceedings under sections 88.28 to 88.46. The county auditor, the county treasurer, and the county recorder are

MINNESOTA STATUTES 2006

88.41

DIVISION OF FORESTRY

3216

each hereby authorized and required to perform in all proceedings under sections 88.28 to 88.46 the duties specified in General Statutes 1923, sections 6712 and 6713; and in all cases where the term "ditch" or "ditches" or any other similar term appears therein, the same, for all purposes of sections 88.28 to 88.46, shall be construed as reading "improvement."

History: (4031-49) 1925 c 263 s 14; 1976 c 181 s 2; 2005 c 4 s 14

88.42 IMPROVEMENTS BY TOWNS AND CITIES; LIMITATION OF IN-DEBTEDNESS.

All towns and cities are hereby authorized and empowered to contract debts and pledge the public credit for, and to engage in, any work reasonably tending to prevent or abate forest fires; provided, that the amount of the indebtedness so contracted or assumed shall never be such as to increase the total public indebtedness of any such town or city beyond the limits now or hereafter fixed by the laws specifically relating thereto, except in case of actual emergency to be declared at or subsequent to the time by resolution or other appropriate action of the town board or city council, or other governing body, as the case may be. For such emergencies the total public indebtedness shall never be increased at any time so as to be more than five percent in excess of the maximum provided by general law.

History: (4031-50) 1925 c 263 s 15; 1973 c 123 art 5 s 7

88.43 FIREBREAKS; CLEARING LANDS.

Subdivision 1. **Distance.** The governing body of any town or city may construct and continuously maintain good and sufficient firebreaks for the protection of life and property within such municipality. For such purposes any city may completely clear all land and remove all combustible or inflammable materials therefrom within 1,000 feet next beyond and outside of the boundary lines of the city whenever and wherever such improvement will reasonably tend to prevent or abate forest fires.

Subd. 2. **Benefits; assessment; lien.** If any clearing or other improvement of land made by any town or city benefits any person, or benefits some and damages others, then the amount of both such benefits and damages shall be ascertained in the same manner as provided by law with respect to damages in condemnation proceedings by power of eminent domain. All provisions of law relating to the determination of the amount of damages in condemnation proceedings shall apply to the determination of the value of benefits under this section, as far as practicable. Any benefits so found shall be assessed against, and be a lien upon, the real property so benefited and shall be noted upon the public records and collected upon the same terms and in substantially the same manner as now provided by law for the collection of ditch and drainage assessments pursuant to chapter 103E.

History: (4031-51, 4031-52) 1925 c 263 s 16,17; 1961 c 560 s 10; 1973 c 123 art 5 s 7; 1985 c 172 s 99; 1990 c 391 art 8 s 18; 2006 c 214 s 20

88.44 ACQUISITION OF PROPERTY.

Subdivision 1. **Certificate of indebtedness; bond issues; tax levies.** For any of the purposes authorized in sections 88.28 to 88.46 and within the limits therein fixed, any county, town, or city may borrow money and issue bonds for the payment thereof, with the approval of a majority of the voters, as provided by the general laws relating to bond issues; may make all necessary, proper, and convenient provisions for sale of such bonds at not less than par, for payment of interest thereon at not more than six percent per annum, and of the principal thereof at maturity, or contingently at an earlier date; may issue promissory notes or certificates of indebtedness as far as reasonably necessary to procure funds in case of emergency not affording time to submit the matter to the voters; and for such purposes may levy and collect taxes annually upon all taxable property of such municipalities. As to counties, the powers conferred by this section shall be deemed supplementary to, but in no way lessening or detracting from, the powers and authority conferred by section 88.40.

Subd. 2. **How acquired.** When necessary in the exercise of the powers and authority conferred by sections 88.28 to 88.46, any county, town, or city may acquire property or prop-

MINNESOTA STATUTES 2006

3217

DIVISION OF FORESTRY

88.48

erty rights by gift, by purchase, or by condemnation, in any manner now or hereafter provided by law.

History: (4031-53, 4031-54) 1925 c 263 s 18,19; 1973 c 123 art 5 s 7

88.45 MUNICIPALITIES TO COOPERATE.

Counties doing anything under sections 88.28 to 88.46 shall act by and through county boards; towns, by and through town boards; and cities, by and through their councils or other governing bodies. It shall be the duty of all such municipalities and their officials and employees to cooperate, as far as possible, with the director and other employees in the forestry service. In all cases where forest fires are actually burning the orders and directions of the director and district rangers shall be binding upon, and must be obeyed by, all officials and employees of any municipality until the fires shall have been extinguished.

History: (4031-55) 1925 c 263 s 20; 1973 c 123 art 5 s 7; 1992 c 464 art 1 s 13

88.46 LAWS APPLICABLE.

Where in sections 88.28 to 88.46 it is provided that any section or provision of General Statutes 1913 or 1923, or any session laws or general laws, shall be deemed applicable in sections 88.28 to 88.46 for any purpose, the sections and provisions of these other laws so incorporated in sections 88.28 to 88.46 by such reference shall include all existing amendments thereto made prior to the year 1925, but not thereafter. If any such law so incorporated by reference shall be hereafter repealed, the same shall nevertheless be and remain a part of sections 88.28 to 88.46, unless the repeal expressly and explicitly provides to the contrary through direct reference to sections 88.28 to 88.46.

History: (4031-56) 1925 c 263 s 21

88.47 AUXILIARY FORESTS; TAXATION.

Subdivision 1. Created. Any tract of land in this state containing not less than 35 acres, generally suitable for the planting, culture, and growth of trees for the production of timber or forest products may be made an auxiliary forest, subject to taxation only in accordance with the provisions of sections 88.47 to 88.53.

Subd. 2. Wood lots. Any tract of land in this state containing not less than five nor more than 40 acres generally suitable for the planting, culture, and growth of trees for the production of timber or forest products, being in the nature of wood lots guarded or protected by the owners or their tenants actually living on the land or immediately adjacent thereto, may, regardless of value be made an auxiliary forest, subject to limited and special taxation only in accordance with the provisions of sections 88.47 to 88.53.

Subd. 3. Form and contents of application. The owner of, the owner of an option to buy, or the owner of a contract to buy any tract or contiguous tract of land who deems the tract suitable for an auxiliary forest may make written application to the county board of the county in which such land is situate, setting forth the description thereof by governmental subdivisions or other proper survey, the estimated value per acre thereof, a brief statement of the facts showing its suitability for production of timber or forest products, a statement of the kinds of timber growing and proposed to be grown thereon and the kind and quantity of merchantable timber thereon, the methods of timber culture proposed to be followed, and a request that such land be made an auxiliary forest under and subject to the provisions of sections 88.47 to 88.53.

Subd. 4. Verification. The application shall be upon a form prescribed by the director and shall be verified by the applicant.

History: (4031-60, 4031-61) 1927 c 247 s 1,2; 1945 c 269 s 1,2; 1947 c 467 s 1; 1986 c 444

88.48 APPLICATION.

Subdivision 1. Filing. Such application shall be filed with the auditor of the county in which the land described therein is situate, who shall present the same to the county board at its first meeting held after the lapse of a period of ten days after such filing.

MINNESOTA STATUTES 2006

88.48

DIVISION OF FORESTRY

3218

Subd. 2. Notice. The county auditor shall, upon receipt of the application and prior to the meeting of the county board at which it is presented, mail notice to the clerk of the town in which lies the land therein described.

Subd. 3. Hearing, determination. Upon the presentation to it of the application, the county board shall consider the same and hear any matter that may be offered in support of or in opposition to the application. It shall then determine whether the land covered by the application is suitable for the planting, culture, and growth of trees for the production of timber or forest products, the actual or market value thereof, exclusive of timber thereon and of minerals or anything under the surface thereof, and the amount of annual tax provided for in section 88.51, subdivision 1.

Subd. 4. Action of county board. The county board shall make proper record of its action upon the application including, if the application be rejected, a written statement, prepared within 30 days of the date of rejection, covering the reason or reasons for such rejection.

If the application be rejected, the county auditor shall endorse the rejection on the application and return it, together with a copy of the written statement prepared by the county board giving the reason or reasons for rejection, to the applicant within 30 days by certified mail at the address given in the application; or, if the application is disapproved as to a part only of the lands described therein, the county auditor shall in like manner notify the applicant, who may within 60 days after the mailing of the notice amend the application accordingly. If it be not so amended the application shall be deemed rejected.

If the application be accepted, the county auditor shall in like manner notify the applicant thereof and transmit the application, with the record of the approval thereof, to the director. It shall be the duty of the commissioner to approve or disapprove the application within 90 days from receipt thereof, to make proper record of the action and to give notice thereof to the applicant in the manner hereinbefore provided and to the county board.

Subd. 5. Abstract of title. Within 60 days after the mailing of notice of acceptance by the commissioner, the applicant shall furnish to the county attorney of the county in which the lands described in the contract lie an abstract of title to these lands, or a certificate of title, if the same be registered, including certificates by the county auditor and county treasurer that there are no unpaid taxes thereon, and a certificate of judgment search by the court administrator of the district court. In case of land conveyed to the applicant by the state of Minnesota under the provisions of section 282.01, subdivision 2, or sections 282.011 to 282.015, the furnishing of the recorded state deed and a certificate of judgment search to the county attorney in lieu of an abstract of title shall constitute satisfactory compliance with this subdivision. The county attorney shall make such examination as may be required by the commissioner and certify to the director the name of the owner of the fee title or the holder of a state deed issued pursuant to Minnesota Statutes, as amended, section 282.01, subdivision 2, or sections 282.011 to 282.015, thereto, and the names of all other persons having any liens thereon, and such other information as may be required by the commissioner. The applicant shall pay the county attorney a reasonable fee for the examination, not exceeding \$10 for each 640 acres, or fraction thereof, of contiguous lands included in any one abstract, certificate of title or state deed.

History: (4031-62) 1927 c 247 s 3; 1949 c 334 s 1; 1949 c 664 s 1; 1953 c 246 s 1; 1955 c 772 s 1; 1957 c 753 s 1; 1978 c 674 s 60; 1984 c 543 s 3; 1986 c 444; 1Sp1986 c 3 art 1 s 82

88.49 CONTRACTS.

Subdivision 1. Execution. When it shall have been determined that any lands may be made into an auxiliary forest, the commissioner shall prepare a contract therefor, which contract shall be executed by the commissioner in behalf of the state of Minnesota and by the owner of the fee title or the holder of a state deed and by all other persons having any liens thereon and witnessed and acknowledged as provided by law for the execution of recordable

deeds of conveyance. Notices sent by certified mail to the owner in fee at the address given in the application shall be deemed notice to all persons executing such contract.

Subd. 2. Preparation, form, approval. The contract shall be prepared by the director of the Division of Lands and Forestry on a recordable form approved by the attorney general and prescribe such terms and conditions as will reasonably tend to produce merchantable timber upon the lands described therein and specify the kind or species of seeds to be planted or seedlings to be set out and the quantity or number thereof, or other acts or steps that the commissioner shall deem necessary in respect to afforestation or reforestation of the lands; the time or times when the same shall be done; the kind and amount, if any, of culture or other attention to be given in aid of the growth of timber thereon; the uses, if any, which may be made of the land while the same remains an auxiliary forest; the period of time, not exceeding 50 years, during which the land may continue to be an auxiliary forest, with privilege of renewal by mutual agreement between the owner and the state acting through the commissioner, with the approval of the county board and the Executive Council, for an additional period not exceeding 50 years; the rate of taxation which may be levied annually on the land, exclusive of merchantable timber growing thereon at the time of the making of the contract and exclusive of mineral or other things of value thereunder, the rate to be determined as herein-after provided; the keeping open to the public, as public hunting and fishing grounds, of all approved auxiliary forest lands, except when such lands are closed to public hunting or fishing by order of the director of the Division of Lands and Forestry in order to protect such lands from fire, loss of life or property provided, however, that the term keeping open shall not apply to private roads or improvements should the owner desire to close same; and such other conditions, provisions, and stipulations, as the commissioner, in the exercise of scientific knowledge and business judgment, may deem necessary or proper. Every such contract shall be approved by the Executive Council.

As far as practicable all contracts shall be uniform and equal in respect to all lands or classes of lands substantially similar in capacity for, or adaptability to, any particular kind or species of tree culture or forest growth.

Subd. 3. Recording. The commissioner shall submit such contract in recordable form to the owner of the land covered thereby. If the owner shall indicate to the commissioner an unwillingness to execute the same, or if the owner or any of the persons having an interest therein or lien thereon fail to execute it within 60 days from the time of its submission to the owner, all proceedings relating to the making of this land into an auxiliary forest shall be at an end.

When the contract shall have been executed it shall forthwith be recorded in the office of the county recorder at the expense of the owner or, if the title to the land be registered, with the registrar of titles. At the time the contract is recorded with the county recorder for record the owner, at the owner's expense, shall record with the county recorder a certificate from the county attorney to the effect that no change in record title thereof has occurred, that no liens or other encumbrances have been placed thereon, and that no taxes have accrued thereon since the making of the previous certificate. It shall be the duty of the county attorney to furnish this certificate without further compensation.

All the provisions of the contract shall be deemed covenants running with the land from the date of the filing of the contract for record.

Subd. 4. Effect. Upon the filing of the contract for record the land therein described shall become and, during the life of the contract, remain and be, an auxiliary forest entitled to all the benefits and subject to all the restrictions of sections 88.47 to 88.53, all of which shall be deemed a part of the obligation of the contract and shall be inviolate, subject only to the police power of the state, to the power of eminent domain, and to the right of the parties thereto by mutual agreement to make applicable to the contract any laws of the state enacted subsequent to its execution and filing. This provision shall not be so construed as to prevent amendatory or supplementary legislation which does not impair these contract rights of the parties thereto, or as to prevent amendatory or supplementary legislation in respect of the culture, care, or management of the lands included in any such contract.

MINNESOTA STATUTES 2006

88.49

DIVISION OF FORESTRY

3220

Subd. 5. Cancellation. Upon the failure of the owner faithfully to fulfill and perform such contract or any provision thereof, or any requirement of sections 88.47 to 88.53, or any rule adopted by the commissioner thereunder, the commissioner may cancel the contract in the manner herein provided. The commissioner shall give to the owner, in the manner prescribed in section 88.48, subdivision 4, 60 days' notice of a hearing thereon at which the owner may appear and show cause, if any, why the contract should not be canceled. The commissioner shall thereupon determine whether the contract should be canceled and make an order to that effect. Notice of the commissioner's determination and the making of the order shall be given to the owner in the manner provided in section 88.48, subdivision 4. On determining that the contract should be canceled and no appeal therefrom be taken, the commissioner shall send notice thereof to the auditor of the county and to the town clerk of the town affected and file with the recorder a certified copy of the order, who shall forthwith note the cancellation upon the record thereof, and thereupon the land therein described shall cease to be an auxiliary forest and, together with the timber thereon, become liable to all taxes and assessments that otherwise would have been levied against it had it never been an auxiliary forest from the time of the making of the contract, any provisions of the statutes of limitation to the contrary notwithstanding, less the amount of taxes paid under the provisions of section 88.51, subdivision 1, together with interest on such taxes and assessments at six percent per annum, but without penalties.

The commissioner may in like manner and with like effect cancel the contract upon written application of the owner.

The commissioner shall cancel any contract if the owner has made successful application under sections 290C.01 to 290C.11, the Sustainable Forest Incentive Act, and has paid to the county treasurer the difference between the amount which would have been paid had the land under contract been subject to the Minnesota Tree Growth Tax Law and the Sustainable Forest Incentive Act from the date of the recording of the contract and the amount actually paid under section 88.51, subdivisions 1 and 2. This tax difference must be calculated based on the years the lands would have been taxed under the Tree Growth Tax Law and the Sustainable Forest Incentive Act. The sustainable forest tax difference is net of the incentive payment of section 290C.07. If the amount which would have been paid, had the land under contract been under the Minnesota Tree Growth Tax Law and the Sustainable Forest Incentive Act from the date of the filing of the contract, is less than the amount actually paid under the contract, the cancellation shall be made without further payment by the owner.

When the execution of any contract creating an auxiliary forest shall have been procured through fraud or deception practiced upon the county board or the commissioner or any other person or body representing the state, it may be canceled upon suit brought by the attorney general at the direction of the commissioner. This cancellation shall have the same effect as the cancellation of a contract by the commissioner.

Subd. 6. Assessment after cancellation. For the purpose of levying such taxes, the county auditor shall, immediately upon receipt of notice of the cancellation of any contract creating an auxiliary forest, direct the local assessor to assess the lands within the forest, excluding the value of merchantable timber and minerals and other things of value taxed under the provisions of section 88.51, subdivision 2, as of each of the years during which the lands have been included within the auxiliary forest. The local assessor shall forthwith make the assessment and certify the same to the county auditor. The county auditor shall thereupon levy a tax on the assessable value of the land as fixed by section 273.13, for each of the years during which the land has been within an auxiliary forest, at the rate at which other real estate within the taxing district was taxed in those years. The tax so assessed and levied against any land shall be a first and prior lien upon the land and upon all timber and forest products growing, grown, or cut thereon and removed therefrom. These taxes shall be enforced in the same manner as other taxes on real estate are enforced and, in addition thereto, the lien of the tax on

MINNESOTA STATUTES 2006

3221

DIVISION OF FORESTRY

88.49

forest products cut or removed from this land shall be enforced by the seizure and sale of the forest products.

No person shall, after the mailing by the commissioner, as provided in subdivision 5, of notice of hearing on the cancellation of a contract making any lands an auxiliary forest, cut or remove from these lands any timber or forest products growing, grown, or cut thereon until all taxes levied under this subdivision shall have been paid, or, in the event such levy shall not have been completed, until the owner shall have given a bond payable to the county, with sureties approved by the county auditor, in such amount as the county auditor shall deem ample for the payment of all taxes that may be levied thereon under this subdivision, conditioned for the payment of such taxes.

Any person who shall violate any of the provisions of this subdivision shall be guilty of a felony.

Subd. 7. Appeal. The owner may appeal from any cancellation order of the commissioner to the district court of the county wherein the land is situate, by serving notice of appeal on the commissioner and filing the same with the court administrator of the district court within 30 days after the date of mailing of notice of such order.

The appeal shall be tried between the state of Minnesota and the owner by the court as a suit for the rescission of a contract is tried, and the judgment of the court shall be substituted for the cancellation order of the commissioner, and shall be final.

Subd. 8. Proceedings in lieu of cancellation. If cause for the cancellation of any contract shall exist, the commissioner may, in lieu of canceling such contract, perform the terms and conditions, other than the payment of taxes, required, by the contract or by law or by the rules of the commissioner, to be performed by the owner, and may for that purpose use any available moneys appropriated for the maintenance of the commissioner's division and any other lawful means. The commissioner shall, on December 1 each year, certify to the auditor of each county the amount of moneys thus expended and the value of services thus rendered in respect of any lands therein since December 1 of the preceding year. The county auditor shall forthwith assess and levy the amount shown by this certificate against the lands described therein. This amount shall bear interest at the rate of six percent per annum and shall be a lien upon the lands described therein, and the collection thereof enforced in the same manner as taxes levied under section 88.52, subdivision 1; and, if such tax be not sooner paid, it shall be added to, and the payment thereof enforced with, the yield tax imposed under section 88.52, subdivision 2.

Subd. 9. Auxiliary forests; withdrawal of land from. Land needed for other purposes may be withdrawn from an auxiliary forest as herein provided. A verified application therefore in a form prescribed by the commissioner of natural resources may be made by the owner to the county board of the county in which the land is situated, describing the land and stating the purpose of withdrawal. Like proceedings shall be had upon the application as upon an application for the establishment of an auxiliary forest, except that consideration need be given only to the questions to be determined as provided in this subdivision. If the county board shall determine that the land proposed to be withdrawn is needed and is suitable for the purposes set forth in the application, and that the remaining land in the auxiliary forest is suitable and sufficient for the purposes thereof as provided by law, the board may, in its discretion, grant the application, subject to the approval of the commissioner. Upon such approval a supplemental contract evidencing the withdrawal shall be executed, filed, and recorded or registered as the case may require, in like manner as an original auxiliary forest contract. Thereupon the land described in the supplemental contract shall cease to be part of the auxiliary forest, and, together with the timber thereon, shall be liable to taxes and assessments in like manner as upon cancellation of an auxiliary forest contract.

Subd. 9a. Land trades with governmental units. Notwithstanding subdivisions 6 and 9, or section 88.491, subdivision 2, if an owner trades land under auxiliary forest contract for land owned by a governmental unit and the owner agrees to use the land received in trade from the governmental unit for the production of forest products, upon resolution of the county board, no taxes and assessments shall be levied against the land traded, except that

MINNESOTA STATUTES 2006

88.49

DIVISION OF FORESTRY

3222

any current or delinquent annual taxes or yield taxes due on that land while it was under the auxiliary forest provision must be paid prior to the land exchange. The land received from the governmental unit in the land trade automatically qualifies for inclusion in the Sustainable Forest Incentive Act.

Subd. 10. Auxiliary forest contracts; consolidation thereof. For the purpose of the simplification of operations thereunder, two or more auxiliary forest contracts held by one owner in any county may be consolidated into a single contract, establishing the initial yield tax in the consolidated contract to such a percentage of market value as will represent a reasonable average of the various levels of the yield taxes payable under the contracts so consolidated at the time of consolidation, as may be determined by the commissioner with the approval of the board of county commissioners. The yield tax payable after consolidation shall be subject to the schedule provided by section 88.51, subdivision 2. The period of time of a consolidated contract shall be the average of the periods remaining of the contracts consolidated. Consolidation of contracts shall be effected in the manner a new contract is established as provided in section 88.48, subdivisions 1, 2, 3, and 4 and subdivisions 1, 2, 3, and 4 of this section but no consolidation shall be effected without the consent of both the county board of county commissioners in any county affected as well as the commissioner of natural resources and no such approval shall be given if the board or the commissioner shall be of the opinion the total taxes that have been paid to date under the separate parcels and are estimated will be paid under the consolidated contract during the period thereof would be less than the aggregate total of the taxes that would be paid under the separate contracts on the parcels sought to be consolidated.

Subd. 11. Auxiliary forests; transfer of title; procedure on division. The title to the land in an auxiliary forest or any part thereof is subject to transfer in the same manner as the title to other real estate, subject to the auxiliary forest contract therefor and to applicable provisions of law. In case the ownership of such a forest is divided into two or more parts by any transfer or transfers of title and the owners of all such parts desire to have the same made separate auxiliary forests, they may join in a verified application therefor to the county board of the county in which the forest is situated in a form prescribed by the commissioner of natural resources. If the county board determines that each of the parts into which the forest has been divided is suitable and sufficient for a separate auxiliary forest as provided by law, it may, in its discretion, grant the application, subject to the approval of the commissioner. Upon such approval, the commissioner shall prepare a new auxiliary forest contract for each part transferred, with like provisions and for the remainder of the same term as the prior contract in force for the entire forest at the time of the transfer, and shall also prepare a modification of such prior contract, eliminating therefrom the part or parts of the land transferred but otherwise leaving the remaining land subject to all the provisions of such contract. The new contract or contracts and modification of the prior contract shall be executed and otherwise dealt with in like manner as provided for an original auxiliary forest contract, but no such instrument shall take effect until all of them, covering together all parts of the forest existing before the transfer, have been executed, filed, and recorded or registered, as the case may require. Upon the taking effect of all such instruments, the owner of the forest prior to the transfer shall be divested of all rights and relieved from all liabilities under the contract then in force with respect to the parts transferred except such as may have existed or accrued at the time of the taking effect of such instruments, and thereafter the several tracts into which the forest has been divided and the respective owners thereof shall be subject to the new contract or contracts or the modified prior contract relating thereto, as the case may be, as provided for an original auxiliary forest contract. The provisions of this subdivision shall not supersede or affect the application of any other provision of law to any auxiliary forest which is divided by transfer of title unless the procedure herein authorized is fully consummated.

History: (4031-63) 1927 c 247 s 4; 1949 c 320 s 1; 1955 c 772 s 2; 1957 c 753 s 2; 1959 c 130 s 1; 1959 c 561 s 1; 1961 c 347 s 1; 1967 c 905 s 5; 1969 c 1129 art 10 s 2; 1975 c 339 s 8; 1976 c 181 s 2; 1978 c 674 s 60; 1985 c 248 s 70; 1986 c 444; 1Sp1986 c

MINNESOTA STATUTES 2006

3223

DIVISION OF FORESTRY

88.51

3 art 1 s 82; 1987 c 109 s 1-3; 1987 c 268 art 7 s 2; 1Sp2001 c 5 art 8 s 1,2; 2005 c 4 s 15-17; 2006 c 214 s 20

88.491 RESTRICTIONS ON NEW AUXILIARY FORESTS, EXTENSIONS OF EXISTING CONTRACTS.

Subdivision 1. **New or extended auxiliary forest contracts.** After June 30, 1974, no application for an auxiliary forest contract may be accepted or approved by a county board under section 88.48, and no auxiliary forest contract may be executed by the commissioner of natural resources under section 88.49, subdivision 1. After June 30, 1974, no extension of an auxiliary forest contract may be agreed upon by the commissioner of natural resources or approved by a county board or the Executive Council under section 88.49, subdivision 2.

Subd. 2. **Effect of expired contract.** When auxiliary forest contracts expire, or prior to expiration by mutual agreement between the land owner and the appropriate county office, the lands previously covered by an auxiliary forest contract automatically qualify for inclusion under the provisions of the Sustainable Forest Incentive Act; provided that when such lands are included in the Sustainable Forest Incentive Act prior to expiration of the auxiliary forest contract they will be transferred and a tax paid as provided in section 88.49, subdivision 5, upon application and inclusion in the sustainable forest incentive program. The land owner shall pay taxes in an amount equal to the difference between:

(1) the sum of:

(i) the amount which would have been paid from the date of the recording of the contract had the land under contract been subject to the Minnesota Tree Growth Tax Law; plus

(ii) beginning with taxes payable in 2003, the taxes that would have been paid if the land had been enrolled in the sustainable forest incentive program; and

(2) the amount actually paid under section 88.51, subdivisions 1 and 2.

History: 1974 c 411 s 1,2; 1Sp2001 c 5 art 8 s 3; 2005 c 4 s 18

88.50 TAXATION.

Every auxiliary forest in this state shall be taxed in the manner and to the extent herein-after provided and not otherwise. Except as expressly permitted by sections 88.47 to 88.53, no auxiliary forest shall be taxed for, or in any manner, directly or indirectly made to contribute to, or become liable for the payment of, any tax or assessment, general or special, or any bond, certificate of indebtedness, or other public obligation of any name or kind, made, issued, or created subsequent to the filing of the contract creating the auxiliary forest, provided that temporary buildings, structures, or other fixtures of whatsoever kind located upon land within an auxiliary forest shall be valued and assessed as personal property and classified as class 3 under the general system of ad valorem taxation. In any proceeding for the making of a special improvement under the laws of this state by which any auxiliary forest will be benefited, the owner thereof may subject the lands therein to assessment therefor in the manner provided by law, by filing the owner's consent in writing to the making of the assessment in the tribunal in which the proceeding is pending, whereupon the lands shall for the purposes of the improvement and assessment be treated as lands not in an auxiliary forest; but the lien of any assessment so levied on lands in any auxiliary forest shall be subject to the provisions of the contract creating the auxiliary forest and subordinate to the lien of any tax imposed under the provisions of sections 88.47 to 88.53.

History: (4031-64) 1927 c 247 s 5; 1963 c 418 s 2; 1986 c 444

88.51 AUXILIARY FORESTS; TAX RATE, SPECIAL TAXES.

Subdivision 1. **Annual tax, ten cents per acre.** From and after the filing of the contract creating any tract of land an auxiliary forest under sections 88.47 to 88.53 and hereafter upon any tract heretofore created as an auxiliary forest, the surface of the land therein, exclusive of mineral or anything of value thereunder, shall be taxed annually at the rate of 10 cents per acre. This tax shall be levied and collected and the payment thereof, with penalties and inter-

MINNESOTA STATUTES 2006

88.51

DIVISION OF FORESTRY

3224

est, enforced in the same manner as other taxes on real estate, and shall be credited to the funds of the taxing districts affected in the proportion of their interest in the taxes on this land if it had not been so made an auxiliary forest; provided, that such tax shall be due in full on or before May 31, after the levy thereof. Failure to pay when due any tax so levied shall be cause for cancellation of the contract.

The levy upon the land of the taxes provided for by section 88.49, subdivision 5, upon the cancellation of a contract, shall discharge and annul all unpaid taxes levied or assessed theron.

Subd. 2. Merchantable timber taxed separately. Timber which is merchantable at the time of filing of an auxiliary forest contract or which may become merchantable thereafter may be cut or otherwise removed from the land in accordance with applicable provisions of law and of the auxiliary forest contract, and shall be taxed in the following manner. The owner shall, in the event the timber is cut or removed within one year after March 31 following the date of filing the auxiliary forest contract, pay a special tax thereon, which is hereby designated as a yield tax, equal to 40 percent of the market value of the merchantable timber on the stump at the time of the cutting or removal. The aforesaid yield tax rate shall be reduced by two percent on each April 1st following until it shall become ten percent after which it shall remain constant. Minerals, mineral reservations, or any other thing of value under the surface of the land in any auxiliary forest shall not be included within the terms of sections 88.47 to 88.53 and shall be taxed separately in the same manner as mineral interests or minerals separately owned are taxed.

Subd. 3. Determination of market value. In determining the net tax capacity of property within any taxing district the value of the surface of lands within any auxiliary forest therein, as determined by the county board under the provisions of section 88.48, subdivision 3, shall, for all purposes except the levying of taxes on lands within any such forest, be deemed the market value thereof.

History: (4031-65) 1927 c 247 s 6; 1929 c 245 s 1; 1945 c 269 s 3,5; 1947 c 467 s 2,3; 1953 c 246 s 2; 1957 c 694 s 1; 1975 c 339 s 8; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

88.52 CUTTING TIMBER; TAXATION.

Subdivision 1. Yield tax, when to be paid. The merchantable timber shall either be cut, or the yield tax hereinbefore mentioned shall be paid upon its value as standing timber, at the expiration of the period fixed in the contract for the duration of the auxiliary forest; or at the expiration of any renewal of the contract.

Subd. 2. Examination, report. When any timber growing or standing in any auxiliary forest shall have become suitable for merchantable forest products, the commissioner shall, at the written request of the owner, a copy of which shall at the time be filed in the office of the county auditor, make an examination of the timber and designate for the owner the kind and number of trees most suitable to be cut if in the judgment of the commissioner there be any, and the cutting and removal of these trees so designated shall be in accordance with the instructions of the commissioner. The commissioner shall inspect the cutting or removal and determine whether it or the manner of its performance constitute a violation of the terms of the contract creating the auxiliary forest or of the laws applicable thereto, or of the instructions of the commissioner relative to the cutting and removal. Any such violation shall be ground for cancellation of the contract by the commissioner; otherwise the contract shall continue in force for the remainder of the period therein stated, regardless of the cutting and removal. Within 90 days after the completion of any cutting or removal operation, the commissioner shall make a report of findings thereon and transmit copies of such report to the county auditor and the surveyor general.

Subd. 3. Kinds, permit, scale report, assessment and payment of tax. (a) Upon the filing of the request of the owner, the director of lands and forestry, with the county board or

the county land commissioner, shall determine within 30 days the kinds, quantities, and value on the stump of the timber proposed to be cut.

Before the cutting is to begin, the director of lands and forestry shall file with the county auditor a report showing the kinds, quantities and value of the timber proposed to be cut or removed and approved by the director of lands and forestry for cutting within two years after the date of approval of the report by the director of lands and forestry. The county auditor shall assess and levy the estimated yield tax thereon, make proper record of this assessment and levy in the auditor's office, and notify the owner of the auxiliary forest of the amount thereof. The owner shall, before any timber in the forest is cut or removed, give a bond payable to the state of Minnesota, or in lieu thereof, deposit in cash with the county treasurer, in the amount required by the report, which shall be not less than 150 percent of the amount of the levy, conditioned for the payment of all taxes on the timber to be cut or removed. Upon receipt of notification from the county auditor that the bond or cash requirement has been deposited, the director of lands and forestry will issue a cutting permit in accordance with the report. The owner shall keep an accurate count or scale of all timber cut. On or before the fifteenth day of April following issuance of such cutting permit, and on or before the fifteenth day of April of each succeeding year in which any merchantable wood products were cut on auxiliary forest lands prior to the termination of such permit, the owner of the timber covered by the permit shall file with the director of lands and forestry a sworn statement, submitted in duplicate, on a form prepared by the director of lands and forestry, one copy of which shall be transmitted to the county auditor specifying the quantity and value of each variety of timber and kind of product cut during the preceding year ending on March 31, as shown by the scale or measurement thereof made on the ground as cut, skidded or loaded as the case may be. If no such scale or measurement shall have been made on the ground, an estimate thereof shall be made and such estimate corrected by the first scale or measurement, made in the due course of business, and such correction at once filed with the director of lands and forestry who shall immediately transmit it to the county auditor. On or before the fifteenth day of May following the filing of the sworn statement covering the quantity and value of timber cut under an authorized permit, the auditor shall assess and levy a yield (severance) tax, according to section 88.51, subdivision 2, of the timber cut during the year ending on the March 31st preceding the date of assessing and levying this tax. This tax is payable and must be paid to the county treasurer on or before May 31 next following. Copies of the yield (severance) tax assessment and of the yield (severance) tax payment shall be filed with the director of lands and forestry and the county auditor. Except as otherwise provided, all yield (severance) taxes herein provided for shall be levied and collected and payment thereof, with penalties and interest, enforced in the same manner as taxes imposed under the provisions of section 88.51, subdivision 1, and shall be credited to the funds of the taxing districts affected in the proportion of their interests in the taxes on the land producing the yield (severance) tax. At any time on deeming it necessary the director of lands and forestry may order an inspection of any or all cutting areas within an auxiliary forest and also may require the owner of the auxiliary forest to produce for inspection by the director of lands and forestry of any or all cutting records pertaining to timber cutting operations within an auxiliary forest for the purpose of determining the accuracy of scale or measurement reports, and if intentional error in scale or measurement reports is found to exist, shall levy and assess a tax triple the yield (severance) tax on the stumpage value of the timber cut in excess of the quantity and value reported.

(b) The following alternative method of assessing and paying annually the yield tax on an auxiliary forest is to be available to an auxiliary forest owner upon application and upon approval of the county board of the county within which the auxiliary forest is located.

For auxiliary forests entered under this subdivision the county auditor shall assess and levy the yield tax by multiplying the acreage of each legal description included within the auxiliary forest by the acre quantity of the annual growth by species, calculated in cords, or in thousands of feet board measure Minnesota standard log scale rule, whichever is more reasonably usable, for the major species found in each type by the from year-to-year appraised stumpage prices for each of these species, used by the Division of Lands and Forestry, De-

MINNESOTA STATUTES 2006

88.52

DIVISION OF FORESTRY

3226

partment of Natural Resources, in selling trust fund timber located within the district in which the auxiliary forest is located. The assessed value of the annual growth of the auxiliary forest, thus determined, shall be subject to a ten percent of stumpage value yield tax, payable annually on or before May 31. In all other respects the assessment, levying and collection of the yield tax, as provided for in this subdivision shall follow the procedures specified in clause (a).

Forest owners operating under this subdivision shall be subject to all other provisions of the auxiliary forest law except such provisions of clause (a) as are in conflict with this subdivision. Penalties for intentional failure by the owner to report properly the quantity and value of the annual growth upon an auxiliary forest entered under this subdivision and for failure to pay the yield tax when due shall be the same as the penalties specified in other subdivisions of this law for like failure to abide by its provisions.

To qualify for the assessment and levying of the yield tax by this method, the owner of the forest requesting this method of taxation must submit a map or maps and a tabulation in acres and in quantity of growth by legal descriptions showing the division of the area covered by the auxiliary forest for which this method of taxation is requested into the following forest types, namely: white and Norway pine; jack pine; aspen-birch; spruce-balsam fir; swamp spruce; tamarack; cedar; upland hardwoods; lowland hardwoods; upland brush and grass (temporarily nonproductive); lowland brush (temporarily nonproductive); and permanently nonproductive (open bogs, stagnant swamps, rock outcrops, flowage, etc.). Definition of these types and determination of the average rate or rates of growth (in cords or thousand feet, board measure, Minnesota standard log scale rule, which ever is more logically applicable for each of them) shall be made by the director of the Division of Lands and Forestry, Minnesota Department of Natural Resources, with the advice and assistance of the land commissioner of the county in which the auxiliary forest is located; the director of the United States Forest Service's North Central Forest Experiment Station; and the director of the School of Forestry, University of Minnesota. Before the approval of the application of the owner of an auxiliary forest to have the auxiliary or proposed auxiliary forest taxed under provisions of this subdivision is submitted to the county board the distribution between types of the area as shown on the maps and in the tabulations submitted by the owner of the auxiliary or proposed auxiliary forest shall be examined and their accuracy determined by the director of the Division of Lands and Forestry, Department of Natural Resources, with the assistance of the county board of the county in which the auxiliary forest is located.

During the life of the auxiliary forest contract timber cutting operations within the various types shown upon the type map accepted as a part of the approved auxiliary forest application shall not bring about a reclassification of the forest types shown upon that map or those maps until after the passage of ten years following the termination of said timber cutting operations and then only upon proof of a change in type.

Subd. 4. Hearing, procedure. The owner of any land or timber upon which a yield tax is assessed and levied as provided in this section may, within 15 days after mailing of notice of the amount of the tax, file with the county auditor a demand for hearing thereon before the county board. The county auditor shall thereupon fix a date of hearing, which shall be held within 30 days after the filing of the demand, and mail to the owner notice of the time and place of the hearing. The owner may appear at the meeting and present evidence and argument as to the amount of the tax and as to any matter relating thereto. The county board shall thereupon determine whether the tax as levied is proper in amount and make its order thereon. The county auditor shall forthwith mail to the owner a notice of the order. If the amount of the tax is increased or reduced by the order, the county auditor shall make a supplemental assessment and levy thereof, as in this subdivision provided.

Subd. 5. Yield tax, a prior lien. Throughout the life of any such auxiliary forest the yield tax accruing thereon shall constitute and be a first and prior lien upon all the merchantable timber and forest products growing or grown thereon; and, if not paid when due, this yield tax, together with penalties and interest thereon as otherwise provided by law and all expenses of collecting same, shall continue to be a lien upon the timber and forest products

and every part and parcel thereof wherever the same may be or however much changed in form or otherwise improved until the yield tax is fully paid. Such lien may be foreclosed and the property subject thereto dealt with by action in the name of the state, brought by the county attorney at the request of the county auditor.

Subd. 6. Timber held exempt from yield tax. Timber cut from an auxiliary forest by an owner and used by the owner for fuel, fencing, or building on land occupied by the owner which is within or contiguous to the auxiliary forest where cut shall be exempt from the yield tax, and as to timber so cut and used the requirements of subdivisions 1 and 2 shall not be applicable and in lieu thereof the owner shall prior to cutting file with the county auditor, on a form prepared by the commissioner, a statement showing the quantity of each kind of forest products proposed to be cut and the purposes for which the same will be used.

History: (4031-66) 1927 c 247 s 7; 1945 c 269 s 4; 1953 c 246 s 3; 1955 c 772 s 3; 1967 c 905 s 5; 1969 c 1129 art 10 s 2; 1971 c 25 s 27; 1986 c 444

88.523 AUXILIARY FOREST CONTRACTS; SUPPLEMENTAL AGREEMENTS.

Upon application of the owner, any auxiliary forest contract heretofore or hereafter executed may be made subject to any provisions of law enacted subsequent to the execution of the contract and in force at the time of application, so far as not already applicable, with the approval of the county board and the commissioner of natural resources. As evidence thereof a supplemental agreement in a form prescribed by the commissioner and approved by the attorney general shall be executed by the commissioner in behalf of the state and by the owner. Such supplemental agreement shall be filed and recorded in like manner as the original contract, and shall thereupon take effect.

History: 1953 c 246 s 4; 1969 c 1129 art 10 s 2

88.53 LAND HELD AS AUXILIARY FOREST; AMOUNT, DISPOSAL AFTER CEASING TO BE AUXILIARY FOREST.

Subdivision 1. Time for disposal. Any corporation, association, or organization may acquire and hold any amount of land without restriction and without limit as to acreage or quantity for the purpose of including same within and holding same as an auxiliary forest under the provisions of sections 88.47 to 88.53. When the same shall cease to be an auxiliary forest the owners shall have five years within which to dispose of the land, any provisions of general law to the contrary notwithstanding.

Subd. 2. Rules. The director shall make rules and adopt and prescribe such forms and procedure as shall be necessary in carrying out the provisions of sections 88.47 to 88.53; and the director and every county board, county recorder, registrar of titles, assessor, tax collector, and every other person in official authority having any duties to perform under or growing out of sections 88.47 to 88.53 are hereby severally vested with full power and authority to enforce such rules, employ help and assistance, acquire and use equipment and supplies, or do any other act or thing reasonably necessary to the proper performance of duties under or arising from the administration and enforcement of sections 88.47 to 88.53. It shall be the duty of the director to cause periodic inspections to be made of all auxiliary forests for the purpose of determining whether contract and statutory provisions relative thereto are being complied with.

Subd. 3. Application. Auxiliary forests shall be subject to all applicable provisions of sections 88.03 to 88.21, except as expressly provided otherwise in sections 88.47 to 88.53.

History: (4031-67, 4031-68, 4031-69) 1927 c 247 s 8-10; 1976 c 181 s 2; 1985 c 248 s 70; 1986 c 444

88.54 [Renumbered 84A.31]

88.55 [Renumbered 84A.32]

88.56 [Renumbered 84A.33]

88.57 [Renumbered 84A.34]

- 88.58 [Renumbered 84A.35]
- 88.59 [Renumbered 84A.36]
- 88.60 [Renumbered 84A.37]
- 88.61 [Renumbered 84A.38]
- 88.62 [Renumbered 84A.39]
- 88.63 [Renumbered 84A.40]
- 88.64 [Repealed, 1949 c 546 s 10]

88.641 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 88.641 to 88.648 the following words, terms and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears or the context otherwise requires.

Subd. 1a. **Decorative boughs.** "Decorative boughs" mean decorative materials that are side branches or slashings that have been cut from any growing coniferous or deciduous trees, bushes, saplings, seedlings, or shrubs and that are intended to be sold or used for decorative purposes.

Subd. 1b. **Decorative materials.** "Decorative materials" mean forest products that are collected or harvested from growing coniferous or deciduous trees, bushes, saplings, seedlings, shrubs, or herbaceous plants, including the tops, branches, or other parts cut from any of the foregoing, untrimmed or in their natural condition, intended to be sold or used for decorative purposes. Nursery stock is not included in this definition.

Subd. 2. **Decorative trees.** "Decorative trees" mean decorative materials that are growing coniferous or deciduous trees, bushes, saplings, seedlings, or shrubs, including the tops cut from any of the foregoing, untrimmed or in their natural condition, intended to be sold or used for decorative purposes. Nursery stock shall not be included in this definition.

Subd. 3. [Repealed, 1983 c 133 s 5]

Subd. 4. [Duplication of the provisions of subd 3]

Subd. 4. [Repealed, 1Sp2001 c 2 s 162]

Subd. 4a. **Officer.** "Officer" means a forest officer, conservation officer, or other peace officer.

Subd. 5. [Repealed, 1Sp2001 c 2 s 162]

Subd. 6. **Written consent.** "Written consent" means written permission, a bill of sale, or a governmental or reservation permit.

History: 1949 c 546 s 1; 1983 c 133 s 1; 1Sp2001 c 2 s 91-95

88.642 DECORATIVE MATERIALS.

Subdivision 1. **Written consent.** No person shall cut, harvest, remove, transport, or possess for decorative purposes or for sale more than three decorative trees, more than 100 pounds of decorative boughs, or more than 100 pounds of any other decorative materials without the written consent of the owner or authorized agent of the private or public land on which the decorative materials were cut or harvested. The written consent shall be on a form furnished or otherwise approved by the commissioner of natural resources and shall contain the legal description of the land where the decorative materials were cut or harvested, as well as the name of the legal owner of the land or the owner's authorized agent. The written consent must be carried by every person cutting, harvesting, removing, possessing, or transporting any decorative materials, or in any way aiding therein, and must be exhibited to any officer at the officer's request at any time.

Subd. 2. **Inspection and investigation.** Any officer shall have power to inspect any decorative materials when being transported in any vehicle or other means of conveyance or

MINNESOTA STATUTES 2006

3229

DIVISION OF FORESTRY

88.6435

by common carrier, to make an investigation with reference thereto as may be necessary to determine whether or not the provisions of sections 88.641 to 88.648 have been complied with, to stop any vehicle or other means of conveyance found carrying decorative materials upon any public highways of this state, for the purpose of making an inspection and investigation, and to seize and hold subject to the order of the court any decorative materials found being cut, removed, or transported in violation of any provision of sections 88.641 to 88.648. Failure to comply with the requirements of sections 88.641 to 88.648 subjects the decorative materials to seizure and confiscation as contraband in addition to other penalties provided by law.

Subd. 3. Transportation requirements. No person, common carrier, bough buyer, or authorized agent shall purchase or otherwise receive for shipment or transportation any decorative materials without recording the seller's or consignor's name and address and the written consent on a form furnished or otherwise approved by the commissioner of natural resources.

Subd. 4. No written consent. Failure to possess or exhibit a written consent shall be *prima facie* evidence that no consent was given or exists.

Subd. 5. Exceptions. (a) This section does not apply to decorative materials in the possession of or being transported by a federal, state, or local government official for a legitimate public purpose.

(b) This section does not apply to a person cutting, harvesting, possessing, or transporting decorative materials cut from the person's own property if the person produces documentation that the person owns the property where the decorative materials were cut.

History: 1949 c 546 s 2; 1967 c 905 s 9; 1969 c 1129 art 10 s 2; 1976 c 181 s 2; 1983 c 133 s 2; 1986 c 444; 1Sp2001 c 2 s 96

88.643 [Repealed, 1983 c 133 s 5]

88.6435 BOUGH BUYERS.

Subdivision 1. Permits. A person may not buy more than 100 pounds of decorative boughs in any calendar year without a bough buyer's permit issued by the commissioner of natural resources. The annual fee for a permit for a resident or nonresident to buy decorative boughs is \$25. The annual fee may be reduced to \$10 if the buyer attends an approved annual workshop or other orientation session for balsam bough harvesters and buyers.

Subd. 2. Buying and record requirements. (a) When buying or otherwise receiving decorative boughs, a person permitted under this section must record:

- (1) the seller's name and address;
- (2) the form of written consent; and

(3) the government permit number or legal description or property tax identification number of the land from which the boughs were obtained.

The information must be provided on a form furnished or otherwise approved by the commissioner of natural resources in consultation with the balsam bough industry groups.

(b) Boughs may not be purchased if the seller fails to exhibit the written consent required under section 88.642, subdivision 1, or if the boughs do not conform to the standards specified on the consent. Decorative boughs cut from public lands must conform to standards specified in the written consent.

(c) Records shall be maintained from July 1 until June 30 of the following calendar year and shall be open to inspection to an officer during reasonable hours.

(d) Customer name and address records created and maintained by permittees under this section are classified as private or nonpublic government data.

MINNESOTA STATUTES 2006

Subd. 3. Revocation of permits. (a) The commissioner may deny, modify, suspend, or revoke a permit issued under this section for cause, including falsification of records required under this section or violation of any other provision of sections 88.641 to 88.648.

(b) A person convicted of two or more violations of sections 88.641 to 88.648 within three years may not obtain a bough buyer's permit for three years from the date of the last conviction.

Subd. 4. Forest bough account; disposition of fees. (a) The forest bough account is established in the state treasury within the natural resources fund.

(b) Fees for permits issued under this section shall be deposited in the state treasury and credited to the forest bough account and, except for the electronic licensing system commission established by the commissioner under section 84.027, subdivision 15, are annually appropriated to the commissioner of natural resources for costs associated with balsam bough educational programs for harvesters and buyers.

History: 1Sp2001 c 2 s 97; 1Sp2005 c 1 art 2 s 69

88.644 [Repealed, 1Sp2001 c 2 s 162]

88.645 ENFORCEMENT.

Subdivision 1. Search warrants. A court having authority to issue warrants in criminal cases may issue a search warrant, in the manner provided by law for issuing search warrants for stolen property, to search for and seize decorative materials affected by or involved in an offense under sections 88.641 to 88.648. The warrant may be directed to and executed by any officer authorized to make arrests and seizures by sections 88.641 to 88.648.

Subd. 2. Complaint. An officer having knowledge of an offense under sections 88.641 to 88.648 shall make a complaint against the offender before a court having jurisdiction of the offense and request the court to issue a warrant of arrest in the case.

History: 1949 c 546 s 5; 1983 c 359 s 3; 1Sp2001 c 2 s 98

88.646 [Repealed, 1983 c 133 s 5]

88.647 RELATION TO EXISTING LAWS.

Sections 88.641 to 88.6435 do not supersede any existing provision of law relating to any matter within the scope thereof but shall be construed as supplementary thereto.

History: 1949 c 546 s 7; 1Sp2001 c 2 s 99

88.648 CRIMINAL PENALTIES; MISDEMEANOR.

(a) A person who makes a false statement in any application, form, or other statement as described in sections 88.641 to 88.6435 is guilty of a misdemeanor.

(b) Except as otherwise provided in this section, a person who violates a provision of sections 88.641 to 88.6435 is guilty of a misdemeanor.

History: 1949 c 546 s 8; 1983 c 133 s 4; 1Sp2001 c 2 s 100

88.649 [Repealed, 1983 c 133 s 5]

88.65 [Repealed, 1949 c 546 s 10]

88.651 [Renumbered 90.50, subds 1-4]

88.652 [Renumbered 90.50, subd 5]

88.66 [Repealed, 1949 c 546 s 10]

88.67 [Repealed, 1949 c 546 s 10]

88.68 [Repealed, 1949 c 546 s 10]

88.69 [Repealed, 1949 c 546 s 10]

MINNESOTA STATUTES 2006

3231

DIVISION OF FORESTRY

88.75

88.70 [Repealed, 1949 c 546 s 10]

88.71 [Repealed, 1949 c 546 s 10]

88.72 [Repealed, 1949 c 546 s 10]

88.73 ADMINISTRATION; DELEGATED POWERS AND DUTIES.

The director is hereby empowered and directed to administer and enforce sections 88.03 to 88.22; and, to that end, may make and enforce all necessary or convenient rules not inconsistent with the provisions and purposes of these sections. In every case the powers delegated to, and the duties imposed upon, the director, and other state or municipal representatives by sections 88.03 to 88.22 shall be exercised and performed in good faith, without undue oppression, and in a manner as reasonable as the exigencies of the situation will permit.

Nothing in sections 88.03 to 88.22 shall be construed as abrogating the laws specifically governing state parks or other public parks, or state or municipal forests. The provisions of all such laws and of sections 88.03 to 88.22 shall be harmonized and both given effect wherever possible.

Nothing in sections 88.03 to 88.22 shall be construed as restricting the state, or any political subdivision thereof, in the exercise of any power, right, or privilege which may be conferred by separate enactment of the legislature under authority of the so-called forest fire prevention amendment to the state Constitution, approved by vote of the electors of this state at the general election held in November, 1924.

History: (4031-32, 4031-33) 1925 c 407 s 32,33; 1978 c 735 s 6; 1985 c 248 s 70; 1986 c 444

88.74 [Repealed, 1965 c 45 s 73]

88.75 VIOLATIONS; PENALTIES.

Subdivision 1. Misdemeanor offenses; damages; injunctive relief. Any person who violates any of the provisions of sections 88.03 to 88.22 for which no specific penalty is therein prescribed shall be guilty of a misdemeanor and be punished accordingly.

Failure by any person to comply with any provision or requirement of sections 88.03 to 88.22 to which such person is subject shall be deemed a violation thereof.

Any person who violates any provisions of sections 88.03 to 88.22, in addition to any penalties therein prescribed, or hereinbefore in this section prescribed, for such violation, shall also be liable in full damages to any and every person suffering loss or injury by reason of such violation, including liability to the state, and any of its political subdivisions, for all expenses incurred in fighting or preventing the spread of, or extinguishing, any fire caused by, or resulting from, any violation of these sections. All expenses so collected by the state shall be deposited in the general fund. When a fire set by any person spreads to and damages or destroys property belonging to another, the setting of the fire shall be *prima facie* evidence of negligence in setting and allowing the same to spread.

At any time the state, or any political subdivision thereof, either of its own motion, or at the suggestion or request of the director, may bring an action in any court of competent jurisdiction to restrain, enjoin, or otherwise prohibit any violation of sections 88.03 to 88.22, whether therein described as a crime or not, and likewise to restrain, enjoin, or prohibit any person from proceeding further in, with, or at any timber cutting or other operations without complying with the provisions of those sections, or the requirements of the director pursuant thereto; and the court may grant such relief, or any other appropriate relief, whenever it shall appear that the same may prevent loss of life or property by fire, or may otherwise aid in accomplishing the purposes of sections 88.03 to 88.22.

Subd. 2. [Renumbered 18.436]

Subd. 3. **Felony offenses.** Any person who willfully or knowingly cuts or removes any timber or forest product contrary to the provisions of sections 88.47 to 88.53; or willfully or knowingly makes any false statement or representation in any application, certificate, or oth-

MINNESOTA STATUTES 2006

88.75

DIVISION OF FORESTRY

3232

er paper or document required by, or purporting to be made pursuant to, sections 88.47 to 88.53; or wrongfully and intentionally falsifies, or changes, any such application, certificate, or document; or uses any artifice, trick, scheme, or device, or who conspires with others so to do, under color of sections 88.47 to 88.53, for the purpose of wrongfully evading or escaping the levy, assessment, or payment of any taxes, assessments, or claims of the state, or any political subdivision or agency thereof, shall be guilty of a felony.

Subd. 4. [Renumbered 84A.30, subd 2]

Subd. 5. [Obsolete, See 1949 c 546 s 10]

History: (4031-28, 4031-70, 4031-87, 5887-41) Ex1919 c 32 s 3; 1925 c 407 s 28; 1927 c 247 s 11; 1933 c 402 s 13; 1971 c 24 s 12; 1978 c 735 s 7; 1987 c 271 s 2; ISp2001 c 2 s 101

88.76 REWARDS.

Upon conviction of any person for violating any of the provisions of sections 88.03 to 88.22, the director may pay, from any money placed at the director's disposal under those sections, a reward of not more than \$1,000 to the person or persons giving the information leading to such conviction.

History: (4031-31) 1925 c 407 s 31; 1978 c 735 s 8; 1986 c 444; 1987 c 271 s 3; 1993 c 328 s 31

88.77 DISPOSAL OF FINES AND PENALTIES.

Except as otherwise expressly provided in sections 88.03 to 88.22, all money received as penalties for violations of the provisions of those sections, less the cost of collection, shall be paid into the treasury of the county in which the penalties for these violations were imposed; provided, that fines collected for violations of those sections, where prosecutions are instituted upon the complaint of town or city officers duly appointed by the director as fire wardens, shall be paid into the treasury of the town or city where the offense was committed.

History: (4031-29) 1913 c 159 s 7; 1925 c 407 s 29; 1973 c 123 art 5 s 7; 1978 c 735 s 9

88.78 APPEALS.

No appeal shall be allowed from a judgment in any prosecution under sections 88.03 to 88.22, unless the person appealing shall, within the time prescribed by law, enter into a recognizance, with sufficient sureties, or deposit cash bail in twice the amount of the fine and costs.

The judge may examine the proposed sureties under oath and shall make and keep a record of their answers in respect to the kinds and amount of their property not exempt from execution. The judge shall furnish a copy of the record to the director.

Upon an arrest being made for violation of any of the provisions of sections 88.03 to 88.22, or upon information of a violation being lodged, the county attorney of the county in which the offense was committed shall prosecute the accused.

History: (4031-30) 1913 c 159 s 6; 1925 c 407 s 30; 1978 c 735 s 10; 1983 c 247 s 40; 1986 c 444

88.79 STATE FOREST SERVICE TO PRIVATE OWNERS.

Subdivision 1. Employment of competent foresters; service to private owners. The commissioner of natural resources may employ competent foresters to furnish owners of forest lands within the state of Minnesota who own not more than 1,000 acres of forest land, forest management services consisting of:

- (1) advice in management and protection of timber, including written stewardship and forest management plans;
- (2) selection and marking of timber to be cut;
- (3) measurement of products;

- (4) aid in marketing harvested products;
- (5) provision of tree-planting equipment; and
- (6) such other services as the commissioner of natural resources deems necessary or advisable to promote maximum sustained yield of timber upon such forest lands.

Subd. 2. **Charge for service; receipts to special revenue fund.** The commissioner of natural resources may charge the owner receiving such services such sums as the commissioner shall determine to be fair and reasonable. The charges must account for differences in the value of timber. The receipts from such services shall be credited to the special revenue fund and are annually appropriated to the commissioner for the purposes specified in subdivision 1.

Subd. 3. **Cost-sharing of conservation practices.** The commissioner of natural resources may provide cost-sharing of conservation practices to nonindustrial owners of less than 5,000 acres of private land within this state, provided that the landowners successfully complete conservation practices approved by the commissioner. The cost shared by the commissioner may not exceed 75 percent of the actual cost of the conservation practice.

Subd. 4. **Rulemaking exemption.** The charge for forest management services and cost-sharing conservation practices under this section are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

History: 1947 c 580 s 1; 1969 c 399 s 1; 1969 c 1129 art 10 s 2; 1987 c 226 s 1; 1989 c 335 art 4 s 106; 1993 c 172 s 42; 1997 c 216 s 70; 2004 c 221 s 27; 2006 c 281 art 3 s 8

88.80 ASPEN RECYCLING PROGRAM.

Subdivision 1. **Establishment.** The commissioner must establish and accelerate an aspen recycling program providing for the betterment of public lands owned by the state by clearing trees which because of age, disease, pests, or other cause are unmarketable or increase the hazard of forest fires or infestation, permitting the regeneration of stands of healthy aspen capable of economic management, harvesting, and marketing. The financing of this program is determined to be a necessary and proper public purpose for the issuance of state bonds under the provisions of article XI, section 5 of the Constitution relating to the betterment of public land, the promotion of reforestation, and prevention and abatement of forest fires and the clearing and improving of wild lands. The program shall designate priority areas on state lands for aspen recycling.

Subd. 2. **Pilot project.** The commissioner shall establish an aspen recycling program pilot project in the highest priority area on state lands in order to develop effective program procedures and practices. With respect to the pilot project, the commissioner may restrict bidding on contracts for the cutting, removal, and disposal of aspens, and for related activities, to loggers and others residing in the pilot project area designated under the program that are financially distressed. The commissioner may establish standards and procedures for awarding logging contracts relating to eligibility for employment for conservation work projects.

Subd. 3. **Report.** The commissioner shall report to the legislature by January 1, 1987 the results of the pilot project and a plan to recycle the overmature aspen stands of the state.

History: 1Sp1985 c 13 s 218; 1986 c 383 s 11; 1988 c 690 art 1 s 3; 1997 c 187 art 1 s 8

88.81 FOREST MANAGEMENT PRACTICES IN LITIGATION.

The commissioner may not implement new or revised forest management practices as part of agreements relating to litigation until the commissioner has reported the forest management practices to the chairs of the environment and natural resources committees of the legislature at the next regular session of the legislature.

History: 1990 c 594 art 1 s 48

MINNESOTA STATUTES 2006

88.82

DIVISION OF FORESTRY

3234

88.82 MINNESOTA RELEAF PROGRAM.

The Minnesota releaf program is established in the Department of Natural Resources to encourage, promote, and fund the planting, maintenance, and improvement of trees in this state to reduce atmospheric carbon dioxide levels and promote energy conservation.

History: *1991 c 254 art 2 s 20*