

**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 hereinafter 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.

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 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 therefor 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 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 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*