

## Forestry

## CHAPTER 88

## DIVISION OF FORESTRY

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**88.01 DEFINITIONS.** Subdivision 1. **Terms.** For the purposes of chapters 88 to 91 the terms defined in subdivisions 2 and 3 have the meanings ascribed to them. For the purposes of sections 88.03 to 88.21 and 88.28 to 88.53 the term defined in subdivision 4 has the meaning ascribed to it. For the purposes of sections 88.03 to 88.21 and 88.47 to 88.53 the term defined in subdivision 5 has the meaning ascribed to it. For the purposes of sections 88.03 to 88.21 the terms defined in subdivisions 6 to 8 have the meanings ascribed to them. For the purposes of sections 88.28 to 88.46 the terms defined in subdivisions 14 to 16 have the meanings ascribed to them. For the purposes of sections 88.47 to 88.53 the terms defined in subdivisions 17 to 21 have the meanings ascribed to them.

Subd. 2. **Division.** "Division" or "the division" means the division of forestry in the department of conservation.

Subd. 3. **Director.** "Director" or "the director" means the director of the division of forestry in the department of conservation.

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

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

Subd. 6. **Forest areas.** Every county now or hereafter having within its boundaries any tract or area of 1,000, or more, contiguous acres of standing or growing timber or of unbroken prairie land or of cut-over timber land not cleared or other-

wise denuded of combustible or inflammable growth, is hereby declared to be a forest area; and every other county is hereby declared not to be such forest area.

Subd. 7. **Forest or forest-land.** "Forest" or "forest-land" means and includes swamps, peat-bogs, cut-over lands, and every other area where timber grows and exists.

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

Subd. 9-13 [Repealed, 1955 c 699 s 2]

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

Subd. 15. **Improvement.** The term "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 forest fires.

Subd. 16. **Forest.** The term "forest" means every area where coniferous or evergreen trees, at any time, are growing or existing, including swamps, peat-bogs, and cut-over lands.

Subd. 17. **Auxiliary forest.** The term "auxiliary forest" is used in relation to state forest, and includes any privately-owned tract of land set apart for, and chiefly devoted to, the production of timber or forest products under the restrictions, and subject to the provisions, of sections 84A.31 to 84A.36.

Subd. 18. **Forest products.** The term "forest products" means and includes all products derived from timber.

Subd. 19. **Merchantable timber.** "Merchantable timber" includes all timber and all forest products having any commercial value.

Subd. 20. **Owner.** The word "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. **Register of deeds.** The term "register of deeds" includes the register of deeds of the county in which the land referred to is situate, or the registrar of titles in case the title to the land has been registered.

[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] (4031-1, 4031-2, 4031-35½, 4031-57, 4031-72, 5887-42)

**88.02 CITATION, FORESTRY ACT.** Sections 88.02 to 88.21 may be cited as the forestry act.

[1925 c 407 s 1] (4031-1)

**88.03 CODIFICATION.** Sections 88.03 to 88.21 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 forest and prairie fires, 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 88.21 shall apply only to the forest areas of this state. In the prosecution of any civil or criminal action or proceeding thereunder, it shall not be necessary to prove that any county comes within the purview thereof, but the contrary may be proven by any party to such action or proceeding.

[1925 c 407 s 1] (4031-1)

**88.04 FIRE-BREAKS; PREVENTION OF FIRES.** The director shall cooperate with the state highway authorities and with the supervising officers of the various towns, cities, and villages in the construction of fire-breaks along section lines and public highways.

All cities and villages in the state situated in any forest area are hereby authorized to clear off all combustible material and debris and create at least two good and sufficient fire-breaks 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

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which back-fires may be set or a stand made to fight forest fires in cases of emergency.

All towns, villages, and cities are hereby authorized and directed to take necessary precautions to prevent the starting and spreading of forest or prairie fires and to extinguish the same; and are hereby further authorized to levy a tax of not more than ten mills annually upon the taxable property of such municipalities, but in no municipality to exceed a total of \$3,000 in any one year, which tax when collected shall be known as the fire fund and kept separate and apart from all other funds and used only in paying all necessary and incidental expenses incurred in enforcing the provisions of sections 88.03 to 88.21. Not to exceed \$500 shall be expended in any one year from any such fire fund for the support of any municipal fire department. No such municipality shall make any levy for its fire fund at any time when the same contains \$5,000 or more, consisting of cash on hand or uncollected taxes not delinquent or both.

In all towns constituted within any of the forest patrol districts which may be established by the director, the respective town and village officers and employees shall cooperate with, and be under the general supervision and direction of, the director.

[1925 c 407 s 11; 1949 c 676 s 1] (4031-11)

**88.05 ROADSIDES, CLEARING; FIRE-BREAKS.** All highways, roads, and trails within forest areas are declared to be established fire-breaks and for that purpose the state, through the division, is authorized to clean up all dead and down timber, all underbrush, rotting logs, stumps, and all other inflammable 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 forestry 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.

[1933 c 320 s 1; 1937 c 113 s 1] (4031-11½)

**88.06 DEAD OR DOWN TIMBER; REMOVAL.** The director may permit, under his 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 inflammable 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.

[1933 c 320 s 1; 1937 c 113 s 2] (4031-11½a)

**88.063 FOREST FIRE PROTECTION.** Subdivision 1. **Grants from United States.** The commissioner of conservation, in behalf of the state, may accept and use grants of money or property from the United States for forest fire prevention or any other forestry purpose not inconsistent with the laws of this state. Any money or property so received is hereby appropriated and dedicated for the purposes for which it is granted, and shall be expended or used solely for such purposes in accordance with the federal laws and regulations pertaining thereto, subject to applicable state laws and regulations as to manner of expenditure or use.

Subd. 2. **State appropriations not reduced.** Except as otherwise expressly provided by state law or by the terms of the grant, all moneys heretofore or hereafter received from the United States for such purposes shall be deemed to be in addition to any state moneys appropriated for like purposes, no such state appropriation shall be offset or reduced by reason of such grant, and the commissioner of conservation may determine whether expenditures shall be made from the federal grant or the state appropriation. Unexpended or unencumbered balances of such moneys hereafter received from the United States and hereafter remaining on hand at any time shall not be canceled or applied in reimbursement or offset of state appropriations, but shall remain available for the purposes for which they were granted until expended.

Subd. 3. **Compliance; enforcement.** Appropriate funds and accounts shall be maintained by the state auditor and state treasurer to secure compliance with the provisions hereof.

[1945 c 522 s 1, 2]

**88.065 EQUIPMENT FURNISHED.** Subject to applicable provisions of state laws respecting purchases, the commissioner of conservation may purchase for and furnish to any governmental subdivisions of the state authorized to engage in forest fire prevention or suppression materials or equipment therefor, and may use for that purpose any funds available for the purchase of forest fire prevention or suppression equipment 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 equipment shall reimburse the state for the cost thereof. All moneys received in such reimbursement shall be credited to the fund from which the purchase was made, and are hereby reappropriated and shall be available for the same purpose as the original appropriation.

[1945 c 521 s 1]

**88.07 AUDIT FIRE CONTROL EXPENSES.** It shall be the duty of the director to audit and inspect all bills for salaries and expenses incurred by the district rangers and by fire patrolmen and other employees for the prevention, suppression, checking, and control of fires and to recommend the amounts justly due and which should be paid.

[1925 c 407 s 13] (4031-13)

**88.08 PATROL DISTRICTS.** The director may create and establish patrol districts, including all lands of both state and private ownership, upon which there is a probability of forest and brush fires starting, and establish rangers and patrolmen over these districts. These rangers and patrolmen may cooperate with aeroplane patrolmen acting under authority of Laws 1923, Chapter 34, Sections 1 to 5. All such patrol districts heretofore established and now in existence are hereby continued until and unless hereafter abolished by the director.

[1925 c 407 s 14] (4031-14)

**88.09 FIRE PROTECTION, LANDS, ACQUISITION.** Subdivision 1. **Gifts.** The director is hereby authorized on behalf of the state to accept as gifts to the state 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 he deems necessary or convenient for the use of the state as locations for watch towers, warehouses, or other buildings of any kind, or as locations for fire-breaks, or for other use in connection with his duties.

Subd. 2. **Purchase, lease, or condemnation.** The commissioner is also authorized on behalf of the state, where no suitable state lands are available, to purchase, lease or acquire easements on small tracts or parcels of lands, not exceeding 40 acres in area, or costing more than \$1500 for any single tract, to be used as locations for watch towers, warehouses, or other buildings of any kind, or as locations for fire-breaks, or for any other use in connection with his duties; also to acquire by condemnation any tract of land, not exceeding 40 acres, for these purposes; also to 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.

[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] (4031-14a, 4031-14b)

**88.10 FIGHTING FOREST FIRES, AUTHORITY OF STATE FOREST OFFICERS.** Under the direction of the director, the forest rangers are charged with preventing and extinguishing forest fires in their respective districts and the performance of such other duties as may be required by him. They may arrest without warrant any person found violating any provisions of sections 88.03 to 88.21, take him before a magistrate, and there make complaint. When the forest rangers shall have information that such violation has been committed they shall without delay make similar complaint and have the same prosecuted. The forest rangers and other forest officers shall not be liable in civil action for trespass committed in the discharge of their duties. All authorized state forest officers, including rangers, guards, township fire wardens, smoke chasers, fire foremen or individuals legally employed as fire fighters, 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 forest, prairie or brush fires without incurring a liability to anyone, except for damages arising out of wilful or gross negligence.

Any forest ranger or forest guard may serve any warrant for the arrest of any person violating any provision of sections 88.03 to 88.21 and for that purpose all forest rangers and forest guards are hereby vested with the same powers as constables or other similar officers of the courts issuing such warrants.

[1925 c 407 s 15; 1957 c 322 s 1] (4031-15)

**88.11 FIRE PATROLMEN; AID FOR FIGHTING FIRES; REFUSAL; COMMANDEERING PROPERTY.** At any time district rangers, with the approval of the director, may employ suitable persons to be known as fire patrolmen, permanently to remain upon and patrol any territory, whether comprising public or private lands, or both, as may be assigned to them as long as required to prevent and extinguish any fires. Each fire patrolman so employed shall be supplied with the necessary equipment. The director, or any district ranger or fire patrolman, may summon any male 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 his next superior officer or other state employee over him.

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 state employee who summoned him, shall be guilty of a misdemeanor and punished by a fine of not less than \$10 and not more than \$50 and the costs of prosecution, or by imprisonment in the county jail for not less than 10, nor more than 30, days. The ranger, or patrolman, as the case may be, shall have power to commandeer, for the time being, any team, automobile, 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 himself to use, and to require the persons summoned to his assistance 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 ranger, or patrolman from any money available for these expenses under sections 88.03 to 88.21.

[1925 c 407 s 16] (4031-16)

**88.12 FOREST FIRE FIGHTERS, WAGES AND EXPENSES.** Subdivision 1. **Limitation.** The compensation and expenses of persons temporarily employed in emergencies in suppression or control of forest fires shall be fixed by the commissioner of conservation or his 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 regulations, but shall not be subject to any minimum rate so established. The commissioner is authorized to draw from the state treasury out of any money at any time appropriated for the purposes of sections 88.03 to 88.21 a reasonable sum, not to exceed \$5,000 at any one time, and to place the same in the hands of the director of the division of forestry or other authorized agent to be used by him 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 88.21. The state auditor is authorized to draw his warrant for this sum when duly approved by the commissioner. The commissioner, director, or agent in charge shall take proper sub-vouchers or receipts from all persons to whom these moneys are paid, and after these sub-vouchers have been approved by him they shall be filed with the state auditor. Every sum placed in the hands of the commissioner, director, or agent 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 fire prevention work; commissions to persons employed.** The director 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 fire prevention work, either gratuitously

or for compensation not in excess of the limits provided by law with respect to the employment of labor by him. He 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, patrolman, 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 district rangers.

[1925 c 407 s 17; 1927 c 280 s 1; 1955 c 218 s 1] (4031-17, 4031-17a)

**88.13 NOTICES OF CUTTING OF TIMBER; POSTING; FAILURE TO POST.**

Each year before any person shall cut, or cause to be cut, any timber upon any land in, upon, or adjoining any forest or wild land area within this state, such person shall post in a conspicuous place in some camp building on the premises where the cutting is to be done or, if there be no such building, on and at the northwest corner of each 40 acre governmental subdivision or at the nearest corresponding point in each fractional subdivision of such lands, and shall deliver in person or by registered mail, sealed and postage prepaid, a notice in writing in the English language, addressed to the commissioner of conservation and delivered or sent as above specified, to the division of forestry supervisory headquarters of the area in which the timber to be cut is located, specifying the name and post office address of such person and specifying a full description of all the lands upon which the cutting is to be done, designating the same by each 40-acre governmental subdivision or fraction thereof with the proper section, township, and range; which notice shall be kept continuously so posted during the entire time that the cutting is being done, together with a statement of the kind of products proposed to be cut, and who is to be responsible for the disposal of slashings and debris resulting from the cutting.

The commissioner of conservation or his agent may execute a statement certifying that as of a certain date, no report of cutting had been received, as specified herein; such certified statement to be admitted as evidence in any prosecution for failure to report cutting.

Any person who fails to post and send the notice, as in this section required shall be guilty of a misdemeanor; and, upon conviction thereof, fined not less than \$25, or imprisoned in the county jail for not less than 20 days. The provisions of this section shall not apply to any person who shall be engaged in cutting cordwood or other fuel wood upon his own land or engaged in cutting timber for clearing any land actually owned and occupied by him.

Any person who, and any municipality or political subdivision of this state which, cuts or fells timber or brush of any kind in clearing land for any public road-bed or right of way, or for any other purpose, shall before starting such operation deliver in person or by registered mail, sealed and postage prepaid, a notice in writing in the English language, addressed to the commissioner of conservation and delivered or sent as specified herein to the division of forestry supervisory headquarters of the area in which the timber to be cut is located, describing the intended operations.

[1925 c 407 s 18; 1957 c 393 s 1] (4031-18)

**88.14 DISPOSAL OF SLASHINGS AND DEBRIS.** Where and whenever in the judgment of the director or any district ranger there is or may be danger of starting and spreading of fires 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 inflammable refuse from the manufacture of lumber or other timber products the director, or district ranger, 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 director 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 director, or otherwise to dispose of the same so as to eliminate the fire hazard therefrom.

When any person who has been directed by the director, or district rangers to dispose of such slashings, debris, or refuse fails to comply with these directions he shall be deemed guilty of a misdemeanor; and, on conviction thereof, punished by a fine of not less than \$25, and not exceeding \$100, and costs of prosecution;

and each day during which the failure to comply with the requirements of the director continues shall be deemed a separate and distinct violation of sections 88.02 to 88.21; but any number of these offenses may be prosecuted as separate counts of one charge or information.

When any such slashings, debris, or refuse are not disposed of or are left unattended contrary to the instructions of the director, or district ranger the director, or any district ranger or patrolman, may go upon the premises with such force of men 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 director, or district ranger, of the amount of the costs and expenses incurred in burning or otherwise disposing of these slashings, debris, or refuse shall be filed, within 90 days from the time the disposal thereof is completed, in the office of the register of deeds 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 forest service fund.

Any person who cuts or fells trees or bushes of any kind in clearing land for any road-bed or right of way for any railroad, highway, or trail shall, in the manner and at the time as above prescribed, burn the slashings and all combustible material, except fuel and merchantable timber, which shall be promptly removed.

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 regulations or directions of the director.

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 pile in the middle of the right of way all the slashings and debris so cut or grubbed therefrom and burn and dispose of such slashings and debris without damage to adjoining timber or woods, which burning shall be done in a manner and at a time satisfactory to the director. 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.

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 burn and dispose of these slashings.

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 director, or district ranger, 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 nevertheless be piled in separate and compact piles ready for burning, which piling shall be done by the person by or for whom the timber was cut within 15 days after such timber was cut and such person shall thereafter make such further disposition of such slashings and debris as the director, or district ranger, may direct.

No sawdust, shavings, chips, bark, edgings, slabs, or other inflammable refuse from the manufacture of lumber or other timber products shall be made or deposited upon any public highway, portage, railroad, or lake shore, or within 100 feet thereof.

[1925 c 407 s 19; 1929 c 360 s 1] (4031-19)

**88.15 CAMP FIRES.** Subdivision 1. **Extinguishment.** Any road overseer or assistant of a road overseer or other local officer having charge of any highway, or any highway patrolman, who finds that any person has left a camp fire burning in his district shall extinguish the same and take prompt measures to prosecute the person who so left the fire.

Subd. 2. **Not to be left burning.** Every person who when the ground is not covered with snow starts a fire in the vicinity of forest or prairie land shall exercise every reasonable precaution to prevent the fire from spreading and shall before lighting the same clear the ground of all branches, brushwood, dry leaves, and other combustible material within a radius of five feet from the fire, and keep the fire under his immediate personal supervision and control at all times, and carefully extinguish the fire before quitting the place.

[1925 c 407 s 20, 21; 1929 c 261 s 1] (4031-20, 4031-21)

**88.16 STARTING FIRES; FIRE-BREAKS; UNAUTHORIZED FIRES.** It shall be unlawful, when the ground is not snow-covered, in any place where there are standing or growing native coniferous trees, or in areas of ground from which native coniferous trees have been cut, or where there are slashings of such trees, or native brush, timber, slashings thereof, or excavated stumps, or where there is peat or peat roots excavated or growing, to start or have any open fire, except for domestic purposes, or any back-fire, without the written permission of the director, or other authorized forest officer, unless a fire-break sufficient to check the spread of the fire shall have been freshly made or plowed around the place or area wherein the fire is set.

Furrows plowed in peat lands or bogs shall not be deemed a sufficient fire-break as required by this section.

The occupant of any premises upon which any unauthorized fire is burning in the vicinity of forest lands, whether the fire was started by him or otherwise, shall promptly report the fire to the director, or to the nearest district ranger, patrolman, or fire warden. Failure to make this report shall be deemed a violation of sections 88.03 to 88.21 and the occupant of the premises shall be deemed prima facie guilty of negligence if the unreported fire spreads from the premises to the damage, loss, or injury of the state or any person.

[1925 c 407 s 22] (4031-22)

**88.17 PERMISSION TO START FIRES; PROSECUTION FOR UNLAWFULLY STARTING FIRES.** Permission to set fire to any grass, stubble, peat, brush, slashings or woods for the purpose of clearing and improving land or preventing other fire shall be given whenever the same may be safely burned, upon such reasonable conditions and restrictions as the director may prescribe, to prevent same from spreading and getting beyond control. This permission shall be in the form of a written permit signed by a regular forest officer or a member of the town board, designated by the director, or some other suitable person to be designated by him, as town fire warden, these permits to be on blanks furnished by the director. The director, or any of his assistants or the town fire warden, may at his discretion in cases of extreme danger refuse, revoke, or postpone the use of permits to burn when such act is clearly necessary for the safety of life and property. Any person setting any fire or burning anything under such permit shall keep the permit on his person while so engaged and produce and exhibit the permit to any district ranger, patrolman, or other employee of the forestry service, or town fire warden, when and as often as requested so to do by any of them.

In any prosecution under sections 88.03 to 88.21 for unlawfully starting or setting or having or permitting the continuation or spread of any fire or back-fire, proof upon the part of the prosecution that such fire or back-fire originated upon, or was permitted to burn upon, or that it spread from, lands or premises occupied by the person charged with the offense, and that this person had knowledge of the fire and made no effort to put it out, shall be prima facie evidence that he is guilty. The burden of proof as to any matter in refutation of this prima facie guilt, or in extenuation or excuse, shall be and rest upon the person so appearing prima facie to be guilty.

[1925 c 407 s 23] (4031-23)

**88.18 FIRE WARDENS.** The director may appoint supervisors, constables, and clerks of towns, mayors of cities, and presidents or presiding officers of village councils to be fire wardens for their respective districts; and they shall do all things reasonably necessary to protect the property of such municipalities from fire and to extinguish the same.

[1925 c 407 s 24] (4031-24)

**88.19 NEGLECT OR REFUSAL TO PERFORM DUTY.** Every forestry employee of the state who shall unjustifiably refuse or neglect to perform his duty; every person who shall kindle a fire on or near forest, brush, or prairie land and



leave it unquenched, or be a party thereto, or who shall set fire to brush, stumps, dry grass, field stubble, or other material, and fail to extinguish the same before it has endangered the property of another; every person who shall negligently or carelessly set on fire, or cause to be set on fire, any woods, prairie, or other combustible material, whether on his own land or not, by means whereof the property of another shall be endangered, or who shall negligently suffer any fire upon his own lands to extend beyond the limits thereof; every person who shall use other than incombustible wads for firearms, or carry a naked torch, firebrand, or exposed light in or near forest land, or who, upon any such land or in the vicinity thereof, or on or along any public or private road, trail, path, railroad right of way or road-bed, or other public or private way of any kind running over or along or in the vicinity of any such land, shall throw or drop any burning match, ashes of pipe, lighted cigar, or cigarette, or any other burning substance, and who fails to extinguish the same immediately; every person who drives upon or over forest lands in a motor vehicle with an open cut-out or without a muffler on the exhaust pipe; and every person who shall deface, destroy, or remove any notice posted under sections 88.03 to 88.21, shall be guilty of a misdemeanor; and, on conviction thereof, punished by a fine of not less than \$25 and not exceeding \$100 and costs of prosecution, or by imprisonment in the county jail for not less than ten and not exceeding 90 days.

[1927 c 407 s 25; 1929 c 261 s 2] (4031-25)

**88.20 RAILROAD COMPANIES TO PROVIDE PATROLMEN.** When in the judgment of the director there is danger of the setting and spreading of fires from locomotive engines he shall order any railroad company to provide patrolmen to follow each train throughout such fire patrol district or districts as he deems necessary to prevent fires. From and after April 1, 1939, these patrolmen shall be equipped with a patrol-speeder or other suitable conveyance, and each railroad patrolman shall carry with him on such conveyance when performing patrol duty one number two shovel and a suitable container with a double-acting pump attached thereto, commonly called a "pump tank," holding at least five gallons of water, the pump tank to be kept filled with water ready for use and maintained in such condition at all times that under normal operation of the pump a stream of water can be forced through a three-sixteenths inch diameter nozzle a distance of at least 20 feet. When the director has so notified a railroad company to provide such 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 director may employ patrolmen with the necessary equipment to patrol the rights of way of the railroad, and the expense of the same shall be charged to the railroad company and may be recovered in a civil action in the name of the State of Minnesota; and in addition thereto the company shall be guilty of a misdemeanor. All moneys so recovered shall be paid into the state treasury and credited to the appropriation from which these expenses were paid.

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

It is made the duty of any railroad company, acting independently of the director, 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; and any failure of the railroad company, its officers and patrolmen, to comply with this section shall be a misdemeanor and punishable by a fine of not less than \$50 nor more than \$100 and costs, and in addition thereto the railroad company shall be liable for all expenses and damages caused by or resulting from such failure of duty.

[1925 c 407 s 26; 1939 c 427 s 1] (4031-26)

**88.21 REPORTS BY RAILROAD COMPANIES.** Subdivision 1. **Copies.** When the director has reason to believe that a certain locomotive caused a fire he can order the railroad company to forward to him at once by mail 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 sections 88.03 to 88.21. Every person operating a railroad for any purpose shall equip and use upon each steam or Diesel locomotive engine a practical and efficient ash-pan and/or spark arrester device, which the master mechanic or corresponding skilled employee of the operator shall cause to be inspected each time before the locomotive leaves the

roundhouse or starts on any trip, between the dates of March first and November thirtieth, both dates inclusive, each year. It shall not be required to make more than one such inspection of any one engine within a period of 24 hours. Between the dates of December first and February twenty-eighth, both dates inclusive, each year, this inspection shall be made at intervals of not more than seven days. Where spark arresters are equipped with a manhole door, such door shall be removed at the time of inspection and replaced before an engine goes on any trip. Such ash-pan and spark-arrester device shall be constructed and operated in conformity and in compliance with all the following specifications and rules:

(1) Except when the ash-pan is being cleaned, the hopper opening for removal of cinders on ash-pans constructed with hoppers shall be kept closed while the engine is in use by a cast slide supported by cast guides; and there shall be no opening greater than five-sixteenths of an inch between the slide and hopper; or such openings in hoppers for removal of cinders may be closed by what is known as the "radial type of hopper bottom," the general design of which shall be approved, in writing, by the director;

(2) Ash-pans commonly known as solid or swipe pans shall have the ends, if open, covered either with a substantially constructed solid damper or screen damper, which shall extend at least one and one-fourth inches inside or outside the pan when closed, leaving no opening greater than five-sixteenths of an inch in width, so arranged that it can be fastened down, and kept fastened down when the engine is in use; if a screen is used, it shall conform to the specifications for use in spark-arresters, as contained in sections 88.03 to 88.21;

(3) Openings in ash-pans for draught purposes shall be protected by screens bolted firmly and securely over such openings or by the use of deflector plates in place of screens; provided, that any deflector plate used for such purpose shall extend above or below, as the case may be, the opening to be protected a distance at least equal to the width of such opening; and, provided, further, that any such deflector plate so used shall be closed in at each end thereof; (all screens so used and the bolting in place thereof shall conform to the specifications for spark-arresters, as contained in sections 88.03 to 88.21);

(4) On locomotive engines where there is an opening between ash-pan and the foundation ring, protection shall be furnished by a flare brought up level with the bottom of the foundation ring, such flare being either an integral part of the pan or attached to the body of the pan by bolts, rivets, or hinges; where hinges are used the flare shall have suitable locking devices and the hinges and locking devices shall be so spaced and maintained in such condition as to hold the flare securely in place, and the opening between the bottom of the foundation ring and flare of pan, measured horizontally, shall not be greater than eight inches at any point; provided, that for any distance the flare of pan extends above the bottom of foundation ring, the flare may be extended out horizontally an equal distance in excess of eight inches; or such opening between ash-pan and foundation ring may be protected by deflector plates; provided, that any deflector plates used for such purposes shall extend above and below, as the case may be, the opening to be protected a distance at least equal to the width of such opening and that any such deflector plate so used shall be closed in at each end thereof;

(5) Openings in ash-pans for entry of grate connections must be fully protected; and the openings around the rods where they enter the ash-pan must not be greater than five-sixteenths of an inch in width, or the grate connections outside the ash-pan must be boxed in for their full length so that no sparks or cinders can possibly escape;

(6) Plates and angle-irons used in ash-pans, including all fire-protective devices attached thereto, shall not be less than one-fourth of an inch in thickness, and the ash-pans, including all fire-protective devices attached thereto, shall be so constructed and maintained in such condition that there shall be no openings in excess of five-sixteenths of an inch in width;

Material used in construction or repair of ash-pans shall be of iron or steel securely bolted or riveted or welded in place. No cement, putty, asbestos, or other material or substance other than iron or steel shall be applied to, laid on, attached to, or used in any way in connection with or made a part of ash-pans;

From and after May 1, 1933, the spacing of bolts, rivets, studs, and other fastening devices in sheet-iron and steel plates, whether fastened to other plates, castings,

forgings, or other parts when used in the construction or repair of ash-pans and all fire-protective appliances attached thereto, shall not be greater than three and three-fourths inches center to center;

The spacing of bolts, rivets, studs, and other fastening devices in castings, used in the construction of ash-pans and all fire-protective appliances attached thereto, shall be such as to hold the casting securely in place;

(7) Such ash-pans shall be equipped with swipes, injector overflow or other sprinkling devices, and ashes and coals therein shall be kept extinguished and dampened at all times between April fifteenth and October thirty-first, both dates inclusive, each year, and during such additional period, in any particular territory, as may be specified, in writing, by the director;

(8) Spark arrester screens shall be either square mesh wire screen or oblong mesh wire screen or perforated plate, and conform to the following specifications:

**SQUARE MESH WIRE SCREEN**

<b>Mesh per lineal inch in either direction</b>	<b>Least diameter of wire when new</b>	<b>Condemning limit of opening in mesh in either direction</b>
2½ by 2½	0.134 inch	½ inch
2¾ by 2¾	0.134 inch	½ inch
3 by 3	0.105 inch	½ inch
4 by 4	0.092 inch	0.204 inch
5 by 5	0.072 inch	0.164 inch
6 by 6	0.063 inch	0.1355 inch
7 by 7	0.063 inch	0.1115 inch

Fractional mesh shall not be used except as specified.

**OBLONG MESH WIRE SCREENS**

<b>Size of opening mesh</b>	<b>Least diameter of wire when new</b>	<b>Condemning limit of opening in mesh</b>
⅜ by ¾ inch	0.134 inch	¼ by ⅝ inch
½ by ¾ inch	0.134 inch	⅜ by ⅝ inch

The openings in perforated plates when new shall be oblong, not exceeding three-sixteenths of an inch in width or three-fourths of an inch in length, and there shall not be less than one-eighth of an inch in width of plate between the meshes, and such plate shall not be less than 0.085 of an inch in thickness; the condemning limit of the openings in perforated plate shall be one-fourth of an inch in width and thirteen-sixteenths of an inch in length;

(9) The spark-arrester screen shall have a manhole door with a substantial rigid frame, large enough to allow the entry for purposes of inspection and repair;

(10) All angle-irons and plates used for the purpose of attaching or supporting any part of the spark-arrester device shall be so placed as to fit closely and continuously to the smoke arch, plates, angle-irons, and other parts;

(11) Plates used in the construction or repair of spark-arresters, wherever attached, shall not be less than three-sixteenths of an inch in thickness;

From and after May 1, 1931, angle-irons used in spark-arresters shall be of sections in size not less than one-fourth of an inch by two inches by two inches, on all steam or Diesel locomotive engines unless otherwise authorized, in writing, by the director. The spacing of rivets, bolts, studs, and other fastening devices used in spark arresters shall not be greater than set forth in the following specifications:

Fastening screens—three and one-half inches center to center;

Fastening angle-irons to smoke arch—eight inches center to center;

Fastening plates—five inches center to center;

Fastening angle-irons to flue sheet—eight inches center to center.

Material used in the construction or repair of spark-arresters shall be of iron or steel securely bolted or riveted or welded in place. No cement, putty, asbestos or other material or substance other than iron or steel shall be applied to, laid on, attached to or used in any way in connection with or made a part of spark-arresters except upon written approval of the director. No opening anywhere in the spark-arrester device, other than the openings herein specified for wire screen and perforated plate, shall be larger than one-fourth of an inch in width;

(12) Devices and appliances differing from those specified in this subdivision may be used for experimental purposes only by written permission of the director during such limited periods and upon such terms and conditions as he may pre-

scribe; this written permission shall be subject to revocation by the director at any time, and such experimental devices or appliances shall not be permanently adopted unless authorized by law;

(13) Permission is hereby given to use as a spark-arrester on all types of engines using wood, coal, oil, or other fuels the so-called "Cyclone spark-arrester"; this arrester shall consist primarily of a drum with entrance so arranged that the products of combustion shall be given a rotary motion within the drum to the extent that all sparks shall be sufficiently cooled before leaving the stack as to preclude such sparks reaching the ground alive; the drum shall be constructed of iron or steel at least one-fourth inch in thickness. The number of fastenings shall be such as to hold the plates and other parts securely in position, and all parts of the spark-arrester which are essential to its proper operation shall be maintained in a safe and serviceable condition at all times.

Permission is hereby given to use as a spark-arrester on all types of engines using wood, coal, oil, and other fuels the so-called "Anderson spark-eliminator." This spark-eliminator shall consist primarily of a top ring set horizontally and attached to the extension stack, a bottom ring set horizontally and attached to the exhaust pipe, deflector plates set vertically in between the two rings, such deflector plates being arranged suitably around the exhaust nozzle. Plates used in the construction of the spark-eliminator shall be of iron or steel at least one-fourth inch in thickness and the number of fastenings shall be such as to hold the plates and other parts securely in position. All parts of the spark-eliminator which are essential to its operation shall be maintained in a safe and suitable condition at all times.

Subd. 2. **Record of examination.** 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 inspection, giving location and size of openings greater than permitted by sections 88.03 to 88.21 and of any and all defects found in the ash-pan or spark-arrester device, and of the condition thereof; and
- (4) 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, the ash-pan or spark-arrester device.

The book shall always be open for inspection by the director or other authorized officer appointed by him.

Subd. 2. **Responsibility.** The master mechanic, or corresponding employee, shall be held responsible for the good condition of the ash-pan and spark-arrester device, but without relieving the person owning or operating the locomotive engine from his responsibility hereunder.

Any locomotive inspector appointed by the director is authorized to inspect any locomotive engine operated in the vicinity of forest, brush, peat or grass lands, and to enter upon any property for such purpose when he may deem it necessary in order to see that all the provisions of law relating to the subject matter are duly complied with. When the inspector requests the person in immediate charge of the locomotive that he be accompanied while making the inspection by a representative of the person owning or operating the locomotive, this request shall be immediately complied with, and either the roundhouse foreman, assistant roundhouse foreman, boiler foreman, or corresponding employee shall accompany the inspector during the time he is making the inspection. The inspector shall have access to the records of every person operating a railroad 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 he may deem advisable in making up his records and substantiating his findings. No locomotive shall be operated in the vicinity of forest, brush, peat or grass lands after being found defective by the inspector and after notice of such condition has been given to the person in charge thereof, until the repairs specified by the inspector have been made, except where a locomotive is found defective on the line it may proceed to the first terminal or point where repairs can be made.

Any violation of the provisions of this subdivision shall be a gross misdemeanor. The provisions of this subdivision shall not relieve any one from any duty or liability under any provision of any statute.

**Subd. 4. Right of way, duties.** Every person operating a railroad for any purpose shall keep its right of way clear of grass, brush, combustible materials, logs, poles, lumber, and wood, except ties and material for shipment and other material necessary for the maintenance and operation of the road, from March fifteenth to December first. During particularly dry and dangerous periods the director may prohibit any and all burning along part or all of any railroad right of way for a definite period.

**Subd. 5. Fire-breaks.** Every person operating a railroad for any purpose shall establish and maintain such fire-breaks along the route of its railway as can be constructed and maintained at not excessive expense. The intention shall be to adjust the protective measures to the local conditions, and to make the expense proportionate to the fire risk and the possible damage.

**Subd. 6. Engines; operation, when forbidden.** Except when the ground is covered with snow, no steam or internal combustion donkey engine, tractor engine, sawmill engine, threshing engine, shovel, railroad ditcher, railroad wrecker, or portable engine or other engine or boiler, except any locomotives conforming to all the requirements of sections 88.03 to 88.21, 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.

The person in charge of such engine or boiler shall be held responsible for the good condition of the spark-arrester device, but without relieving the person owning or operating the engine from his responsibility hereunder. Any locomotive inspector appointed by the director is authorized to inspect any steam or internal combustion donkey engine, tractor engine, sawmill engine, threshing engine, shovel, railroad ditcher, railroad wrecker, or portable engine, or other engine or boiler operated in the vicinity of forest, brush, peat or grass lands, and to enter upon any property for such purpose whenever he may deem it necessary in order to see that all the provisions of the laws relating to the subject matter are duly complied with, and is authorized to use such methods as he may deem necessary in making up his records and substantiate his findings.

No steam or internal combustion donkey engine, tractor engine, sawmill engine, threshing engine, shovel, railroad ditcher, railroad wrecker, or portable engine or other engine or boiler, shall be operated in the vicinity of forest, brush, peat or grass lands, after being found defective by the inspector and after notice of such condition has been given the person in charge thereof, until the repairs specified by the inspector have been made. Any violation of the provisions of this paragraph shall be a gross misdemeanor; provided, that the provisions of this paragraph shall not relieve anyone of any duty or liability under any other provisions of any statute.

No person operating a steam or internal combustion donkey engine, tractor engine, sawmill engine, threshing engine, shovel, railroad ditcher, railroad wrecker, or portable engine, or other engine or boiler, shall leave a deposit of fire, live coals, or ashes in the immediate vicinity of forest lands or lands liable to be overrun by fire.

**Subd. 7. Deposit of fire, live coals, or ashes forbidden.** No person operating a railroad for any purpose shall leave a deposit of fire, live coals, or ashes in the immediate vicinity of forest lands or lands liable to be overrun by fire; and every engineer, conductor, or trainman discovering a fire adjacent to the track shall report the same promptly to the agent at the first telegraph or telephone station reached by him, whose duty it shall be, as representative of such company, at once to take necessary steps to put out such fire.

**Subd. 8. Instructions for fire prevention.** Every person operating a railroad for any purpose shall give its employees particular instructions for the prevention and extinguishment of fires, and cause warning placards such as are approved by the director to be conspicuously posted at every station in the vicinity of forest, peat, brush, and grass lands, and when a fire occurs on the right of way of its road, shall immediately concentrate such help and adopt such measures as shall be available for its extinguishment.

**Subd. 9. Reports of fires, when.** Any person operating a railroad for any purpose shall make written report to the director, in such form as the director may prescribe, covering each fire in the open 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 director; 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.

Subd. 10. **Combustible material near railroad.** When any combustible material shall be left in proximity to any railroad, either without proper protection or so as to constitute a fire menace, it shall be the duty of the owner of the material, upon being notified, in writing, by the director, or any forest ranger, as to the nature and extent of the protection required, forthwith to comply with all the terms of the notice so as properly to protect the material, or remove the same; and upon default of the owner, this protection or removal may be accomplished under the direction of the director and the expense thereof collected from the owner.

Subd. 11. **Safety devices on engines.** Every person operating a railroad for any purpose who shall fail to equip and use upon each steam or Diesel locomotive engine a practical and efficient ash-pan and/or spark-arrester device, constructed and operated in conformity with all the specifications and requirements set forth in sections 88.03 to 88.21, shall be liable to a penalty of \$500 per day for each and every day on which such defective locomotive is run within this state. Upon receipt of duly verified information disclosing that a violation has occurred, the attorney general may bring suit in the district court of Ramsey county, or of any other county, at his election, for the recovery of these penalties, which, when so collected, shall be credited to the general revenue fund of the state.

Subd. 12. **Approval of forms, notices.** All forms, records, placards, and notices of any kind required to be printed by the companies under sections 88.03 to 88.21, shall be approved by the director every two years, beginning May 1, 1939, and these forms can be ordered changed at such periods. Any new forms, records, placards, and notices of any kind so ordered shall be put in use at once unless written permission is given by the director for the use of the old form until the supply then on hand is exhausted.

[1925 c 407 s 27; 1939 c 427 s 2; 1945 c 68 s 1; 1957 c 135 s 1-3] (4031-27)

**88.22 FOREST FIRE PREVENTION; CLOSING FOREST ROADS AND TRAILS; PROHIBITING CAMPFIRES AND SMOKING; REGULATING PRIVATE AND PUBLIC DUMPING AREAS; PENALTIES.** When the commissioner of conservation shall determine that conditions conducive to forest fire hazards exist in the forest areas of the state and that the presence of persons in the forest areas tends to aggravate forest fire hazards, render forest trails impassable by driving thereon during wet seasons and hampers the effective enforcement of state timber trespass and game laws, he 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. The commissioner may also, upon such determination, by written order, prohibit the building of all campfires except by permit issued by an authorized officer; 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.

The commissioner may close any public or private dumping area, by posting such area as closed to dumping, whenever he deems it necessary for the prevention of forest fires. 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 he deems necessary for the prevention of forest fires. Any violations of this section shall constitute a misdemeanor.

[1937 c 114 s 1; 1957 c 201 s 1; 1959 c 37 s 1] (4031-34a)

**88.23** [Renumbered 18.432]

**88.24** [Renumbered 18.433]

**88.25** [Renumbered 18.434]

**88.26** [Renumbered 18.435]

**88.27 FISHING RESTRICTIONS; BROOK TROUT.** When after investigation the director shall determine that conditions conducive to forest fire hazards exist at any place in the forest areas of the state in the vicinity of any waters frequented by persons taking or attempting to take brook trout and that the presence of persons attracted by the opportunities for taking brook trout in such vicinity tends to aggravate fire hazards he may by written order with the approval of the director

of game and fish, prohibit or restrict, upon such conditions as the director of forestry and the director of game and fish may prescribe, the taking of brook trout in such waters during such period in any year as they may deem necessary for the purpose of reducing such fire hazards.

Every such order, together with the written approval of the director of game and fish appended thereto, shall be filed in the office of the director of forestry and a duplicate thereof filed in the office of the director of game and fish. The director of forestry shall cause a copy of the order and approval to be published at least once in a qualified legal newspaper published at the county-seat of each county affected by the order, or in some other legal newspaper of the county, if there be none published at the county-seat, and the order shall take effect and be in force in each such county from and after the date of publication therein.

After the taking effect of any such order it shall be unlawful to take or attempt to take brook trout in violation thereof and any person who shall do so shall be guilty of a misdemeanor.

Any such order may be modified or rescinded at any time.

This section shall not be deemed to supersede or repeal any existing law relating to the taking of brook trout, but shall be construed as supplementary thereto. No law relating to the taking of brook trout hereafter enacted shall be construed as inconsistent herewith unless it is expressly provided therein that this section shall be superseded, amended, modified, or repealed, in whole or in part, or unless the future law specifically relates to the subject matter of this section.

*[1931 c 372 s 1, 2] (4031-35½j, 4031-35½k)*

**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, cities, and villages. Sections 88.44 to 88.46 contain provisions relating both to counties and to towns, cities, and villages.

*[1925 c 263 s 1] (4031-36)*

**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.

*[1925 c 263 s 2] (4031-37)*

**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 provi-

sions 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.

[1925 c 263 s 3] (4031-38)

**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, he shall notify the county board of the county, and the county board shall, within 30 days thereafter, appoint a competent civil engineer and direct him to proceed to examine the land described in the petition and make the necessary surveys to enable him 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 his 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 his estimate of the cost thereof, and the probable value of the material, if any, when removed, and shall accompany his report with specifications as to the manner of performing and completing the improvement. He 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 his appointment, unless for good cause shown further extension of 30 days is granted him by the auditor. This engineer before entering upon his duties shall execute to the county board a bond in the sum of \$1,000, conditioned for the faithful performance of his duties.

[1925 c 263 s 4] (4031-39)

**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.

[1925 c 263 s 5] (4031-40)

**88.33 HEARING; NOTICE; SERVICE; DATE; ADJOURNMENTS.** Upon the filing of this report with the auditor, he 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 him, 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.

[1925 c 263 s 6] (4031-41)

**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.

[1925 c 263 s 7] (4031-42)

**88.35 RE-REFERENCE 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.

[1925 c 263 s 8] (4031-43)

**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.

[1925 c 263 s 9] (4031-44)

**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 therein.

[1925 c 263 s 10] (4031-45)

**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.

[1925 c 263 s 11] (4031-46)

**88.39 WORK OF IMPROVEMENT; DUTIES OF ENGINEER; 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 per cent 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, he may draw his 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 that he has completed the work, the engineer shall make careful examination and report to the county auditor the facts as he finds them; and, if he finds the contract to be completed in accordance with the terms thereof, he 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.

[1925 c 263 s 12] (4031-47)

**88.40 BOND ISSUES TO PAY FOR IMPROVEMENTS.** The county board of each county wherein any improvement is ordered constructed under the provi-

sions 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.

[1925 c 263 s 13] (4031-48)

**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 filed in the office of the register of deeds 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 register of deeds 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 register of deeds are 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."

[1925 c 263 s 14] (4031-49)

**88.42 IMPROVEMENTS BY TOWNS, CITIES, AND VILLAGES; LIMITATION OF INDEBTEDNESS.** All towns, cities, and villages 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, city, or village 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, city or village 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.

[1925 c 263 s 15] (4031-50)

**88.43 FIRE-BREAKS; CLEARING LANDS.** Subdivision 1. **Distance.** The governing body of any town, village, or city may construct and continuously maintain good and sufficient fire-breaks for the protection of life and property within such municipality. For such purposes any village or 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 village or 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, village, 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 right 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 Minnesota Statutes, Chapter 106.

[1925 c 263 s 16, 17; 1961 c 560 s 10] (4031-51, 4031-52)

**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, city, or village 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 per cent 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, city, or village may acquire property or property rights by gift, by purchase, or by condemnation, in any manner now or hereafter provided by law.

[1925 c 263 s 18, 19] (4031-53, 4031-54)

**88.45 MUNICIPALITIES TO COOPERATE.** Counties doing anything under this section shall act by and through county boards; towns, by and through town boards; and cities and villages, 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.

[1925 c 263 s 20] (4031-55)

**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.

[1925 c 263 s 21] (4031-56)

**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 that he deems 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.

[1927 c 247 s 1, 2; 1945 c 269 s 1, 2; 1947 c 467 s 1] (4031-60, 4031-61)

**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.

**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, published once in the official newspaper of the county notice of the presentation at the expense of the applicant and mail a copy of the 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 registered mail at the address given by him 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 his 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 his 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 clerk of the district court. In case of land conveyed to the applicant by the state of Minnesota under the provisions of Minnesota Statutes, 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.

[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] (4031-62)

**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 registered mail to the owner in fee at the address given by him 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 forestry on a 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 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 his 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 to the owner of the land covered thereby. If the owner shall indicate to the commissioner his unwillingness to execute the same, or if he 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 register of deeds at the expense of the owner in a permanent book or record which shall be designated "record of auxiliary forests" and shall always be open to public inspection; and, if the title to the land be registered, there shall in addition to such record be filed with the registrar of titles a duplicate of the contract. At the time the contract is filed with the register of deeds for record the owner shall furnish to the register of deeds 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 his 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 right 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 or regulation 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 his determination and the making of the order shall be given to the owner in the manner provided in section 88.48, subdivision 4. If the commissioner determines that the contract should be canceled and no appeal therefrom be taken, he shall send notice thereof to the auditor of the county and to the town clerk of the town affected and file with the register 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 at his discretion 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 Minnesota Statutes, Sections 270.31 to 270.39 inclusive, the Minnesota tree growth tax law, 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 from the date of the filing of the contract and the amount actually paid under Minnesota Statutes, Section 88.51, Subdivisions 1 and 2. If the amount which would have been paid, had the land under contract been under the Minnesota tree growth tax law 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 executive council. 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 clerk 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 and regulations of the commissioner, to be performed by the owner, and may for that purpose use any available moneys appropriated for the maintenance of his division and any other lawful means. The commissioner shall, on December first 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 first 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 conservation 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 and the executive council. 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. 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 full and true 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 conservation 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 joint 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 conservation. 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 and the executive council. 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.

[1927 c 247 s 4; 1949 c 320 s 1; 1955 c 722 s 2; 1957 c 753 s 2; 1959 c 130 s 1; 1959 c 561 s 1; 1961 c 347 s 1] (4031-63)

**88.50 TAXATION.** Every auxiliary forest in this state shall be taxed in the manner and to the extent hereinafter 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. 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 his 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 improve-

ment 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.

[1927 c 247 s 5] (4031-64)

**88.51 AUXILIARY FOREST; TAX RATE, SPECIAL TAXES.** Subdivision 1. **Annual tax, 6 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 interest, 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 thereon.

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 31st 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 full and true 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. **Full and true value, what is.** In determining the assessed value 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 full and true value thereof.

[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] (4031-65)

**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. He 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 his 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 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 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 forestry for cutting within two years after the date of approval of the report by the director of forestry. The county auditor shall assess and levy the estimated yield tax thereon, make proper record of this assessment and levy in his 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 forestry will issue a cutting permit in accordance with his 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 to him, 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 forestry a sworn statement, submitted in duplicate, on a form prepared by the director of 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 31st, 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 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 31st next following. Copies of the yield (severance) tax assessment and of the yield (severance) tax payment shall be filed with the director of 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 when he may deem it necessary the director of 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 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 on his part 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 forestry, department of conservation, 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 non-productive); lowland brush (temporarily non-productive); and permanently non-productive (open bogs, stagnant swamps, rock outcrops, flowage, etc.) Definition of these types and determination of the average rate of rates or 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 forestry, Minnesota Department of Conservation, 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 Lake States 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 his 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 forestry, Department of Conservation, 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 him for fuel, fencing, or building on land occupied by him 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 he proposes to cut and the purposes for which the same will be used.

[1927 c 247 s 7; 1945 c 269 s 4; 1953 c 246 s 3; 1955 c 772 s 3] (4031-66)

**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 conservation. 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.

[1953 c 246 s 4]

**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 and regulations.** The director shall make rules and regulations 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, register of deeds, 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 and regulations, employ help and assistance, acquire and use equipment and supplies, or do any other act or thing reasonably necessary to the proper performance of his 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.

[1927 c 247 s 8-10] (4031-67, 4031-68, 4031-69)

**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. For the purposes of sections 88.641 to 88.649 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. 2. "Decorative Trees" means growing pines, spruce, balsam, cedar, evergreen or coniferous trees, bushes, saplings, seedlings, shrubs, boughs or branches, including the tops cut from any of the foregoing, intended to be sold or used for decorative purposes. Nursery stock shall not be included in this definition.

Subd. 3. The term "processed" means the treatment of any tree by a chemical bath, either through dipping or spraying, for the purpose of fixing, intensifying or changing the color thereof or to prevent the falling off of needles therefrom.

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

Subd. 5. "Person" means any individual, corporation, firm, copartnership, company, association or legal entity.

[1949 c 546 s 1]

**88.642 DECORATIVE TREES; CUTTING, REMOVAL OF; TRANSPORTATION; PROHIBITION; EXCEPTIONS.** No person shall cut, remove, or transport for decorative purposes or for sale in natural condition and untrimmed, any decorative tree as defined herein, without the written consent of the owner of the land on which the same are grown and whether such land be publicly or privately owned. Such written consent shall be on a form furnished and approved by the department of conservation, which form shall contain the legal description of the land where the decorative trees were cut, as well as the name of the legal owner, or his duly authorized agent or agents, thereof. Such written consent, or a copy thereof certified as a true copy by the person to whom such consent was given, or by the register of deeds of the county in which the land is situated, if recorded in his office, shall be carried by every person cutting, removing, or transporting any such decorative trees, untrimmed or in their natural condition, or in any way aiding therein, and shall be exhibited to any officer of the law, forest ranger, forest patrolman, game warden, or other officer of the department of conservation, at his request at any time. Any such officer shall have power to inspect any such decorative trees when being transported in any vehicle or other means of conveyance or by common carrier, and to make such investigation with reference thereto as may be necessary to determine whether or not the provisions of sections 88.641 to 88.649 have been complied with, and to stop any vehicle or other means of conveyance found carrying any such decorative trees upon any public highways of this state, for the purpose of making such inspection and investigation, and to seize and hold subject to the order of the court any such decorative trees found being cut, removed, or transported in violation of any provision of sections 88.641 to 88.649. No common carrier or agent thereof shall receive for shipment or transportation any such decorative trees unless the consignor, whose name and address shall be recorded, exhibits at the time of consignment the written consent or certified copy thereof herein provided for. Failure to so exhibit such written consent shall be prima facie evidence that no such consent was given or exists.

[1949 c 546 s 2]

**88.643 CONCENTRATION; POSTING NOTICE; PENALTIES.** Any person who accumulates and concentrates decorative trees as hereinafter defined, at any geographical place for the purpose of shipment or transportation to market, shall post a notice at such place, which notice shall list the owner or owners of such decorative trees and shall contain a legal description of the lands from which they were cut. Failure to keep such place properly posted as herein provided, shall constitute a violation of sections 88.641 to 88.649 and shall subject the decorative trees so accumulated and concentrated, to seizure and confiscation by the State as contraband, in addition to the other penalties provided in sections 88.641 to 88.649 for violation thereof.

[1949 c 546 s 3]

**88.644 PERMIT REQUIRED.** Before any person except a common carrier, shall transport any decorative trees as defined herein, on any public highways, such person shall obtain a transportation permit from the department of conservation. No such permit need be obtained by any person transporting not more than six decorative trees for his own use. Such permit may be revoked by the commissioner of conservation for the season for which it is issued upon conviction of the holder thereof of violation of any provision of sections 88.641 to 88.649.

Any person having in his possession decorative trees, and any person transporting the same, for sale or processing on any public highway in this state shall carry

in his possession the written consent referred to in section 88.642.

Such consent or an original duplicate or certified copy shall be kept in the possession of the vendee named therein until June 30th of the year following the date thereof and shall be open to inspection during reasonable hours to any officer of the department of conservation.

Failure to comply with any of the requirements of this section constitutes a violation of sections 88.641 to 88.649 and subjects the decorative trees not covered by a transportation permit or such consent to seizure and confiscation by the state as contraband in addition to the other penalties provided for violation thereof.

The provisions of this section shall not apply to decorative trees in the possession of or being transported by any properly authorized federal, state, or local government official for a legitimate public purpose.

[1949 c 546 s 4]

**88.645 ENFORCEMENT.** Subdivision 1. Any court or magistrate 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 any trees alleged upon sufficient grounds to have been affected by or involved in any offense under sections 88.641 to 88.647. The warrant may be directed to and executed by any officer authorized to make arrests and seizures by sections 88.641 to 88.647.

Subd. 2. Any officer having knowledge of any offense under sections 88.641 to 88.647 shall forthwith make complaint against the offender before a court or magistrate having jurisdiction of the offense and request the court or magistrate to issue a warrant of arrest in such case.

[1949 c 546 s 5]

**88.646 RECORD OF TRANSPORTATION PERMITS.** Records shall be kept by the director and by every officer and agent authorized by him to issue transportation permits under sections 88.641 to 88.647 by showing the dates of issuance of all such transportation permits, the persons to whom issued, the number issued and such other pertinent information as the director may prescribe. The director may require these reports from such officers and agents as he deems necessary. These records and reports shall be filed in the office of the director.

[1949 c 546 s 6]

**88.647 RELATION TO EXISTING LAWS.** Sections 88.641 to 88.647 shall not be deemed to supersede any existing provision of law relating to any matter within the scope thereof but shall be construed as supplementary thereto.

[1949 c 546 s 7]

**88.648 FALSE STATEMENT; GROSS MISDEMEANOR; MISDEMEANOR.** Any person who makes any false statement in any application, form, or other statement for the purpose of obtaining any written consent or transportation permit as described in sections 88.641 to 88.644 is guilty of a gross misdemeanor.

Except as otherwise provided in this subdivision, any person who violates any provision of sections 88.641 to 88.647, is guilty of a misdemeanor.

[1949 c 546 s 8]

**88.649 PERMITS; FEES.** Any person engaged in the business of processing decorative Christmas trees or other coniferous trees, intended for use as Christmas trees, for decorations, or for other purposes, shall apply to the commissioner for a permit as dealer in such trees, which permit shall expire on December thirty-first of the year in which issued. At the time of applying for the permit the applicant shall give such information as to the proposed manner of conducting the business and the number, kind, and character of trees intended to be dealt in as may be required by the commissioner. With the application the applicant shall submit a fee of \$200, payable to the state treasurer, providing, however, that this section shall not apply to any person processing 1,000 Christmas trees or less.

[1949 c 546 s 9]

**88.65** [Repealed, 1949 c 546 s 10]

**88.651 TREES IN STAGNANT SWAMPS, CULTIVATION, HARVESTING.** The commissioner of conservation may lease as herein provided any state lands under his jurisdiction and control for the purposes of cultivating and harvesting stagnant swamp trees for Christmas trees or other decorative purposes, except lands included in a state park and except lands within the area defined by the Act of Congress approved July 10, 1930, Title 16, U. S. Code Annotated, Section 577.

Such leases shall be offered at public sale upon like proceedings as provided by law for the sale of state timber. The appraisers in such proceedings shall determine and report the annual rental value of the land and the location, estimated quantity and stumpage value of the stagnant swamp trees and other merchantable timber thereon.

No bid shall be accepted which is for less than the appraised price, and any bidding over and above the appraised price shall be by percentage, a percent bid to be added to the appraised rental value of the land and stumpage value of the stagnant swamp trees in the same proportion, provided that if no bids are received on a parcel when offered, it may be leased at not less than the appraised value at any time within one year thereafter, without reoffering it for public sale.

Such leases shall be subject to the following restrictions:

(a) The commissioner, by written order, shall determine that the lands to be leased are not suitable for agricultural or forestry use other than the growing of stagnant swamp trees of no commercial value for other than decorative purposes, and that they are lands which, under the general policy of the conservation department, would not be offered for sale; that in the opinion of the commissioner, the use of such lands for the cultivation and harvesting of stagnant swamp trees is in the public interest and will best advance the conservation of the resources of the state.

(b) All such leases shall be subject to sale and leasing of the land for mineral purposes under legal provisions and shall also be subject to cancellation by the commissioner of conservation for mining or exploration purposes, upon three months' written notice, and shall be subject to cancellation by the commissioner for violation of any conditions of the lease after giving the lessee written notice of alleged violations and at least three months to rectify same.

(c) No such lease shall be made for a term to exceed 15 years.

(d) No individual, corporation or partnership shall hold at any one time any lease or leases covering a total of more than 10,000 acres, and no lease shall cover a total of more than 5,000 acres. The lease shall specify the annual rental to be paid for the lands, and a stumpage value to be paid for stagnant swamp trees harvested therefrom.

(e) Such lease shall provide that before it becomes effective for any purpose, the lessee within 90 days from the date of purchase, shall give a good and valid bond to the State of Minnesota at double the sale value of all stumpage of stagnant swamp trees covered or to be covered by the lease.

(f) Such lease shall confer no rights to cut commercial timber other than the stagnant swamp trees.

(g) Such lease may prescribe such other terms and conditions as to the use and improvement of such lands, the manner of harvesting such trees, and other pertinent matter, as the commissioner deems in the public interest.

(h) Such lease shall be assignable only with the written approval of the commissioner of conservation endorsed thereon.

The form of the lease shall be approved by the attorney general.

All moneys received under any such lease shall be credited to the fund to which the land belongs.

[1955 c 805 s 1]

**88.652 LEASED STATE LANDS NOT SUBJECT TO GENERAL PROPERTY TAXATION.** State lands, leased pursuant to section 88.651, for the purposes of cultivating and harvesting stagnant swamp trees for Christmas trees or other decorative purposes shall not be subject to general property taxation during the term of such lease, and Minnesota Statutes, Section 273.19, shall not be applicable thereto, provided, however, that an amount equal to the annual land rental shall be paid in lieu of the general property tax to the county treasurer of the county in which the lands are located at the same time that such rentals are payable to the state, and shall be distributed to the taxing districts in which located in proportion to the mill rates of such districts.

[1957 c 396 s 1]

**88.66-88.72** [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 88.21; and, to that end, he may make and enforce all necessary or convenient rules and regulations 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 88.21 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 88.21 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 88.21 shall be harmonized and both given effect wherever possible.

Nothing in sections 88.03 to 88.21 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.

[1925 c 407 s 32, 33] (4031-32, 4031-33)

**88.74 CERTAIN RECORDS MAY BE DESTROYED.** The director is authorized, with the consent and approval of the commissioner and the department of administration, to divest his files of records and other papers and documents in his office at the time and under the conditions herein specified:

(1) Claims and vouchers paid by the division more than 15 years prior to such destruction; and

(2) Miscellaneous documents, papers, and correspondence bearing dates more than 15 years prior thereto.

The director, instead of personally destroying any such claims, vouchers, miscellaneous papers, and correspondence, or any other documents, instruments, or papers which may be of historical value, shall forward the same to the Minnesota historical society, St. Paul, Minnesota, and the society is authorized to permanently preserve any matter found therein deemed by it to be of historical value and to destroy all other documents, papers, and matters so received by it.

[1939 c 41 s 1] (53-23 $\frac{1}{2}$ v)

**88.75 VIOLATIONS; PENALTIES.** Subdivision 1. Any person who violates any of the provisions of sections 88.03 to 88.21 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 88.21 to which such person is subject shall be deemed a violation thereof.

Any person who violates any provisions of sections 88.03 to 88.21, 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. When a fire set by any person spreads to and damages or destroys property belonging to another, the person setting the fire shall be prima facie guilty 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 88.21, 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 88.21.

Subd. 2. [Renumbered 18.436]

Subd. 3. Any person who wilfully or knowingly cuts or removes any timber or forest product contrary to the provisions of sections 88.46 to 88.53; or wilfully or knowingly makes any false statement or representation in any application, certificate, or other paper or document required by, or purporting to be made pursuant to, sections 88.46 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 88.46 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]

[*Ex*1919 c 32 s 3; 1925 c 407 s 28; 1927 c 247 s 11; 1933 c 402 s 13] (4031-28, 4031-70, 4031-87, 5887-41)

**88.76 REWARDS.** Upon conviction of any person for violating any of the provisions of sections 88.03 to 88.21, the director, at his discretion, may pay, from any money placed at his disposal under those sections, a reward of not more than \$25 to the person or persons giving the information leading to such conviction.

[1925 c 407 s 31] (4031-31)

**88.77 DISPOSAL OF FINES AND PENALTIES.** Except as otherwise expressly provided in sections 88.03 to 88.21, all moneys 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, city, or village officers duly appointed by the director as fire wardens, shall be paid into the treasury of the town, city, or village where the offense was committed.

[1913 c 159 s 7; 1925 c 407 s 29] (4031-29)

**88.78 APPEALS.** No appeal shall be allowed from a judgment in any court of a justice of the peace, or a municipal court, or other similar court, to the district court in any prosecution under sections 88.03 to 88.21, 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, to be approved by the justice, conditioned to appear before the district court on the first day of the next general term thereof to be held in and for the same county, and abide the judgment of the court therein.

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

When an arrest shall have been made for violation of any of the provisions of sections 88.03 to 88.21, or when information of such violation shall have been lodged with him, the county attorney of the county in which the offense was committed shall prosecute the accused with diligence and energy.

[1913 c 159 s 6; 1925 c 407 s 30] (4031-30)

**88.79 STATE FOREST SERVICE TO PRIVATE OWNERS.** Subdivision 1. **Employment of competent foresters; service to private owners.** The commissioner of conservation may employ competent foresters to furnish owners of forest lands within the state of Minnesota owning respectively not exceeding 1,000 acres of such land, forest management services consisting of advice in management and protection of timber, selection and marking of timber to be cut, measurement of products, aid in marketing harvested products, and such other services as the commissioner of conservation deems necessary or advisable to promote maximum sustained yield of timber upon such forest lands.

Subd. 2. **Charge for service; receipts to general revenue fund.** The commissioner of conservation may charge the owner receiving such services such sums as the commissioner shall determine to be fair and reasonable. The receipts from such services shall be deposited in the general revenue fund.

[1947 c 580 s 1]