

CHAPTER 88

DIVISION OF LANDS AND FORESTRY

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88.49 CONTRACTS.

[For text of subs 1 to 4, see M.S.2000]

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

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

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

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

[For text of subs 6 to 9, see M.S.2000]

Subd. 9a. **Land trades with governmental units.** Notwithstanding subdivisions 6 and 9, or section 88.491, subdivision 2, if an owner trades land under auxiliary forest contract for land owned by a governmental unit and the owner agrees to use the land received in trade from the governmental unit for the production of forest products, upon resolution of the county board, no taxes and assessments shall be levied against the land traded, except that any current or delinquent annual taxes or yield taxes due on that land while it was under the auxiliary forest provision must be paid prior to the land exchange. The land received from the governmental unit in the land trade automatically qualifies for inclusion in the Sustainable Forest Incentive Act.

[For text of subs 10 and 11, see M.S.2000]

History: *1Sp2001 c 5 art 8 s 1,2*

NOTE: The amendments to subdivisions 5 and 9a by Laws 2001, First Special Session chapter 5, article 8, sections 1 and 2, are effective for taxes levied in 2002, payable in 2003, and thereafter. Laws 2001, First Special Session chapter 5, article 8, sections 1 and 2, the effective dates.

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

[For text of subd 1, see M.S.2000]

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

(1) the sum of:

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

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

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

History: *1Sp2001 c 5 art 8 s 3*

NOTE: The amendment to subdivision 2 by Laws 2001, First Special Session chapter 5, article 8, section 3, is effective for taxes levied in 2002, payable in 2003, and thereafter. Laws 2001, First Special Session chapter 5, article 8, section 3, the effective date.

88.641 DEFINITIONS.

[For text of subd 1, see M.S.2000]

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

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

Subd. 2. **Decorative trees.** "Decorative trees" mean decorative materials that are growing coniferous or deciduous trees, bushes, saplings, seedlings, or shrubs, including

the tops cut from any of the foregoing, untrimmed or in their natural condition, intended to be sold or used for decorative purposes. Nursery stock shall not be included in this definition.

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

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

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

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

History: 1Sp2001 c 2 s 91-95

88.642 DECORATIVE MATERIALS.

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

Subd. 2. **Inspection and investigation.** Any officer shall have power to inspect any decorative materials when being transported in any vehicle or other means of conveyance or by common carrier, to make an investigation with reference thereto as may be necessary to determine whether or not the provisions of sections 88.641 to 88.648 have been complied with, to stop any vehicle or other means of conveyance found carrying decorative materials upon any public highways of this state, for the purpose of making an inspection and investigation, and to seize and hold subject to the order of the court any decorative materials found being cut, removed, or transported in violation of any provision of sections 88.641 to 88.648. Failure to comply with the requirements of sections 88.641 to 88.648 subjects the decorative materials to seizure and confiscation as contraband in addition to other penalties provided by law.

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

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

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

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

History: 1Sp2001 c 2 s 96

88.6435 BOUGH BUYERS.

Subdivision 1. **Permits.** A person may not buy more than 100 pounds of decorative boughs in any calendar year without a bough buyer's permit issued by the commissioner of natural resources. The annual fee for a permit for a resident or nonresident to buy

decorative boughs is \$25. The annual fee may be reduced to \$10 if the buyer attends an approved annual workshop or other orientation session for balsam bough harvesters and buyers.

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

(1) the seller's name and address;

(2) the form of written consent; and

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

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

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

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

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

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

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

Subd. 4. **Disposition of permit fees and penalties.** Fees for permits issued under this section shall be deposited in the state treasury and credited to the special revenue fund and are annually appropriated to the commissioner of natural resources for costs associated with balsam bough educational programs for harvesters and buyers.

History: 1Sp2001 c 2 s 97

NOTE: This section, as added by Laws 2001, First Special Session chapter 2, section 97, is effective July 1, 2002. Laws 2001, First Special Session chapter 2, section 97, the effective date.

88.644 [Repealed, 1Sp2001 c 2 s 162]

88.645 ENFORCEMENT.

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

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

History: 1Sp2001 c 2 s 98

88.647 RELATION TO EXISTING LAWS.

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

History: 1Sp2001 c 2 s 99

88.648 CRIMINAL PENALTIES; MISDEMEANOR.

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

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

History: *1Sp2001 c 2 s 100*

88.75 VIOLATIONS; PENALTIES.

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

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

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

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

[For text of subd 3, see M.S.2000]

History: *1Sp2001 c 2 s 101*