

CHAPTER 26

PROTECTION OF FOREST LANDS

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26.01 Definition. The word "commission" when used in this chapter without other word or words of description or qualification means the state conservation commission of Wisconsin.

Cross Reference: See definitions in 24.01 also.

26.03 Cutting forest products. (1) NOTICE; FILING CONVEYANCE. (a) Before any person shall cut, or cause to be cut any logs, piling, poles, posts, pulpwood, Christmas trees or other forest products, except fuel wood for personal home consumption, in, upon or adjoining any forest or wild land area he shall pay all delinquent taxes thereon and each year shall mail a notice in the English language giving his name and post-office address, and listing all the lands upon which such cutting is to be done, designating the same by each 40 acre governmental subdivision or fraction thereof with the proper section, town and range, by registered letter addressed to the county clerk of each county in which the land is located; and the county clerk shall mail a copy of such notice to the district forest ranger and the town chairman of each town in which said lands upon which such forest products are to be cut are located, and to the county treasurer, who shall forthwith determine whether the county holds tax certificates or tax deeds to any of the land listed in the notice, and if he so finds, he shall take action to collect the unpaid taxes represented by county-owned tax certificates or to prevent cutting on land to which the county holds a tax deed or tax certificate. This section shall not apply to cutting for the purpose of clearing such land for agricultural use.

(b) No purchaser of Indian reservation land or land to be placed upon the tax roll for the first time shall cut or cause to be cut any

logs, piling, posts, poles, pulpwood, Christmas trees or other forest products, except fuel wood for personal home consumption, from such land without first recording the instrument by which title to such land was acquired in the office of the register of deeds for the county in which such land is located.

(2) PENALTIES. Whoever violates sub. (1) (a) may be fined not less than \$10 nor more than \$50, or imprisoned for not less than 10 nor more than 30 days, or both. Whoever violates sub. (1) (b) may be fined not less than \$10 nor more than \$200, or imprisoned not more than 60 days, or both.

History: 1963 c. 80.

26.04 Timber trespass. Any person who unlawfully cuts or directs or contracts for the cutting of forest products on the lands of another, which is defined to include privately owned lands and those of any unit of government, and lands to which the state holds a land contract certificate under ch. 24, or lands to which any county holds a tax certificate, shall be punished as provided in s. 26.15.

History: 1967 [13.93 (1) (e)].

26.05 Timber theft. Any person who unlawfully cuts or directs or contracts for the cutting of forest products on the lands of another as defined in s. 26.04 and who does not own or control adjoining land; or who, though owning adjoining land bearing merchantable forest products, cuts on an acreage substantially in excess of the adjoining land; or who, as part of an unlawful cutting operation, removes or destroys any survey monument or bearing tree, shall be punished as provided in s. 943.20 for the theft of property of the same value.

26.06 Enforcement, seizure and sale of materials. (1) In cases of unlawful cutting

of forest products on the public lands of the state, or federal lands leased to the state, or forest crop lands entered under ch. 77, the foresters, forest supervisors, rangers or wardens of the commission and the cruisers or foresters of the commissioners of public lands shall have the enforcement powers specified in s. 26.14 (1), and also to seize, without process, any forest products unlawfully severed from such lands. Seized products cut from lands under the control of the commissioners of public lands shall be held for them and those cut from forest crop lands shall be held for the owner, and subject to his payment of severance taxes thereon to the state. Products cut from state forest lands or federal lands leased to the commission shall be appraised and sold. Products appraised at more than \$250 shall be sold on sealed bid not less than 10 days after the first insertion of a class 2 notice thereof has been published, under ch. 985, in the county where the material is located. Any sheriff may seize and hold for the owner thereof any forest products unlawfully severed or removed.

(2) Any person unlawfully removing any seized products or removing or defacing the seizure notice of the commission or of any sheriff posted thereon, shall be punished as provided in s. 26.15.

(3) Any person who transports, receives or conceals any forest products, knowing the same to have been unlawfully severed from the lands of another, shall be liable to the owner for double the value thereof and in addition shall be punished as provided in s. 943.34.

History: 1965 c. 252; 1967 [13.93 (1) (e)]; 1967 c. 26 s. 94.

26.07 Money, how disposed of. All money received from the sale of logs, lumber, shingles, timber, minerals or other articles seized under this chapter, or recovered in legal proceedings for damages done the public lands, shall be paid into the treasury to the credit of the respective funds to which the lands belong on which such trespasses were committed, and all other money collected as expenses, fees, penalties and damages for trespass on such lands shall be paid into the general fund.

History: 1967 [13.93 (1) (e)].

26.08 Leases and licenses. (1) Said commission may, from time to time, lease for terms not exceeding 15 years, parts or parcels of state park lands or state forest lands; and such leases shall contain proper covenants to guard against trespass and waste. The rents arising therefrom shall be paid into the state

treasury to the credit of the proper fund. Licenses also may be granted to prospect for ore or mineral upon any of said lands; but proper security shall be taken that the licensees will fully inform the commission of every discovery of ore or mineral and will restore the surface to its former condition and value if no discovery of valuable deposits be made. The commission shall retain a copy of each such lease or license and file the original in the office of the commissioners of the public lands.

(2) The commission shall furnish to the commissioners of the public lands such maps, plats, surveys, valuations, information and other services as said commissioners may request respecting any of the public lands, for use by them in granting leases or licenses or in making sales under s. 24.39.

History: 1967 [13.93 (1) (e)].

26.09 Civil liability for unlawful cutting. In addition to the penalties provided in ss. 26.04 and 26.05, any person unlawfully cutting forest products shall be liable to the owner or to the county holding a tax certificate, or to the commissioners of public lands holding a land contract certificate under ch. 24, to the land on which the unlawful cutting was done, in a civil action, for double the amount of damages suffered. This section shall not apply to the cutting of timber for the emergency repair of a highway, fire lane or bridge upon or adjacent to the land.

History: 1967 [13.93 (1) (e)].

Wilfulness is not essential to the recovery of double damages, and proof of intent or wilful trespass is not required but only proof of unauthorized cutting. *Swedowski v. Westgor*, 14 W (2d) 47, 109 NW (2d) 549.

26.10 Reports by the commission to the commissioners of the public lands. The commission shall report monthly to the commissioners of the public lands all trespasses committed, all materials seized, all sales made and all moneys received under ss. 26.01 to 26.09.

History: 1967 c. 26 s. 94.

26.11 Forest fires; commission jurisdiction; procedure. (1) The commission is vested with power, authority and jurisdiction in all matters relating to the prevention, detection and suppression of forest fires outside the limits of incorporated villages and cities in the state except as provided in sub. (2), and to do all things necessary in the exercise of such power, authority and jurisdiction.

(2) The term "forest fire" as used in this chapter means uncontrolled, wild, or running fires occurring on forest, marsh, field, cutover or other lands or involving farm, city or vil-

lage property and improvements incidental to the uncontrolled, wild or running fires occurring on forest, marsh, field, cutover or other lands.

(3) The commission shall direct and give suitable instructions to and obtain reports as directed from, the entire fire warden force of the state whether in officially established forest protection districts or elsewhere, and it may move about or concentrate the fire warden force as occasion demands.

(4) The commission may enter into arrangements or agreements and co-operate with town boards, county boards or committees thereof, with individuals, concerns, corporations or associations, for the purpose of improving the protection against forest fires.

(5) The commission may, upon request from the fire chief of a city or village, or the chief executive thereof, supply assistance within the limits of their resources in suppressing a forest fire within the confines of said municipality.

History: 1967 c. 26 s. 94.

26.12 Forest protection districts, organization, emergency fire wardens, county co-operation, setting fire. (1) ESTABLISHMENT OF DISTRICT. Whenever it appears to the commission from investigation, hearing or otherwise that areas in the state are in need of protection from forest fires, the commission may by rule establish an intensive or an extensive forest protection district in such areas. The limits of each such forest protection district shall be defined, and public notice of its establishment shall be published in the local press of the region affected as a class 1 notice, under ch. 985, and given such other publicity as the commission deems necessary.

(2) ORGANIZATION. The commission shall organize each forest protection district so as to most effectively prevent, detect and suppress forest fires, and to that end may employ experienced wardens or forest rangers to have charge of its efforts in each such district; may subdivide each district into patrol areas; may establish lookout towers, construct ranger stations, telephone lines, purchase tools for fire fighting as well as other necessary supplies or equipment, and carry on all other activities considered necessary to effectively protect the district from such fires, including the promulgation of rules and regulations for the payment of fire fighters, the preparation of notices and forms for publication and the disposition and use of all fire-fighting equipment or property. All property or equipment purchased by the state shall be owned by the

state, but counties or towns may purchase and own equipment for fire suppression, and the same shall be used for the improvement of the forest fire-fighting organization.

(3) EMERGENCY FIRE WARDENS. The commission may deputize additional fire wardens who shall be called emergency fire wardens, and who shall serve during the fire season or for such temporary periods as may be determined upon by the commission. Such appointments shall be made in co-operation with the county board in the county concerned or with a committee thereof. A list of such appointments shall be submitted by the commission each year on or before February 15 to such county board or authorized committee thereof for approval by such board or committee. Should no written approval of such list of emergency fire wardens be received by the commission before March 15 of the year in which submitted such list as submitted shall be deputized by the commission as the official list for the year. Any vacancies occurring during the year shall be filled by the commission as occasion demands. Chapter 16 shall not apply to appointments under this subsection and s. 26.13 (1).

(4) COUNTY CO-OPERATION. Each county included wholly or partially in a forest protection district may appoint a committee to co-operate with the commission and to consider all matters relating to fire prevention, detection and suppression in such county, including the payment of fire fighters, the purchase of fire-fighting equipment and all matters or details relating to or arising from the prevention, detection and suppression of such fires.

(5) SETTING FIRE. (a) No person shall set any fire except for warming the person or cooking food within the limits of any intensive forest protection district at any time of the year except when the ground is snow-covered, unless written permission has been received beforehand from a duly appointed fire warden. The commission shall prepare the necessary blanks for this purpose, shall prescribe rules for the issuance of such permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue such permits, and shall have jurisdiction over all other details concerned with or growing out of the closed season on the setting of fire.

(b) No person shall set any fire except for warming the person or cooking food within the limits of any extensive forest protection district at any time during the months of January, February, March, April and May

except when the ground is snow-covered and during any other time of the year when so ordered by the commission unless written permission has been received beforehand from a duly appointed fire warden. The commission shall prepare the necessary blanks for this purpose, shall prescribe rules for the issuance of such permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue such permits, and shall have jurisdiction over all other details concerned with or growing out of the closed season on the setting of fire.

(6) **SLASH DISPOSAL.** (a) *Definitions.* For the purpose of carrying out this subsection: "Slash" means any tree tops, limbs, bark, abandoned forest products, windfalls or other debris left on the land after timber or other forest products have been cut. "Snags", "stubs" or "rampikes" mean any dead tree still standing, with or without limbs, or any tree whose top has been broken off.

(b) *Disposal.* Any person engaged in cutting timber or other forest products, including any public utility in the process of clearing or brushing any right of way within the limits of any forest protection district, shall dispose of all slash up to 4 inches in diameter resulting from such cutting operations within 100 feet of the center line of any public highway, common carrier railroad, main branch or main line logging road or railroad, or within 100 feet of the boundary line of an adjacent owner. For the purpose of this section, an easement or right of way held by a public utility, shall be construed as ownership. Areas of unbroken slash in excess of 320 acres shall be broken up by disposing of the slash for a distance of 100 feet on each side of any logging road, logging spur, portage trail or any other convenient line. All slash shall be disposed of within 500 feet of any schoolhouse, town hall, church, summer cottage, resort or the buildings of any small community or any settler. All dead rampikes, snags or stubs more than 6 feet high shall be felled within all such strips heretofore mentioned, and for an additional 500 feet beyond except in standing timber. All slash disposal shall be by burning unless the commission authorizes disposal by removal or by lopping and scattering. The disposal of slash and the felling of rampikes, snags or stubs shall be done concurrently with the cutting operation or within a reasonable period to be determined by the commission, but not to exceed one year.

(c) *Penalty.* On failure of the timber owner

or cutting operator to dispose of slash and rampikes, snags or stubs as herein required, the commission may do the work and the landowner, timber owner, cutting operator, all three jointly, severally, or individually shall be liable to the state for the cost of such work, including supervision and transportation of its personnel and any court costs which may arise. All expense incurred by the commission shall be certified to the cutting operator, timber owner and landowner, by registered mail at their last known address and shall be paid within 30 days.

(d) *Illegal felling.* All slash, which during the process of cutting timber or taking out other forest products, falls into or is deposited in any lake or stream or on the land of an adjoining owner, shall be immediately removed therefrom by the timber owner or cutting operator conducting the operations when in the opinion of the commission such removal is in the public interest. If such slash is not removed within 30 days, the commission may do the work and the landowner, timber owner or cutting operator responsible for such slash shall be liable to the state jointly, severally or individually for the cost of such work, including supervision and transportation of its personnel and any court costs which may arise.

(e) *Sales.* All timber sales contracts or timber cutting contracts shall include provision for meeting the requirements of pars. (b) and (d).

(f) *Limitation.* The foregoing provisions shall not apply to cases arising from trespass unless and until reasonable notice is given by the commission.

(7) All slash resulting from clearing or brushing on any public highway within the limits of any forest protection district shall be piled and burned or lopped and scattered. Whenever such work is done under contract the disposal of the resulting slash shall be made a part of the contract. All such slash shall be disposed of concurrently with the clearing or brushing operation or within a reasonable period to be determined by the commission, but not to exceed one year. On failure to dispose of such slash the commission may do the work and the municipality or contractor doing such clearing or brushing shall be liable to the state for the cost of such work.

History: 1965 c. 252, 331; 1967 [13.93 (1) (d), (e)]; 1967 c. 26 s. 94.

26.13 Town fire wardens; duties, expenses.

(1) The chairman of the town board of each town outside the limits of a forest protection

district shall, by virtue of his office and the oath thereof, be town fire warden for such town. He shall assist and co-operate with the commission in all matters relating to the prevention, detection and suppression of forest fires. If a town is unusually large or if special or peculiar conditions in connection with such fires exist, the commission may, upon recommendation of the town chairman, annually, appoint such emergency fire wardens as are necessary, whose duties and authority shall be the same as heretofore provided for emergency fire wardens serving in forest protection districts.

(2) All expenses arising from the prevention or suppression of forest fires by the town chairman acting in his capacity as town fire warden and by those called upon by him to assist in such work, shall be borne by the town in which such expense was incurred, and the town board may levy and assess a tax for defraying such expense. In addition the town board may levy a tax for the purchase of equipment for the suppression of forest fires. Such taxes shall be collected in the same manner as other taxes, and such taxes when so collected shall be paid into the town treasury from which such expense is paid.

(3) Whenever the town board of any town located outside of a forest protection district deems it imprudent to set fires upon any land within the town, they shall post or cause to be posted in 5 or more public places in each township in such town, notices, which shall be prepared by the commission, forbidding the setting of fires therein, and after the posting of such notices no person shall set any fire upon any land in said town except for warming the person or cooking food, until written permission has been received from one of the fire wardens of said town.

26.14 Forest fires, law enforcement, police power of wardens, compensation, penalties, civil liability. (1) State forest rangers, town chairmen, emergency fire wardens, conservation wardens and other duly appointed deputies shall take prompt measures against the spread and illegal setting of forest fires. They have the power of sheriffs to arrest, without warrant, for violations of any section of the statutes relating to such fires. They may execute and serve all warrants and processes in the same manner as any constable may serve and execute such processes, and arrest any person detected in the actual violation, or whom such officer has reasonable cause to believe guilty of a violation of this chapter, and take such person before any court in the coun-

ty where the offense was committed and make proper complaint. They may call upon any able-bodied citizen to assist in fighting such fires in such manner as they direct.

(2) All such forest rangers, town chairmen, emergency fire wardens, conservation wardens and other duly appointed deputies may in the performance of their official duty go on the lands of any person to fight forest fires, and in so doing may set back fires, dig trenches, cut fire lines or carry on all other customary activities in the fighting of forest fires, without incurring a liability to anyone.

(3) Emergency fire wardens, and all persons employed by them or by any other duly appointed fire warden for the purpose of suppressing forest fires, shall receive such hourly pay as the commission may determine, for the time actually employed. Equipment operators and other specialists shall be paid the prevailing wage rate for comparable skills in each locality. And in addition thereto the commission may allow the cost of meals, transportation and disbursements for emergency equipment. One-half of such expense shall be paid by the state and one-half by the county where such service was performed.

(4) Emergency fire wardens or those assisting them in the fighting of forest fires shall prepare itemized accounts of their services and the services of those employed by them, as well as other expenses incurred, on blanks to be furnished by the commission and in a manner prescribed by the commission, and make oaths or affirmation that said account is just and correct, which account shall be forwarded and approved for payment by the commission. As soon as any such account has been paid by the state treasurer the commission shall send to the proper county treasurer a bill for the county's share of such expenses and a copy of the bill shall be filed with the department of administration. The county shall have 60 days within which to pay such bill, but if not paid within that time the county shall be liable for interest at the rate of 6% per annum. If payment is not made within 60 days the secretary of state, upon information certified to him by the department of administration, shall include such amount as a part of the next levy against the county for state taxes, but no county shall be required to pay more than \$5,000 in any one year. Any unpaid levy under this section shall remain a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(5) Any person who shall set a fire or assist in the setting of a fire, including a back fire, on any lands in this state not his own or under his control, shall totally extinguish such fire before leaving it, and upon failure so to do shall be fined not less than \$10 and not to exceed \$100, or imprisoned not exceeding 2 months, or both.

(6) Any person who sets a fire or assists in the setting of a fire, including a back fire, upon his own land or land under his control and who allows such fire to escape and become a forest fire shall be fined not less than \$10 and not to exceed \$100, or imprisoned not exceeding 2 months, or both.

(7a) It shall be unlawful for any person to set or assist in setting a fire upon marsh or other land in the state for the purpose of driving out game birds or animals. The possession of fire arms upon any marsh while it is on fire shall be prima facie evidence of such violation. Any person who violates this section shall be fined not less than \$25 nor more than \$200 or imprisoned not exceeding 3 months or both.

(7b) Any person who shall wilfully and maliciously set fire on any land shall be fined not more than \$1,000 or imprisoned in the state prison not less than one year nor more than 2 years.

(8) (a) Nothing in this chapter shall be construed as affecting the right to damages. The liability of persons for damages is not limited to the destruction of merchantable timber but may also include the value of young or immature forest growth.

(b) Any person who shall set fire on any land and allow such fire to escape and become a forest fire, shall be liable for all expenses incurred in the suppression of such fire by the state or town in which such fire occurred. The commission or the town clerk shall respectively certify to such person the claim of the state or town in writing, and list thereon the items of expense incurred in the suppression of such fire. Such claim shall be paid within 60 days and if not paid within such time, the state or town may begin an action thereon at any time within 2 years.

History: 1961 c. 316; 1967 [13.93 (1) (e), (1)]; 1967 c. 29, 276.

26.15 Responsibility of wardens and citizens. Any fire warden who shall refuse to carry out this chapter, or any able-bodied citizen who shall refuse to render assistance as provided by this chapter, or any citizen who shall violate any of the other provisions of this chapter for which a penalty is not other-

wise provided shall be fined not less than \$10 or more than \$50, or imprisoned not less than 10 days or more than 30 days, or both.

History: 1967 [13.93 (1) (e), (1)].

26.18 District attorneys to prosecute.

Whenever an arrest shall have been made for any violation of this chapter, or whenever any information of such violation shall have been lodged with him, the district attorney of the county in which the criminal act was committed shall prosecute the offender or offenders. If any district attorney shall fail to comply with this section, he shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000, or be imprisoned not less than 30 days nor more than one year, or both. The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects without cause to issue a warrant for the arrest and prosecution of any person or persons when complaint, under oath, of violation of any terms of this chapter, has been lodged with him.

History: 1967 [13.93 (1) (e), (1)]; 1967 c. 29.

26.19 Destruction of forest protection equipment or notices.

Any person who shall destroy, deface, remove or molest or destroy any forest protection equipment or property or disfigure any forest fire sign, poster or warning notice, shall be fined not less than \$25 nor more than \$100, or imprisoned not less than 10 days nor more than 3 months, or both.

History: 1967 [13.93 (1) (1)].

26.20 Fire protection devices. (1) SPARK ARRESTERS ON LOGGING ROAD LOCOMOTIVES. Between March 1 and November 1 it shall be unlawful for any logging locomotive, donkey, traction, or portable engine, and all other engines, boilers, and locomotives, except railway locomotives, operated in, through, or near forest, brush, or grass land, which do not burn oil as fuel, to be operated without a screen or wire netting on top of the smokestack and so constructed as to give the most practicable protection against the escape of sparks and cinders from the smokestacks thereof, and each such engine shall be provided with the most practicable devices to prevent the escape of fire from ash pans and fire boxes. The term "logging locomotive" as used in this section shall be construed to mean any locomotive operated on a railroad branch, line, or division, the chief or main business of which is the transportation of logs, lumber, or other forest products.

(2) SPARK ARRESTERS ON LOCOMOTIVES. All locomotives operated on any railroad other than a logging railroad shall be equipped with the most practicable spark arresters so constructed as to give the greatest possible protection against the escape of sparks and cinders from the smokestacks thereof, and each such engine shall be provided with the most practicable device to prevent the escape of live coals from ash pans and fire boxes, and said devices between March 1 and November 1 shall at all times be maintained in good repair. The superintendent of motive power or equivalent officer of each such railroad shall designate an employe of such railroad at each division point and roundhouse who shall examine each locomotive each time it leaves the division point or roundhouse between March 1 and November 1, and such employe shall be held responsible for the proper carrying out of this subsection, but without relieving the company from its responsibility hereunder.

(3) LOCOMOTIVE INSPECTOR; POWERS. Any locomotive inspector designated by the commission shall have the power to reject from service immediately any locomotive, donkey, traction, or portable engine which, in the opinion of the said inspector, is deficient in adequate design, construction, or maintenance of the fire protective devices designated in subs. (1) and (2), and any such locomotive, donkey, traction, or portable engine so rejected from service shall not be returned to service until such defects have been remedied to the satisfaction of said locomotive inspector. In case of disagreement between said inspector and the owner of the locomotive, donkey, traction, or portable engine so rejected from service as to the efficiency or proper maintenance of said protective devices, then the owner of said locomotive, donkey, traction, or portable engine may appeal to the public service commission of Wisconsin for a decision of said matter, but pending such decision the said locomotive, donkey, traction, or portable engine shall not be returned to service.

(4) CLEARING RIGHT OF WAY. Every corporation maintaining and operating a railway shall, at least once in each year, cut and burn or remove from its right of way all grass and weeds and burn or remove therefrom all brush, logs, refuse material, and debris within a reasonable time, and whenever fires are set for such purpose, shall take proper care to prevent the escape thereof from the right of way.

(5) COMBUSTIBLE DEPOSITS ON TRACK. No such corporation shall permit its employes to deposit fire, live coals, or ashes upon their tracks outside of the yard limits, except they be immediately extinguished.

(6) REPORTS AND MEASURES FOR PREVENTION OF FIRES. Engineers, conductors, or trainmen who discover that fences or other material along the right of way or on lands adjacent to the railroad are burning or in danger from fire, shall report the same to the agent or person in charge at their next stopping place at which there shall be a telegraph station. Corporations maintaining and operating railways shall give particular instructions to their section employes for the prevention and prompt extinguishment of fires, cause notices, which shall be furnished by the state commission, to be posted at their stations, and when a fire occurs along the line of their road, or on lands adjacent thereto, for which fire they are responsible, they shall concentrate such help and adopt such measures as shall most effectually arrest its progress.

(7) FIRE PATROL. All such corporations, during a dangerously dry season, and when so directed by the commission, shall provide fire patrols for duty along their tracks. Whenever said commission shall deem it necessary it may order such corporations to provide for patrolmen to follow each train throughout such districts as may be necessary to prevent fires. When said commission has given a corporation such notice that in its opinion the conditions require such patrol after trains, the corporation shall immediately comply with such instructions throughout the districts designated; or on its failure to do so, said commission may employ patrolmen, and furnish them with the necessary equipment to patrol the rights of way of such corporations, and the expense of the same shall be charged to the corporation and the same may be recoverable in a civil action in the name of this state, and in addition thereto, the said corporation shall be deemed guilty of a misdemeanor. Such corporation, acting independently of such commission, shall patrol its rights of way after the passage of each train when necessary to prevent the spread of fires and use the highest degrees of diligence to prevent the setting and spread of fires, and its officers and employes operating trains in this state, shall use diligence in the extinguishment of fires set by locomotives or found existing upon their respective rights of way, and any negligence in this regard shall render such corporation or

any officer or employe thereof guilty of a misdemeanor.

(8) **INSPECTION AND ENTRY.** The commission may inspect or cause to be inspected any locomotive, donkey, or threshing engine, railway locomotive, and all other engines, boilers, and locomotives operated in, through or near forest, brush, or grass land and enter upon any property for such purpose, or where they deem it necessary in order to see that this section is duly complied with.

(9) **PENALTY.** Any corporation, by its officers, agents, or employes, wilfully violating this section, shall be liable to a penalty of not less than \$50 nor more than \$500 for each and every such violation, to be collected in a civil action in the name of the state.

(10) **APPEAL TO PUBLIC SERVICE COMMISSION.** In case the commission and any person operating any locomotive, donkey, or threshing engine, or any engine, boiler, or locomotive cannot agree as to the most practicable device or devices for preventing the escape of sparks, cinders, or fire from smokestacks, ash pans or fire boxes, then the same shall be determined by the public service commission of Wisconsin.

(11) **EXEMPTION.** The commission may exempt from subs. (1), (2), (3), and (4) any railroad, when, in its judgment, conditions along the right of way are such that the reduced fire hazard renders such protective devices unnecessary.

History: 1967 [13.93 (1) (d), (e), (h), (i)]; 1967 c. 29.

26.205 Tractors, spark arresters. Tractors operating in a forest protection district or on other land where there is danger of setting fire, shall be equipped so that such tractors will not set fire on such lands and to reduce to a minimum the danger of setting fire. The commission or its locomotive inspector is authorized and directed to reject from service all tractors not properly equipped to prevent the setting of fires. The commission shall, after investigation, prescribe suitable fire preventive devices for tractors operating in marsh land or on other land where there is danger of fire being set by their operation.

26.21 Civil liability for forest fires. In addition to the penalties provided in s. 26.20, the United States, the state, the county or private owners, whose property is injured or destroyed by such fires, may recover, in a civil action, double the amount of damages suffered, if the fires occurred through wilfulness, malice or negligence. Persons causing fires in violation of this chapter shall be liable to the

state in an action for debt, to the full amount of all damages done to the state lands and for all expenses incurred by the towns fighting such fires.

History: 1967 c. 29.

26.22 Sales, etc. The commission may sell any timber on the state park or state forest lands which has been damaged by fire or wind, on such terms and in such manner as it shall deem best for the interest of the state.

26.30 Forest insects and diseases; commission jurisdiction; procedure. (1) **PURPOSE.** It is the public policy of the state to control forest pests on or threatening forests of the state in order to protect the forest resources, promote good forest management, enhance the growth and maintenance of forests, promote stability of forest-using industries, aid in fire control by reducing the menace created by dying and dead trees, conserve forest cover on watersheds and protect wildlife, recreational values and other values of the forest.

(2) **POWERS OF THE COMMISSION.** The commission is vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction, except that this shall not be construed to grant any powers or authority to the commission for the silvicultural control of forest pests on any land. It is the intent that this section shall apply only to the detection and control of forest pests on forest lands and nothing in this section shall be construed to affect the authority of the state department of agriculture as outlined in chs. 93 and 94. The action of the commission under sub. (4) shall be co-ordinated with the state department of agriculture in accordance with s. 20.901. The directors of the conservation department and state department of agriculture shall execute annually a memorandum of agreement to enable the co-ordination of pest control work of the 2 departments.

(3) **DEFINITIONS.** As used in this section:

(a) "Forest pest" means any insect or disease which is harmful, injurious or destructive to forests or timber.

(b) "Forests" or "forest lands" mean any area on which trees exist, standing or down, alive or dead, actually or potentially valuable for forest products, watershed or wildlife protection or recreational uses in contrast to shade, horticulture or ornamental trees valuable for landscape, agricultural, aesthetic or similar purposes.

(c) "Infestation" includes actual, potential, incipient or emergency infestation or infection by forest pests.

(d) "Control" includes prevent, retard, suppress, eradicate or destroy.

(e) "Control zone" means an area of land which, in the judgment of the commission, constitutes a present or potential forest pest breeding ground of a nature to be harmful, detrimental and injurious to permanent forest growth in the district or zone upon which control measures are justified.

(4) SURVEYS, INVESTIGATIONS AND CONTROL. The commission shall make surveys and investigations to determine the presence, condition and extent of infestations and it shall also carry on control measures when necessary. For such purposes the commission or its agents may enter public and private lands at reasonable times without incurring a liability to anyone.

(5) CO-OPERATIVE AGREEMENTS. To carry out the purposes of this section the commission may enter into arrangements or agreements with the university of Wisconsin, the state department of agriculture, other departments of this and other states, the U. S. department of agriculture and other federal agencies and with counties, towns, corporations and individuals.

(6) RESPONSIBILITY OF FOREST LANDOWNERS. Every owner of forest lands or timber shall exercise every reasonable effort to control and destroy forest pests on forest lands or timber owned by him or under his control. In case of his failure, neglect or inability to do so, the work may be performed as provided in this section.

(7) DESIGNATION OF INFESTATION CONTROL ZONES. (a) Whenever the commission finds that an area in the state is infested or threatened with infestation by forest pests, it shall determine whether proven measures of control are needed and are available at reasonable cost with respect to the value of the forest lands or timber to be protected and the area affected. Such control measures may be applied through co-operative agreements as provided in subs. (5) and (8) or the commission may designate a proposed zone of infestation covering the area in which control measures are to be applied. When a proposed zone of infestation is designated and before the establishment thereof, the commission shall hold a public hearing thereon. Notice of such hearing shall be published in one or more newspapers having a general circulation in the county covered in whole or in

part by the proposed zone as a class 1 notice, under ch. 985. The notice shall contain a description of the lands included in the proposed zone of infestation and a time and place where owners of forest lands in the proposed zone may show cause orally or in writing why the zone should or should not be established. The commission shall consider any statements received in determining whether the zone shall be established. If the commission determines that a zone should be established it shall issue an order establishing the zone of infestation.

(b) Upon the establishment of a zone of infestation by the commission, notice thereof shall be published in one or more newspapers having a general circulation in the area affected by such zone as a class 1 notice, under ch. 985.

(c) When the commission finds that an emergency condition exists and that the delays necessitated by the procedure outlined in pars. (a) and (b) would result in an epidemic or infestation, it may by order establish a zone of infestation without public hearing, giving such notice as it may deem feasible.

(8) COMMISSION TO CONTROL INFESTATION IF OWNER FAILS TO ACT. Upon the establishment of a zone of infestation, the commission shall apply measures of control on public and private forest lands within the established zone if the owner fails, refuses, neglects or is unable to undertake adequate control measures. The commission shall endeavor to enter into agreements with owners of forest lands concerning the control work on their lands and fixing a pro rata basis on which the costs of such work will be shared between the state and such owner. Failure of the commission to offer an agreement to or execute an agreement with any owner shall not relieve him of any liability under this section or impair the right of the commission to enter on the lands of said owner to conduct control operations.

(9) DISTRIBUTION AND COLLECTION OF COSTS. (a) At the completion of the control measures in any area, or at the end of the calendar year, the commission shall prepare a certified statement of the expenses incurred in carrying out such measures including expenses of owners covered by agreements pursuant to sub. (8) but these charges shall not include salary or expenses of regular permanent or seasonal personnel of the commission, or operating costs for such regular equipment as may be owned or purchased by the commission for insect pest control work. The statement shall show the amount which the

commission determines to be the state's share of the expenses, but this amount shall not be less than 50% of the balance of such expenses incurred on forest lands after federal funds allocated to a specific control project have been deducted. The share of the state may include any federal aid funds and the value of contributions made available by other co-operators. The balance of such costs shall constitute a charge on an acreage basis against the owners of lands in the area affected by the forest pests for which control measures were conducted. In fixing the rates at which charges shall be made against each owner, the commission shall consider present values and the present and potential benefits to such owner and to the state as a whole from the application of control measures, the cost of applying such measures to his land, and other such factors as in the discretion of the commission will enable it to determine an equitable distribution of the costs to all such owners. No charge shall be made against owners to the extent that they have individually or collectively contributed funds, supplies or services pursuant to agreement, and 160 acres or less of forest land owned by any person within any county shall be exempt from any control cost.

(b) As soon as the expenses incurred by the state in forest pest control work have been paid by the state treasurer, the commission shall send to each landowner a bill covering an equitable share of such expenses as herein provided.

1. When such work has been performed on county lands, the commission shall send to the proper county treasurer a bill for the

county's share of such expenses and a copy of the bill shall be filed with the department of administration. The county shall have until October 1 of each year to pay such bill. If payment is not made by October 1 of each year, the secretary of state, upon information certified to him by the department of administration, shall include such amount as a part of the next levy against the county for state taxes, but no county shall be required to pay more than \$5,000 of such amount in any one year. Any unpaid levy under this section shall remain a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

2. When such work has been performed on other public or private lands the commission shall certify to such owner the claim of the state in writing and list the items of expense incurred in such pest control work. Such claims shall be paid within 60 days and, if not paid within such time, the state may begin an action thereon at any time within 2 years.

3. If any claim is not paid within 60 days, the state may file a mechanics' lien within 6 months after the 60-day period expires against the land affected in accordance with ch. 289, and shall have the necessary remedies to enforce the lien.

(10) DISSOLUTION OF INFESTATION CONTROL ZONES. Whenever the commission finds that forest pest control within an established zone of infestation is no longer necessary or feasible it shall set aside the order establishing the zone.

History: 1961 c. 316; 1965 c. 252; 1967 c. 26 s. 94; 1967 c. 291 s. 14.