

CHAPTER 24

ENTRY AND SALE OF PUBLIC LANDS

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24.01 Definitions and classification. Terms used in chs. 23, 24, 25, 26, 27, 28, and 29 are defined as follows:

(1) "Public lands" embraces all lands and all interests in lands owned by the state either as proprietor or as trustee which constitute any part of the lands defined or specified in any of the following subsections.

(2) "School lands" embraces all lands made a part of "the school fund" by section 2 of article X of the constitution.

(3) "University lands" embraces all lands the proceeds of which are denominated "the university fund" by section 6 of article X of the constitution.

(4) "Swamp lands" embraces all lands which have been or may be transferred to the state pursuant to an act of congress entitled "An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits," approved September 28, 1850 or pursuant to an act of congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March 2, 1855.

(5) "Normal school lands" embraces all parcels of said "swamp lands" which the legislature has declared or otherwise decided, or may hereafter declare or otherwise decide, were not or are not needed for the drainage or reclamation of the same or other lands.

(6) "Agriculture college lands" embraces all lands granted to the state by an act of congress entitled "An act donating public lands to the several states and territories

which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862.

(9) "Marathon county lands" embraces all lands acquired by the state pursuant to chapter 22 of the general laws of 1867.

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

24.02 Addition to the public lands. Addition to any class of lands specified in s. 24.01, except lands purchased for forest reserve and Marathon county lands, may be effected by grant, conveyance or devise made as a donation to the state for the purpose of the fund to which such class belongs. But no such proffered donation shall be accepted until the title of the donor has been examined and approved by the attorney general.

24.03 Escheats. The commissioners of public lands shall, whenever they shall have reason to believe that any lands have escheated to the state for defect of heirs, cause due inquiry to be made to ascertain the rights of the state, and the attorney general shall bring any suit or action or take any requisite proceeding necessary to protect and secure the rights of the state. The said commissioners may either take possession of, or cause to be sued for and recovered as aforesaid when necessary, any real estate believed to have escheated to the state, or may proceed directly to sell all the right, title and interest of the state therein, without first obtaining possession thereof and without establishing title thereto by action.

History: 1967 c. 29.

24.04 Administrative receipts and disbursements. (1) RECEIPTS. Said commissioners shall collect from purchasers of land a fee of 50 cents for every certificate and 50 cents for every patent issued by them and pay the same, together with all moneys for expenses of advertising, damages and costs received either by redemption or resale of any public lands forfeited after having been sold by the state, into the state treasury to the credit of the general fund. The chief clerk may take the acknowledgments of said commissioners to all certificates and patents, and no fees shall be charged therefor.

(2) DISBURSEMENTS. All expenses necessarily incurred in caring for and selling public lands shall be paid out of the appropriation made in s. 20.370 (6) (a).

History: 1965 c. 433 s. 121; 1967 c. 291 s. 14.

24.05 Survey of lands. Whenever it shall appear to said commissioners necessary that surveys should be made in order to ascertain the true boundaries of any tract or portion of the public lands, or to enable them to describe and dispose of the same in suitable and convenient lots, they may cause all such necessary surveys to be made.

24.06 Plat of lands. Said commissioners may subdivide any parcel of public lands into smaller parcels or village lots, with streets and alleys if necessary, whenever they believe a larger net price can be obtained by selling the land in such smaller parcels or lots. A survey and plat of such subdivision, verified by its maker as true and correct, shall be returned and recorded in the office of the commissioners, and the parcels or lots designated thereon shall be appraised before they are offered for sale. Such subdivision shall be ordered, the proceedings therefor governed, and such appraisal made in substantial accord with s. 24.08.

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

24.07 Sale of land with water power. Whenever a water power exists upon any public lands offered for sale the commissioners may sell together all the tracts or lots upon which such water power is situated and such other tracts or lots as are necessary for the use and enjoyment of the same, not exceeding 160 acres, or they may sell each tract or lot separately, as in their opinion the larger proceeds may be derived from such sale.

24.08 Minimum price. (1) LANDS APPRAISED. Every parcel of public land, from whatever source derived, that has never been

appraised, every parcel thereof forfeited to the state under s. 24.28, and every parcel of land mortgaged to secure any loan of trust funds and bid in by the state at a sale thereof under the mortgage, shall be appraised pursuant to this section before it is offered or re-offered for sale at public auction or at private sale. All such lands may be re-appraised whenever necessity therefor arises.

(2) APPRAISER. The commissioners shall as often as they deem it necessary, make and enter in their minutes an order that any parcel or parcels of the public lands be appraised, describing the lands, appointing an appraiser and stating the reasons why the appraisal is deemed necessary. So far as practical such appraiser shall be a person already in the employ of the conservation commission, of good character, approved integrity, sound judgment, and well acquainted with the public lands; but when a competent person cannot be selected from a list of such employes any competent appraiser may be employed. Persons employed to complete such appraisal and survey of land and timber and the sale thereof shall not be subject to ch. 16 and shall be appointed by the commissioners of public lands.

(3) APPRAISAL. The appraisement shall be made from actual view and at cash value, the land and the timber thereon, if any, to be appraised separately. It shall be in writing and be verified by the affidavit of the appraiser who shall testify that the same is just and was made as required by law. Such appraisement shall then be filed with the chief clerk and recorded.

(4) APPRAISED VALUE, MINIMUM PRICE, GOVERNMENT MINIMUM. Such appraised value shall be the minimum price of the land until sold or reappraised. Until an appraisal under this section, the appraisal last heretofore made of any parcel of public land, if any has been made, shall fix the minimum price thereof. Notwithstanding this section no parcel of public land having a minimum price for the sale thereof fixed by the act of congress granting the same to the state, shall be sold for a lesser price than that so fixed.

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

24.085 Sale of state-owned lands under the jurisdiction of the conservation commission. (1) The state conservation commission is authorized and empowered to sell at public or private sale, lands and structures owned by the state under the jurisdiction of the state conservation commission when said commission de-

termines that said lands are no longer necessary for the state's use for conservation purposes.

(2) Said commission shall present to the governor a full and complete report of the lands to be sold, the reason for the sale, the price for which said lands should be sold together with an application for the sale of the same. The governor shall thereupon make such investigation as he deems necessary respecting said lands to be sold and approve or disapprove such application. If he shall approve the same, a permit shall be issued by him for such sale on the terms set forth in the application.

(3) Upon completion of such sale, the chairman and secretary of the conservation commission, or the director of the conservation commission, if he be duly authorized by the said commission, shall execute such instruments as may be necessary to transfer title and the conservation commission or its duly authorized agents shall deliver the same to the purchaser upon payment of the amount set forth in the application.

(4) Said commission effecting the sale of any such lands and structures shall, upon receiving payment therefor, deposit the funds in the conservation fund to be used exclusively for the purpose of purchasing other areas of land for the creating and establishing of public hunting and fishing grounds, wild life and fish refuges and state parks.

History: 1963 c. 467; 1965 c. 163, 433, 646; 1967 [13.93 (1) (g)].

24.09 Procedure before sale; withdrawal; resale. (1) All public lands that have been heretofore appraised or appraised pursuant to s. 24.08, shall, in the discretion of said commissioners, be offered for sale at public auction, except that lands required for state or county use may be sold to counties or other state departments, boards or commissions at the appraised value and except that lands located within the exterior boundaries of Indian reservations may be sold to the Indian tribe or tribes located on such reservations or to the United States for the benefit and use of such tribe or tribes upon prices, terms and conditions agreeable to said commissioners and without being subject to the restrictions and procedure otherwise provided by law for the sale of public lands. All sales other than to counties, state agencies or to the United States or an Indian tribe, as hereinbefore provided, shall be made at such times and public places as the commissioners designate; and they shall, previous to any such sale, publish a class 3 notice, under ch. 985, specifying the

time and place and describing the lands to be sold in a newspaper published in the county where such lands are situated.

(2) Said commissioners may, whenever they believe the public interest will be served thereby, withdraw and withhold from sale all or such portions of the public lands as in their opinion it may not be advantageous to sell, for so long a time as in their opinion will be most beneficial to the state; but when reoffered the lands so withdrawn shall first be offered at public sale in the manner prescribed by law.

History: 1965 c. 252; 1967 c. 29.

24.10 Procedure at sale. At the time and place specified in such notice said commissioners shall commence the sale and thereafter continue the same from day to day (Sundays excepted) between 9 a.m. and the setting of the sun, until all lands described in said notice have been offered. The order of such sale shall be to begin at the lowest number of the sections, townships and ranges in each county and proceed regularly to the highest, until all then to be sold are offered for sale. Each lot or tract of such lands shall, except such as may be withheld as provided in s. 24.09, be offered separately at the minimum price fixed by law, and shall be cried at public auction long enough to enable every one present to bid; and if the minimum price or more be bid, such lot or tract shall be struck off to the highest bidder; but if such price be not bid the tract shall be set down unsold.

24.11 Terms of sales. (1) FOR CASH OR INSTALMENTS. Except as provided otherwise in sub. (4) public lands may be sold for cash, to be paid at the time of the sale, or on the following terms: The first payment shall be not less than 15% of the purchase price, and shall be made at the time of the sale together with interest on the deferred payments in advance to February 1 of the following year. In no case, however, shall the first payment be less than the value of the timber, if any, on the lands sold. The deferred payments may be made at any time within 20 years after the date of the sale at the option of the purchaser, with interest thereon at the rate of 7% per annum, payable annually in advance on February 1 of each year.

(2) PURCHASER TO PAY TAXES. The land commissioner shall insert in every contract or certificate of sale of public land a clause providing that the vendee, his heirs, administrators or assigns shall pay or cause to be paid all taxes that are or that may be assessed

against the land from and after the date of the said contract.

(3) **RESERVATION.** Every contract, certificate of sale, or grant hereunder of public lands shall reserve to the people the right of access to such lands and to any meandered or nonmeandered stream, river, pond or lake navigable in fact for any purpose whatsoever, bordered by such lands and all rights necessary to the full enjoyment of such waters, and of all minerals in said lands, and all mining rights therein, and shall also be subject to continued ownership by the state of all water-power rights on such lands or in any manner appurtenant thereto. Such conveyance shall also be subject to a continuing easement in the state and its assigns to enter and occupy such lands in any manner necessary and convenient to the removal of such mineral from such lands and to the proper exercise of such mineral rights, and shall be further subject to the continuing easement in the state and its assigns to enter and occupy such lands in any manner necessary and convenient to the development, maintenance and use of any such water rights. Nothing contained in this section shall be construed to provide for the continued ownership in the state of any stone used for building purposes nor of any sand or gravel.

(4) **SPECIAL TERMS FOR ESCHEATED LANDS.** Upon the sale of any escheated lands the entire purchase price shall be paid at the time of the sale; whereupon the commissioners shall execute and deliver to the purchaser a quitclaim deed of conveyance which shall vest in the grantee all the right, title and interest of the state in or to the land, and every right of action which the state has respecting the same; but no covenant or warranty of title, or of continued enjoyment, or against incumbrances, shall be expressed in or implied from such deed or any words therein. If by virtue of a better title a recovery of such land be had by any other person or party within 20 years after such purchase, the state shall refund to the purchaser or his assigns or legal representatives the amount paid by him for the land together with interest thereon at the rate of 6% per annum from the date of the purchase until the date of recovery and also the amount of all taxes on the land actually paid by him with like interest on each payment from the time of payment to the date of the recovery.

24.12 Forfeit for failure to pay. Every purchaser of any lot or tract at any sale as

aforesaid shall pay the amount of the purchase money required by the terms of sale to be paid in hand immediately after having bid off the same; and if he shall refuse or neglect to so pay, the lot or tract so bid off by him shall again be offered for sale; and the purchaser shall, for such refusal or neglect to pay, forfeit \$25 for each lot or tract so bid off by him, which the commissioners shall, in the name of the state, cause to be immediately sued for and collected, and when collected paid into the school fund.

24.14 Rights of swamp-land purchasers.

Any person who has purchased from the United States or entered any of the lands patented to this state as swamp and overflowed lands, or lands patented in lieu of such lands, prior to the execution of such patents to this state, may whenever such entries have been canceled by the United States on account of conflict with the right and title of this state to such lands, purchase from this state, prior to the date fixed for the public sale thereof, such lands so purchased or entered from the United States, upon making satisfactory proof to the commissioners that such person is the identical person, or the heir, legal representative or assign of the person, who purchased or entered such lands as aforesaid, and upon paying to this state for such lands the same price at which such purchase or entries were made from the United States; but nothing contained in this chapter shall impair the rights acquired by any person who has pre-empted any such lands under the laws of this state.

24.145 State-owned swamp lands; proceeds; disposition. It is declared that none of the swamp and overflowed lands heretofore granted to this state pursuant to an act of congress entitled "An Act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits", approved September 28, 1850, and the proceeds derived from the sale thereof, which have not heretofore been actually applied for reclamation of such lands, are necessary for the purpose of reclaiming any such swamp and overflowed lands by construction of levees and drains or otherwise. All such swamp and overflowed lands and the proceeds derived from the sale thereof including those placed and being in the drainage fund pursuant to chapter 537, laws of 1865, which have not been actually applied for the purpose of reclaiming such lands, shall be and they are made a part of the normal school fund. This section shall be

controlling over any inconsistent act or statute.

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

24.15 Private sale. All public lands, including forfeited lands and mortgaged lands bid in by the state, which shall have once been offered or reoffered at public sale and remain unsold, shall be subject to private sale at the minimum price fixed therefor by law to the person first making application therefor, if he forthwith complies with the term of sale; but if 2 or more persons shall apply at the same time to purchase any of such lands the same shall be offered to the highest bidder, and the applicant who will pay the highest price shall be the purchaser.

24.16 Applications for private sale. Every person making application for the purchase at private sale of any such lands shall file in the office of said commissioners an application in writing, describing the lot or tract which he proposes to purchase by the proper number of the section, township and range, and the subdivision of the section, with his name subscribed thereto. The commissioners shall, if the land applied for may then be sold, enter on books kept for that purpose a note of such application, specifying the day when made, the name of the applicant, and the description of the land applied for, and shall also give to such applicant a memorandum, stating such application and describing the lot or tract applied for, and stating the price at which the same may be sold and the amount to be paid at the time of the sale, which memorandum shall be signed by the chief clerk.

24.17 Receipt and certificate. (1) When the purchaser of any such lands shall make payment to the treasurer of the amount required to be paid on such sale, and, in case of a private sale, shall also produce the memorandum mentioned in s. 24.16, he shall give a receipt therefor to such purchaser, and unless such sale be made wholly for cash said commissioners shall execute and deliver to such person a duplicate certificate of sale, in which they shall certify:

- (a) The description of the land sold;
- (b) The sum paid and the amount remaining due thereon;
- (c) The times, place and terms of payments;
- (d) That if such payments shall be duly made the purchaser or his assigns or other legal representatives shall be entitled to a patent for such land;

(e) And that in case of the nonpayment into the state treasury of the purchase money as it shall become due, or of the interest thereon by the first day of February in each year or on or before June 30 thereafter, or of any taxes lawfully assessed thereon and then remaining unpaid by the purchaser or purchasers or by any person claiming under him or them, then that the said certificate from the time of such failure shall be utterly void and of no effect, and that the said commissioners may take possession of the land described in such certificate and resell the same.

(2) When the sale is wholly for cash, upon payment as above provided, the treasurer shall thereupon give to such purchaser a receipt stating the amount paid and giving a description of the lot or tract of land sold and that such purchaser is entitled to receive a patent according to law.

24.18 Entry of sale and patent. When any sale is made said commissioners shall make a note thereof in the book of entries, and shall enter therein the day of sale, the name of the purchaser, the number of the certificate or patent, the sum paid, the amount of purchase money unpaid, if any, and a description of the lot or tract sold. If such sale be made wholly for cash they shall thereupon execute and deliver to the purchaser a patent for such lot or tract of land so sold. If sold at public auction they shall note that fact.

24.19 Certificate of sale. All original and duplicate certificates shall be properly numbered, and the original shall be filed in the office of said commissioners, and as many distinct lots or tracts of land hereafter purchased by one person in one section at the same time as he shall request shall be included in one certificate or one patent, as the case may be. All certificates may be acknowledged and recorded in the same manner that deeds may be. They may also be assigned in writing, which assignment may be acknowledged and recorded in like manner, and the person to whom the same shall be legally assigned shall have the same rights and remedies thereupon as the original purchaser would have had.

24.20 Payments and accounts. All money paid on account of sales of public lands shall be paid to the state treasurer who shall credit the proper fund therewith, crediting the general fund with the proceeds of sales of Marathon county lands, and the commissioner of

administration or his designee, upon countersigning the receipt given therefor, shall charge the treasurer therewith, and shall also enter the name of the person paying the same, the number of the certificate, if any, upon which the amount shall be paid and the time of the payment.

History: 1961 c. 191.

24.21 Accounts with purchasers. The said commissioners shall open and keep an account with each purchaser for every lot or tract of land that shall be sold, either at public or private sale, in books kept for that purpose, in which they shall charge the purchaser with the whole purchase money and give him credit for all his payments, making proper charges for interest as the same shall become due, and for all taxes returned to them as unpaid by the proper officer; and upon all payments being completed and the patent issued the account shall be balanced.

24.22 Excessive payments to be refunded. Whenever full payment of the principal due upon any certificate of sale by the state shall be made subsequent to the payment of the annual interest thereon, the excess of the interest so paid shall be refunded to the person entitled thereto from the proper fund, on the warrant of the department of administration; and in case of the double or erroneous payment of interest, charges or taxes on any certificate of sale or loan by the state the amount so erroneously paid shall be in like manner refunded.

History: 1961 c. 316.

24.23 Title; patents. The title and fee of all public lands shall remain in the state until patents shall issue for the same; and no such patent shall issue except upon full payment of the purchase money and interest and all taxes returned and lawful charges thereon.

24.24 Effect of certificate. (1) The certificate of sale, issued pursuant to s. 24.17, until the same shall become void by forfeiture as herein provided, shall entitle the purchaser, his heirs or assigns, to all the rents, benefits and provisions of any lease existing thereon at the time of such purchase and thereafter accruing, and shall be sufficient evidence of title, and shall vest in him, his heirs and assigns, the same rights of possession, enjoyment, descent, transmission and alienation of the lands therein described, and the same remedies for the protection of said rights, as against all persons except the state, that he would possess if he were the owner thereof in fee.

(2) No such certificate shall confer the right to cut down, destroy or dig up or carry off any standing wood or timber, or any mineral, without the written consent of said commissioners, except that such wood or timber may be cut when to be used, and it shall be exclusively used, in the erection of fences or buildings on such lands, or for necessary firewood for the household use of the persons actually occupying the same, or when done in good faith for the actual and fair improvement of such land for cultivation.

(3) But no such cutting shall be deemed to have been done for the purposes of cultivation unless the entire surface from which such wood and timber is cut shall have been at the time further prepared therefor by thoroughly clearing it of all brush and growing wood of every kind thereon, except that shade or ornamental trees on not more than 10 adjoining acres selected for building purposes, and trees valuable for saw or rail timber, not to exceed 20 upon each acre, may be left standing. Any wood, timber or mineral otherwise cut, dug out or removed from any such land shall be and remain the property of the state.

24.25 Patent and record thereof. Whenever full payment shall have been made for any such lands as required by law, and the purchaser or his legal representatives shall produce to the said commissioners the duplicate certificate of sale, with the receipt of the state treasurer indorsed thereon, showing that the whole amount of the principal and interest due thereon has been paid and that the holder of such certificate is entitled to a patent for the lands described therein, the original and duplicate certificates shall be canceled, and said commissioners shall thereupon execute and deliver a patent to the person entitled thereto for the land described in such certificate. All patents issued by said commissioners shall be recorded in their office; and the record of patents heretofore issued by them is hereby declared a legal record. Purchasers may, at any time before due, pay any part or the whole of such purchase money and the interest thereon. In all cases where patents have been or may hereafter be issued to a person who may have died or who shall die before the date thereof, the title to the land described therein shall inure to and become vested in the heirs, devisees or assignees of such person to the same extent as if the patent had issued to him during his lifetime.

24.251 Patents, issuance; county may record. Whenever it shall appear to the com-

missioners of public lands that all the conditions relating to the issuance of patents have been complied with, said commissioners may issue patents, and the county board of any county may cause such patents to be recorded in the county and pay the cost of such recording.

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

24.26 Patentee's rights. Except as provided otherwise by s. 24.11 any person, his heirs or assigns, who shall receive a patent pursuant to law for any public lands shall thereby acquire the right to all timber, lumber, trees, wood, bark, stone, earth, and other materials cut, dug, taken or removed therefrom before the issue of such patent, unless the same shall have been cut, dug, taken or removed by the assent of said commissioners or sold by the state, and may maintain any proper action for the recovery thereof, or for any injury done to or trespass committed upon said lands before such patent shall have been issued, in the same manner and with the like effect, and he shall be entitled to like damages as if such injury or trespass had been committed after the patent had issued.

24.27 Purchase money a loan. The purchaser of any such land, when the balance of the purchase money therefor shall become due, may retain the same as a loan from year to year on payment annually in advance, or on or before May 31, of the interest on the sum due, at the rate of interest specified in the certificate of sale, and the taxes annually assessed on the land described in such certificate, until required to pay the whole or part by the said commissioners, as provided in ch. 25, or until the legislature shall otherwise direct.

24.28 Forfeiture. In the case of the nonpayment of interest when due according to the terms of the certificate of sale, or of any taxes which before said annual interest is paid shall have been returned to the commissioners of public lands by the county treasurer as due and unpaid upon such land, or of the principal when required by said commissioners, such certificate shall become void from the time of such failure, and the purchaser, his heirs and assigns, shall forfeit all right and interest in the lands described in such certificate; and the said commissioners may take immediate possession thereof and may resell the same as hereinafter provided.

24.29 Redemption. At any time before the 5 days next preceding the reoffering of such

land at public sale, the former purchaser or his assigns or legal representatives may, by the payment of the sum due with interest, and all taxes returned thereon to the state treasurer which are still unpaid, and all costs occasioned by the delay, together with 3% damages on the whole sum owing for such land, prevent such resale and revive the original contract.

24.30 Liability of former purchaser. In case of such forfeiture the former purchaser of such land shall be liable for any waste or unnecessary injury which he may have done to the same, or to the timber or mineral thereon; and any action therefor may be prosecuted by the commissioners in the name of the state.

24.31 Advertisement and resale of forfeited lands. Whenever any public lands have been forfeited for the nonpayment of either principal, interest or taxes, and have remained forfeited for 3 months, the commissioners shall first cause such lands to be appraised as provided by s. 24.08 and shall thereupon advertise such land for sale as provided by s. 24.09, and shall further state in the notice that the lands have been forfeited and give the names of the former purchasers. Such sale shall be made either in the county where the lands lie or at the capitol on a day not less than 3 months nor more than 6 months after the first insertion of the notice. The commissioners shall publish a class 3 notice, under ch. 985, of the sale giving the time and place where such sale will be held and the county in which such lands are situated, but omitting any description of such lands; the last insertion of the notice shall be at least one week previous to the time of commencing such sale.

History: 1965 c. 252.

24.32 Resale and redemption. (1) Unless such resale be prevented by payment as hereinafter provided by s. 24.29, such lands shall be offered for sale at public auction to the highest bidder, in the manner and upon the terms provided, for original sales, and if not then sold shall be subject to private entry thereafter.

(2) Every such tract may be redeemed by the former purchaser thereof, his assigns or legal representatives at any time before the June 30 next following the date of such resale, upon presenting to the commissioners satisfactory proof, which shall be filed and preserved by them, that such tract was, at the time of resale, in whole or in part under culti-

vation or adjoining a tract partly cultivated, belonging to such former purchaser, his assigns or legal representatives and used in connection therewith, and upon depositing with the state treasurer, for the use of the purchaser at such resale the amount paid by him for such land, together with 25% of the amount of such taxes, interest and costs in addition thereto; and every certificate issued upon any such resale shall be subject to the right of redemption whether it be expressed in such certificate or not. And no patent shall be issued on any such resale until the expiration of such redemption period.

(3) Upon such redemption the commissioners shall cancel such certificate, and shall make and deliver to the party so redeeming a certificate thereof, and shall also record the same in a book to be kept in their office for that purpose.

24.33 Resale may be canceled. Whenever any land has been so forfeited and resold, within 3 months thereafter, upon proof that there are valuable improvements thereon and that such forfeiture was occasioned by the death of the holder of the first certificate, or the neglect of his executor or administrator, and payment to the treasurer of the amount actually due on such first certificate at the time of such resale, with interest, costs and charges, with interest on the amount for which such land was sold at the rate of 10% per annum, the said commissioners, by their order in writing, duly recorded, of which a copy shall be forthwith served on the last purchaser, may avoid and cancel such resale and restore and revive such first certificate. Thereafter there shall be paid out of the state treasury to the last purchaser the amount paid by him and the said interest thereon collected of such person so redeeming, on surrender of the certificate, receipt or patent given him at such resale.

24.34 Void sales. In case of the sale of any public lands made by mistake, or not in accordance with law, or obtained by fraud, and in cases where the state had no title to such lands, or its title has failed, such sale shall be void and no contract, certificate of purchase or patent issued thereon shall be of any effect, but the person named as vendee, or his successor in interest, as the case may be, may furnish to the commissioners, such proof as shall satisfy them of the facts. Thereupon they shall order all amounts, either of principal or interest, paid for the lands described in the contract, certificate or patent,

together with the interest thereon from the time of each such payment, at the rate of 6% per annum, simple interest, to be refunded and paid out of the state treasury, from the fund to which it has been credited, to the person entitled thereto; provided that no money shall be paid to any person participating in any such fraud.

24.341 Offset to refund on void sales. Whenever any claim shall be made under s. 24.34, the commissioners of public lands shall make an investigation and determination, and offset the value of the use of said land, property removed therefrom and the damage or injury thereto by such claimant, together with interest thereon, against the amounts actually paid to the state and to any other persons on account of the purchase, possession, use, damage or injury to such lands by said claimants. The refund or payment to be made under s. 24.34 shall in no case be more than the excess, if any, of the amounts paid out by such claimant with interest over such offset.

24.35 Annulment of certificates and patents. Whenever the said commissioners shall have erroneously or improperly issued any certificate or patent for any public lands, whereby wrong or injustice has been or may be done, including cases where the state had no title to the lands, or its title has failed, they may, upon the written application of such purchaser, or his successor in interest revoke and annul such certificate or patent by their order, which with such application, shall be filed and recorded in their office. A certified copy of such order may be recorded in the office of the register of deeds for the county where such lands lie, and thereupon such certificate or patent shall be absolutely null and void. When such order is so recorded there shall be paid out of the state treasury, from the fund to which it has been credited, to such purchaser, or his successor in interest the amounts in the manner and as provided in s. 24.34.

24.355 Limitation of actions. All claims under s. 24.34 or 24.35 shall become barred, unless application therefor be made within 5 years from the time of such payment, or, in cases where the state never had title, from the time when the invalidity of the title of the state was established.

24.36 Lost certificates and patents. Whenever any duplicate certificate of sale shall have been lost or destroyed before the

patent shall issue, or whenever any patent shall have been lost or destroyed the said commissioners, upon satisfactory proof of the fact by affidavit to be filed with them, may issue a certified copy of the original certificate of sale or of the record in their office of such patent, or a quitclaim deed in place of such patent, to the person entitled thereto, which shall have the same force and effect as the original duplicate certificate or patent. Their certificate to such copy and quitclaim deed shall recite the loss or destruction of the original.

24.37 Ejectment. If any person shall hold or continue in possession of any public lands without written permission from the said commissioners, or contrary to the conditions or covenants of any lease or written agreement, or after such lands have been forfeited to the state, he shall be liable to an action by the state or any purchaser from the state for an unlawful detainer or other proper action to recover possession of such lands with damages for the detention of the same.

24.38 Boundaries. The lines, boundaries and descriptions of the swamp lands as exhibited by the plats and field notes of the United States survey are adopted and shall be deemed conclusively to be the true lines, boundaries and descriptions thereof.

24.39 Leases, etc. (1) The commissioners of the public lands may grant leases of parts or parcels of any public lands except state park lands and state forest lands; grant easements, leases to enter upon any of said lands to flow the same or to prospect for and to dig and remove therefrom ore, minerals and other deposits, and sell therefrom such timber as the commissioners shall find necessary to prevent future loss or damage. All sales of standing live timber shall be on a selective cutting basis in line with federal forest practices. Such easements, leases, licenses and sales shall be made only for a full and fair consideration paid or to be paid to the state, the amount and terms whereof shall be fixed by said commission, and such easements, leases, licenses and sales shall conform to the requirements, so far as applicable, prescribed by ch. 26 for the exercise by the conservation commission of similar powers affecting state park lands and state forest lands.

(2) In negotiating for such leases, licenses or sales, and in exercising the other powers conferred by this section the commissioners of public lands shall, so far as they find it

desirable and practicable, request and make proper use of such services and information as the conservation commission may be able to furnish.

(3) All moneys received by the commissioners from the leasing of land under the U. S. flood control act of 1954 and subsequent amendments thereto, shall be paid into the general fund of the state within one week and are appropriated therefrom to the commissioners to be paid to the county clerk of the county in which the leased land is located for the benefit of the general fund of such county within 30 days of its receipt by the commissioners.

(4) (a) Subject to pars. (c) and (d) the commissioners of the public lands may: 1. Lease to riparian owners rights to the beds of lakes and rights to fill in beds of lakes or navigable streams, held by the state in trust for the public, when the purpose of the lease is for the improvement of navigation or for the improvement or construction of harbor facilities as defined in s. 30.01; and 2. Lease such rights to municipalities as defined in s. 30.01 and in locations where the municipality is the riparian owner, when the purpose of the lease is for the improvement or provision of recreational facilities related to navigation for public use.

(b) All revenues from such leases shall be paid into the general fund.

(c) No leases under par. (a) may be executed without a prior finding of the public service commission under s. 30.11 (5) that any proposed physical change in the area contemplated as the result of the execution of any term lease is consistent with the public interest in the navigable waters involved.

(d) This subsection applies only to Lake Michigan and Lake Superior, the Mississippi and St. Croix rivers, the Fox river, from Green Bay upstream to the point where it meets the Wolf river, and to the segments of all other bodies of water in which the U. S. Army Corps of Engineers provides and maintains commercial navigation channels.

(e) Such lease shall be for a term not to exceed 50 years, and shall include therein any and all conditions and terms the commissioners of the public lands believe to be necessary in the public interest. A lessee or his heirs, successors or assigns of a lease which has reached the end of its term shall have first opportunity to contract with the commissioners of the public lands for a new lease.

(f) A municipality may sublease rights leased to it under par. (a) 1 or 2 to corpora-

tions or private persons. A municipality may also make physical improvements on and above the bottoms to which rights were leased from the commissioners of the public lands and may sublease these improvements to corporations or private persons. Any subleases under this paragraph shall be consistent with this subsection and with whatever standards or restrictions the public service commission, acting under s. 30.11 (5), may have found at the time of execution of the original lease by the commissioners of the public lands to the municipality.

(g) The lease may be terminated for non-use or for a nonconforming use any time after 5 years from date of issue, or such shorter period of time as may be specified in the lease. It may also be terminated for any other ground recognized at law for termination of a lease.

(h) All rights to submerged lands and rights above submerged lands ceded, granted or leased to municipalities, or other persons by prior acts of the state [1961] shall not be affected by this subsection or by s. 30.11 (5).

(i) All leases entered into by the commissioners of the public lands under this sub-

section and s. 30.11 shall be deemed to be subject to both these subsections and any other applicable laws of this state or of the United States.

History: 1961 c. 535, 622; 1967 [13.93 (1) (h)].

Under (4) state may lease riparian rights on shores of Green Bay to the city of Green Bay, which in turn can sublease area for harbor or navigation improvement purposes. 52 Atty. Gen. 42.

24.40 Easements; annexation. (1) Every board, commission, department and agency of the state having real estate belonging to the state under its control may grant easements in said property for public utility service through, over, along or to said property, including without limitation by enumeration the necessary poles, wires, structures, lines, conduits, pipes or pipe lines for heat, light, water, gas, sewer, power, telephone, telegraph and transmission of messages.

(2) Every such board, commission, department and agency may petition or join in a petition for and on behalf of the state as the owner of such property to annex or detach the same or any part or parts thereof to or from an adjoining municipality.

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