CHAPTER 26

PROTECTION OF FOREST LANDS AND FOREST PRODUCTIVITY

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Cross–reference: See definitions in s. 24.01.

26.01 Definitions. In this chapter:

(1) Unless the context requires otherwise, "department" means the department of natural resources.

(2) "Forest fire" means uncontrolled, wild, or running fires occurring on forest, marsh, field, cutover, or other lands or involving farm, city, or village property and improvements incidental to the uncontrolled, wild, or running fires occurring on forest, marsh, field, cutover, or other lands.

History: 2001 a. 103 ss. 40, 42.

26.02 Council on forestry. (1) DUTIES. The council on forestry shall advise the governor, the legislature, the department of natural resources, and other state agencies, as determined to be appropriate by the council, on all of the following topics as they affect forests located in this state:

(a) The protection of forests from fire, insects, and disease.

(b) The practice of sustainable forestry, as defined in s. 28.04 (1) (e).

(c) Reforestation and forestry genetics.

(d) Management and protection of urban forests.

(e) Increasing the public's knowledge and awareness of forestry issues.

(f) Forestry research.

(g) Increasing the economic development of the forestry industry and employment in the forestry industry.

(h) Marketing and use of forest products.

(i) Legislation that impacts on the management of forest lands in this state.

(j) Staffing and funding needs for forestry programs conducted by the state.

(2) REPORT. (a) The council on forestry shall prepare a biennial report on the status of the state's forest resources and forestry industry. The report shall include a summary of each of the following:

1. The magnitude, nature, and extent of the forest resources in this state.

2. The current use in this state for forest products and the benefits that these forest products provide to the state.

3. The projected future demand for forest products and the projected benefits that these forest products will provide to the state in the future.

4. The types of owners and forms of ownership that apply to forests in this state, including the reasons why persons own forest land.

5. The success of existing incentives that are offered to stimulate the development of forest resources.

6. The possible economic opportunities in this state that may result if improved forest–product marketing, and increased business dealing in or use of forest products, occurs in this state.

7. Recommendations for increasing the economic development of the forestry industry and employment in the forestry industry.

8. The effect of state and local governmental laws and policy on forestry management and the location of markets for forest products.

9. Recommendations as to staffing and funding needs for forestry programs and other conservation programs related to forestry that are conducted by the state to support and enhance the development of forest resources.

10. Recommendations as to the need to increase the public's knowledge and awareness of forestry issues.

(b) The council on forestry shall submit the report under this subsection no later than June 1 of each odd–numbered year for distribution to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3). The first report shall be submitted no later than June 1, 2005. Each report shall cover the 24–month period ending on the December 31 immediately preceding the date of the report.

History: 2001 a. 109; 2011 a. 32.

26.03 Harvest of raw forest products. (1b) DEFINITIONS. In this section:

(a) "Harvest" means to cut, remove or transport.

(b) "Harvesting" means cutting, removing or transporting.

(c) "Raw forest products" has the meaning given in s. 26.05 (1).

(1g) PROHIBITION; DELINQUENT TAXES. No person may harvest any raw forest products, or direct the harvest of any raw forest products, from any land for which taxes are delinquent.

(1m) HARVESTING UPON NOTIFICATION. (a) 1. Unless otherwise authorized to do so by the county, no person may harvest any raw forest products, or direct the harvesting of any raw forest products, from any land until 14 days after the clerk of the county in which the land is located is notified of the person's proposal to harvest. The person shall notify the county clerk each year and

may do so in any manner acceptable to the county. Each time the person notifies the county, the person shall describe the land upon which the harvesting will occur by quarter–quarter section, government lot or fractional lot, unless the county requires a different method for describing the land. Notification under this subdivision expires on the December 31 immediately following the notification, and no person may harvest, or direct the harvesting of, any additional raw forest products from the land until further notification that complies with this subdivision is provided to the county.

2. Upon receipt of notifications under subd. 1., the county clerk shall provide notice to the town chairperson of each town in which the land from which raw forest products will be harvested is located and to the county treasurer. The county treasurer shall determine whether the county holds a tax certificate or tax deeds to any of the land involved. If the county holds a tax certificate, the county treasurer shall take action to collect the unpaid taxes represented by county–owned tax certificates or to prevent the harvesting of raw forest products from the land. If the county holds a tax deed, the county treasurer shall take action to prevent the harvesting of raw forest products from the land.

(b) Paragraph (a) 1. does not apply to a person harvesting raw forest products on public lands, as defined in s. 70.13 (7), to a person harvesting raw forest products for fuel wood for his or her home consumption, to a person harvesting for the purpose of clearing the land for agricultural use or to a person harvesting from the person's own land, any of the following:

1. Boughs for his or her own use.

2. Up to 5 Christmas trees for his or her own use.

(1r) HARVESTING UPON RECORDING. (a) No purchaser of Indian reservation land or land to be placed upon the tax roll for the first time may harvest any raw forest products, or direct the harvesting of any raw forest products, from the land without first recording the instrument by which title to the land was acquired in the office of the register of deeds for the county in which the land is located.

(b) Paragraph (a) does not apply to a person harvesting raw forest products for fuel wood for his or her home consumption.

(1v) EXCEPTIONS. This section does not apply to the harvesting of raw forest products for the purpose of establishing or maintaining a railroad track or structure, a pipeline, or a utility right–of–way by any of the following:

(a) An alternative telecommunications utility, as defined in s. 196.01 (1d).

(b) An electric cooperative, as defined in s. 101.80 (1g).

(c) A public utility, as defined in s. 196.01 (5).

(d) A railroad, as defined in s. 195.02.

(e) A telecommunications carrier, as defined in s. 196.01 (8m).

(f) A telecommunications utility, as defined in s. 196.01 (10).

(g) A corporation licensed to do business in this state that is engaged in the business of transporting natural gas, petroleum products, water, or sewage through pipelines.

(2) PENALTIES. (a) Whoever violates sub. (1g), or a rule promulgated under sub. (1g), shall forfeit not less than $500 nor more than $10,000.

(b) Whoever violates sub. (1m) or (1r), or a rule promulgated under sub. (1m) or (1r), shall forfeit not more than $100.

History: 1975 c. 365; 1977 c. 224; 1983 a. 422, 424; 1989 a. 56 s. 258; 1999 a. 190; 2005 a. 423; 2017 a. 136.

26.05 Timber theft. (1) DEFINITION. In this section, "raw forest products" means forest products not altered by a manufacturing process off the land from which they are taken and includes seedlings, saplings, shrubs, whole–tree chips, boughs, logs, pilings, posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees.

(2) CONSENT OF OWNER REQUIRED. No person may cut, remove or transport raw forest products or direct the cutting, removal or transportation of raw forest products without the consent of the owner.

(3) PENALTIES. (a) A person who violates this section or a rule promulgated under this section is subject to a forfeiture of not less than $100 nor more than $10,000.

(b) Instead of the forfeiture provided under par. (a), a person who intentionally violates this section, or a rule promulgated under this section, may be punished under s. 943.20 for theft.

(c) In addition to any other penalty, a person who violates this section, or a rule promulgated under this section, is liable for the reasonable costs incurred to establish the volume and value of the raw forest products cut, removed or transported.

History: 1981 c. 67; 1999 a. 190.

26.06 Enforcement, seizure and sale of materials. (1) Foresters, forest supervisors, rangers and wardens of the department and the cruisers and foresters of the board of commissioners of public lands have the enforcement powers specified in s. 26.97 with respect to, and may seize, without process, any forest products unlawfully severed from public lands of the state, federal lands leased to the state, county forest lands entered under s. 28.11, forest croplands entered under subch. I of ch. 77 or managed forest land designated under subch. VI of ch. 77. Seized products cut from lands under the control of the board of commissioners of public lands shall be held for the commissioners and those cut from forest croplands, managed forest land or county forest shall be held for the owner, and subject to the payment of severance share thereon to the state. Products cut from state forest lands or federal lands leased to the department shall be appraised and sold. Products appraised at more than $500 shall be sold on sealed bids not less than 10 days after a class 1 notice 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 who, without the consent of a person legally able to give consent, removes any seized products or removes or defaces a seizure notice of the department or of any sheriff shall forfeit not less than $500 nor more than $10,000.

(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 (1).

History: 1971 c. 265; 1975 c. 365; 1985 a. 29; 1987 a. 266 s. 5; 1989 a. 79; 1999 a. 190; 2015 a. 358.

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.

26.08 Leases and licenses. (1) The department may, from time to time, lease parts or parcels of state park lands or state forest lands. These leases shall contain proper covenants to guard against trespass and waste. The rents arising from these leases 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 these lands; but proper security shall be taken that the licensees will fully inform the department of every discovery of ore or mineral and will restore the surface to its former condition and value if no discovery of valuable deposits is made. The department shall retain a copy of each lease or license and file the original in the office of the board of commissioners of public lands.

(2) (a) Except as provided under pars. (b) to (e), the department may lease state park land or state forest land for terms not exceeding 15 years.

(b) The department may lease Rib Mountain state park lands and Willow River state park lands for terms not exceeding 30 years.

(bn) The department may lease state park land located within the boundaries of the Wisconsin Dells natural area for terms not exceeding 30 years.

(c) The department may lease Kettle Moraine state forest land for the YMCA Camp Matawa for a term not exceeding 30 years.

(d) The department may lease Northern Highland American Legion State Forest land on Statehouse Lake in the town of Manitowish Waters for the North Lakeland Discovery Center for a term not exceeding 30 years.

(e) The department may lease state forest land located in the town of Boulder Junction to the Boulder Junction Shooting Range for terms not exceeding 30 years.

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

History: 1979 c. 34; 1987 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2013 a. 82.

26.09 Civil liability for unauthorized cutting, removal or transportation of raw forest products. (1b) DEFINITIONS. In this section:

(a) "Compass" means a sighting compass with a liquid–filled capsule that has been adjusted for the proper declination.

(b) "Fair market value" means the amount for which the raw forest products or land can be sold in an open market by a person willing and able but not compelled to sell and a purchaser willing and able but not obliged to buy.

(c) "Harvest" means to cut, remove or transport.

(d) "Harvesting" means cutting, removing or transporting.

(e) "Harvesting boundary" means the boundary of an area in which the harvesting of raw forest products is planned.

(f) "Owner" includes the board of commissioners of public lands if the board holds a land contract certificate under ch. 24 to the land from which the raw forest products were harvested.

(g) "Raw forest products" has the meaning given in s. 26.05 (1).

(h) "Recorded survey" means a land survey that is recorded with the register of deeds in each of the counties in which the harvesting took place.

(i) "Slash" has the meaning given in s. 26.12 (6) (a).

(j) "Stumpage value" means the applicable stumpage value established under s. 77.91 (1) or the fair market value of raw forest products less the cost of their harvesting, whichever is greater.

(k) "Subdivision" means a township, section, quarter–quarter section, government lot or fractional lot.

(2) PERSONS ENTITLED TO SUE; EXCEPTION. (a) In addition to any other enforcement action that may be taken and subject to par. (b), an owner of raw forest products that were harvested without the consent of the owner may bring a civil action against the person who harvested the raw forest products to recover the damages caused by the harvesting. In addition to any other enforcement action and subject to par. (b), a county in which a violation of s. 26.03 (1g) or (1r) or a rule promulgated under s. 26.03 (1g) or (1r) occurred may bring a civil action to recover damages for the violation.

(b) An owner may not recover damages under this subsection if the person harvesting the raw forest products or the person giving consent for the harvesting reasonably relied on a written agreement among adjacent owners, or their agents, that the owner giving consent to harvest has the authority to do so even if after the harvesting it is determined that the owner giving the consent did not have such authority, but only if the harvesting is from land owned by an owner who is a party to the agreement.

(3) DAMAGES. (a) A person against whom an action is brought as provided in sub. (2) is liable for the applicable damages under par. (b) or (c), subject to sub. (6), and other reasonable and necessary costs under par. (d).

(b) 1. A court shall award damages that equal the stumpage value of the raw forest products harvested if the person harvesting the raw forest products or the person giving consent for the harvesting reasonably relied upon a recorded survey that was done by a person who is licensed under ch. 443 as a professional land surveyor even if the recorded survey is determined, after the harvesting, to be in error.

2. A court shall award damages that are equal to 2 times the stumpage value of the raw forest products harvested if a recorded survey was not relied upon as specified in subd. 1. but the person harvesting the raw forest products took reasonable precautions in identifying harvesting boundaries.

3. A court shall award damages that are equal to 4 times the stumpage value or 2 times the fair market value of the raw forest products harvested, whichever is greater, if a recorded survey was not relied upon as specified in subd. 1. and the person harvesting the raw forest products did not take reasonable precautions in identifying the harvesting boundaries.

(c) In addition to the award under par. (b), a court shall award the owner of raw forest products that were harvested without the consent of the owner, any economic damages resulting from that harvest.

(d) A court shall award other reasonable and necessary costs, which may include costs for any of the following:

1. Repair of damage to, or cleanup on, the land from which the raw forest products were harvested.

2. Removal of slash from agricultural land, waterways, highways, private roads, trails or other sites where the slash would interfere with reforesting or replanting.

3. Determining the fair market value, the stumpage value or the volume of the raw forest products that were harvested.

4. Determining the location of property boundaries necessary for determining whether a violation occurred.

5. Preparing forest management or reforestation plans.

6. Reforesting.

7. Replanting by direct seeding or by use of seedlings.

(4) LEGAL COSTS. Notwithstanding the limitations under s. 814.04, and in addition to the remedies available under s. 807.01, the court shall award the successful party in a civil action brought under sub. (2) court costs and reasonable attorney fees if the unsuccessful party, before the commencement of the action, unreasonably refused to pay a demand for damages or to accept an offer of payment for damages.

(5) REASONABLE PRECAUTIONS. (a) For purposes of sub. (3) (b), a person takes reasonable precautions if the person does all of the following:

1. Identifies the harvesting boundaries as required under par. (b).

2. Reviews land ownership records and any other resources or documentation regarding the land. These records, resources and documentation include instruments of conveyance, certified survey maps, survey field notes and information on the land's boundaries provided by the owners, or their agents, of any land that abuts a proposed harvesting boundary.

(b) For purposes of par. (a), the harvesting boundaries may be identified by any of the following methods:

1. By use of a compass and measuring device or by use of a global position system if the identification is conducted by a person trained in the method used and if the identification is based on an established survey corner as specified in par. (c). If a global positioning system is used, it shall be accurate to plus or minus 2 meters.

2. By use of a method established by rule by the department.

(c) A survey corner is an established survey corner for purposes of par. (b) if it is part of a U.S. government survey plat and it is used to determine one or more boundaries of a subdivision. The survey corner may be evidenced by a monument or other marking that was placed at the time that the survey was conducted or, if the monument or marker is no longer visible or in existence, the position of the survey corner may be reconstructed by doing one of the following:

1. Using a reference to a description contained in applicable surveying field notes or other supplemental surveying record.

2. Locating the survey corner by use of physical evidence or witness testimony.

(6) DAMAGES; OTHER. An owner may not receive both payment under s. 26.06 (3) and damages specified under sub. (3) (b) or (c) from the same person. An owner may not receive both payment under s. 26.05 (3) (c) and the damages specified in sub. (3) (d) 3.

History: 1981 c. 67; 1999 a. 190; 2009 a. 365; 2013 a. 358.

Double damages under this section are not "punitive damages." Hartland Cicero Mutual Insurance Co. v. Elmer, 122 Wis. 2d 481, 363 N.W.2d 252 (Ct. App. 1984).

The proper measure of damages is the market value of the logs reduced by the cost of cutting. Double damages are set by doubling that amount. Tydrich v. Bomkamp, 207 Wis. 2d 632, 558 N.W.2d 692 (Ct. App. 1996), 96–2086.

Changes to this section effective June 2, 2000 were not retroactive. The prior version of this section was not the exclusive remedy for timber trespass. Bill's Distributing, Ltd v. Cormican, 2002 WI App 156, 256 Wis. 2d 142, 647 N.W.2d 908, 01–2567.

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

26.105 Forestry and fire prevention study. The Great Lakes Timber Professionals Association and the Wisconsin County Forests Association shall prepare a report containing the results of the forestry and fire prevention study conducted as approved by the joint committee on finance under s. 26.105 (2), 2013 stats., and shall submit the report to the department, the council on forestry, and the appropriate standing committees of the legislature under s. 13.172 (3).

History: 2013 a. 20; 2015 a. 55.

26.11 Forest fires; department jurisdiction; procedure. (1) The department is vested with power, authority, and jurisdiction in all matters relating to the prevention, detection, and suppression of forest fires outside the limits of villages and cities in the state except as provided in s. 26.01 (2), and to do all things necessary in the exercise of such power, authority, and jurisdiction.

(3) The department 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 areas or elsewhere, and it may move about or concentrate the fire warden force as occasion demands.

(4) The department may enter into arrangements or agreements and cooperate 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 department may, upon request from the fire chief of a city or village, or the chief executive thereof, supply assistance within the limits of its resources in suppressing a forest fire within the confines of said municipality.

(6) The department, as the director of the effort, may suppress a forest fire on lands located outside the boundaries of intensive or extensive forest fire protection districts but not within the limits of any city or village if the town responsible for suppressing fires within its boundaries spends more than $3,000, as determined by rates established by the department, on suppressing the forest fire and if the town chairperson makes a request to the department for assistance. Persons participating in the suppression efforts shall act at the direction of the department after the department begins suppression efforts under this subsection. Funds expended by the state under this subsection shall be expended from the appropriation under s. 20.370 (2) (mv).

(7) (a) Notwithstanding s. 20.001 (3) (c), if the sum of the unencumbered balances in the appropriation accounts under s. 20.370 (2) (cs) and (mz) exceeds $1,000,000 on June 30 of any fiscal year, the amount in excess of $1,000,000 shall lapse from the appropriation account under s. 20.370 (2) (cs) to the conservation fund, except as provided in par. (b).

(b) Notwithstanding s. 20.001 (3) (c), if the amount in the appropriation account under s. 20.370 (2) (cs) is insufficient for the amount that must lapse under par. (a), the remainder that is necessary for the lapse shall lapse from the appropriation account under s. 20.370 (2) (mz).

History: 1977 c. 224; 1983 a. 422; 1989 a. 56 s. 258; 1995 a. 27; 2001 a. 16, 103; 2003 a. 33; 2017 a. 59.

A stipulation of facts stating that there was a "large grass fire" did not necessarily mean there was a forest fire as defined in s. 26.11 (2) [now s. 26.01 (2)]. Town of Howard v. Soo Line Railroad Co. 63 Wis. 2d 500, 217 N.W.2d 329 (1974).

26.12 Forest protection areas, organization, emergency fire wardens, county cooperation, setting fire. (1) ESTABLISHMENT OF AREAS. Whenever it appears to the department from investigation, hearing or otherwise that areas in the state are in need of protection from forest fires, the department may by rule establish an intensive or an extensive forest protection area in the areas. The limits of each forest protection area 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 any other publicity the department deems necessary.

(2) ORGANIZATION. The department shall organize each forest protection area 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 area; may subdivide each area 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 area from forest fires, including the promulgation of rules 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 equipment shall be used for the improvement of the forest fire–fighting organization.

(3) EMERGENCY FIRE WARDENS. The department 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 department. Such appointments shall be made in cooperation with the county board in the county concerned or with a committee thereof. A list of such appointments shall be submitted by the department 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 department before March 15 of the year in which submitted such list as submitted shall be deputized by the department as the official list for the year. Any vacancies occurring during the year shall be filled by the department as occasion demands. Chapter 230 shall not apply to appointments under this subsection and s. 26.13 (1).

(4) COUNTY COOPERATION. Each county included wholly or partially in a forest protection area may appoint a committee to cooperate with the department and to consider all matters relating to fire prevention, detection, and suppression in the 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 forest fires.

(5) SETTING FIRE. (a) No person may set any fire except for warming the person or cooking food within the limits of any intensive forest protection area at any time of the year except when the ground is snow–covered, unless written permission has been received in advance from a duly appointed fire warden. The department shall prepare the necessary forms for this purpose, shall promulgate rules for the issuance of the permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue the 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 may set any fire except for warming the person or cooking food within the limits of any extensive forest protection area at any time during January through May except when the ground is snow–covered and during any other time of the year when so ordered by the department unless written permission has been received in advance from a duly appointed fire warden. The department shall prepare the necessary blanks for this purpose, shall promulgate rules for the issuance of the permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue the 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) *Definition.* In this subsection and sub. (7), "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.

(b) *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 department such removal is in the public interest. If such slash is not removed within 30 days, the department 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.

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

History: 1977 c. 196 s. 131; 1977 c. 224; 1983 a. 422; 1985 a. 332 s. 251 (6); 2001 a. 107; 2009 a. 177.

Cross–reference: See also ch. NR 30, Wis. adm. code.

26.13 Town fire wardens; duties, expenses. (1) The chairperson of the town board of each town outside the limits of a forest protection area shall, by virtue of the office and the oath of the office, be town fire warden for the town. The fire warden shall assist and cooperate with the department 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 forest fires exist, the department may, upon recommendation of the town chairperson, annually appoint emergency fire wardens as necessary, whose duties and authority shall be the same as provided for emergency fire wardens serving in forest protection areas.

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

(3) Whenever the town board of any town located outside of a forest protection area 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 the town, notices which shall be prepared by the department, or place one such notice in the official county paper, forbidding the setting of fires in the township, and after the posting of the notices no person may set any fire upon any land in the town except for warming the person or cooking food, until written permission has been received from one of the fire wardens of the town.

History: 1977 c. 224; 1989 a. 56.

26.14 Forest fires, authority of fire fighters, compensation, penalties, civil liability. (1) State forest rangers, town chairpersons, conservation wardens and other duly appointed deputies shall take prompt measures against the spread and illegal setting of forest fires. They may call upon any able–bodied citizen to assist in fighting fires in such manner as they direct.

(2) All such forest rangers, town chairpersons, 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) (a) 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 department 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. The department may also allow the cost of meals, transportation, and disbursements for emergency equipment.

(b) Of the expenses incurred under par. (a) the state shall pay one–half and the county where the service was performed shall pay one–half.

(c) If the state receives any payment of damages under sub. (9) (b), the county's share of expenses under par. (b) is reduced by the amount by which the damages received exceed the state's share of expenses under par. (b). If, at the time the damages are paid, the county has already paid its share of expenses to the state, the state shall reimburse the county the amount by which the damages received exceed the state's share of expenses.

(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 department and in a manner prescribed by the department, and make oaths or affirmation that said account is just and correct, which account shall be forwarded and approved for payment by the department. As soon as any such account has been paid by the secretary of administration the department of natural resources shall send to the proper county treasurer a bill for the county's share of such expenses. 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 percent per year. If payment is not made within 60 days 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 department of administration shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(5) Any person who sets a fire or assists in the setting of a fire, including a back fire, on any lands in this state and fails to totally extinguish such fire before leaving it shall forfeit not more than

$100 for the first offense and shall be fined not more than $500 or imprisoned for not more than 30 days or both for each subsequent offense.

(6) Any person who sets a fire or assists in setting a fire, including a back fire, on any lands in this state and allows the fire to escape and become a forest fire shall be fined not more than $1,000 or imprisoned not more than 90 days or both.

(7) Any person who sets or assists in setting a fire upon marsh or other land in the state for the purpose of driving out game birds or animals shall be fined not more than $1,000 or imprisoned not more than 90 days or both. The possession of firearms upon any marsh while it is on fire shall be prima facie evidence of such violation.

(8) Any person who intentionally sets fire to the land of another or to a marsh is guilty of a Class H felony.

(9) (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 sets a fire on any land and allows such fire to escape and become a forest fire shall be liable for all expenses incurred in the suppression of the fire by the state or town in which the fire occurred. For purposes of this paragraph, the state is considered to incur all expenses described under sub. (3). An action under this paragraph shall be commenced within the time provided by s. 893.91 or be barred.

History: 1973 c. 336; 1975 c. 365; 1977 c. 449; 1979 c. 110 s. 60 (13); 1979 c. 323; 1983 a. 36, 422; 1989 a. 56, 79; 1995 a. 291; 1997 a. 283; 2001 a. 109; 2003 a. 33; 2017 a. 59.

A stipulation of facts stating that there was a "large grass fire" did not necessarily mean there was a forest fire as defined in s. 26.11 (2) [now s. 26.01 (2)]. Town of Howard v. Soo Line Railroad Co. 63 Wis. 2d 500, 217 N.W.2d 329 (1974).

An intentional or negligent act, or an omission if there is a duty to act, is a necessary prerequisite for imposition of fire suppression costs under sub. (9) (b). DNR v. Wisconsin Power & Light Co. 108 Wis. 2d 403, 321 N.W.2d 286 (1982).

26.145 Fire suppression aids. (1) GRANTS. The department shall establish a program to award grants for up to 50 percent of the cost of acquiring fire resistant clothing for suppressing fires, of acquiring fire suppression supplies, equipment, and vehicles, of acquiring fire prevention materials, and of training fire fighters in forest fire suppression techniques.

(2) ELIGIBILITY. (a) Cities, villages, towns, counties and fire suppression organizations shall be eligible for grants under this section.

(b) The department may not award a grant under this section unless the recipient of the grant enters into a written agreement with the department under which the recipient agrees to assist the department in the suppression of forest fires at the department's request.

(3) RULES. The department shall promulgate rules establishing criteria and procedures for awarding grants under this section. For purposes of this section, the rules shall include a definition of "fire suppression organizations".

History: 1997 a. 27; 1999 a. 9; 2001 a. 16, 109.

Cross–reference: See also s. NR 47.90, Wis. adm. code.

26.15 Responsibility of wardens and citizens. Any fire warden who refuses to carry out this chapter, or any able–bodied citizen who refuses to render assistance as provided by this chapter, shall forfeit not more than $50.

History: 1975 c. 365.

26.18 District attorneys to prosecute. Whenever an arrest has been made for any violation of this chapter, or whenever any information of such violation has been lodged with him or her, the district attorney of the county in which the act was committed may prosecute the offender.

History: 1975 c. 365.

26.19 Destruction of forest protection equipment or notices. (1) Any person who destroys, defaces, removes or molests any forest protection equipment or property shall be fined not more than $10,000 or imprisoned not more than 9 months or both.

(2) Any person who disfigures any forest fire sign, poster or warning notice shall forfeit not more than $100.

History: 1975 c. 365; 1983 a. 422.

26.20 Fire protection devices. (2) SPARK ARRESTERS ON LOCOMOTIVES. All road locomotives operated on any railroad shall be equipped with spark arresters that meet or exceed minimum performance and maintenance standards enumerated by the department. The superintendent of motive power or equivalent officer of each railway shall designate an employee of the railway at each railway division point and roundhouse who shall examine each locomotive and its spark arrester each time the locomotive leaves the railway division point or roundhouse and the designated employee and his or her employer shall each be held responsible for complying with this subsection.

(3) LOCOMOTIVE INSPECTOR; POWERS. Any locomotive inspector designated by the department shall have the power to reject from service immediately any locomotive, donkey, traction, or portable engine which, in the opinion of the inspector, is deficient in adequate design, construction, or maintenance of the fire protective devices designated in sub. (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 the locomotive inspector. In case of disagreement between the 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 the locomotive, donkey, traction, or portable engine may appeal to the office of the commissioner of railroads for a decision of said matter, but pending such decision the locomotive, donkey, traction, or portable engine shall not be returned to service.

(4) CLEARING RIGHT–OF–WAY. (a) Every corporation maintaining and operating a railway shall, at least once in each year, and within 10 days when requested by the department in writing, cut and burn or remove from its right–of–way all grass and weeds and burn or remove from its right–of–way all brush, logs, refuse material, and debris within a reasonable time, and whenever fires are set for such purpose, shall prevent the escape of the fire from the right–of–way. Upon failure of a railway corporation to comply with this paragraph, the department may do or contract for completion of the work and the corporation shall be liable to the state for all of the costs of the work.

(b) The department may periodically require every corporation operating a railway to remove combustible materials from designated right–of–way or portions of a right–of–way, and lands adjacent to the right–of–way. This paragraph shall not relieve any railway corporation from responsibility or liability for causing any damage along any right–of–way nor from the corporation's duty to comply with par. (a).

(5) COMBUSTIBLE DEPOSITS ON TRACK. No such corporation shall permit its employees 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. (a) Conductors or individuals in charge of a train who discover that their train is causing fires along or adjacent to the right–of–way shall immediately report the fires to the nearest railway division point or district office. It shall be the duty of the railway dispatcher or appropriate railway management authority to immediately notify the local department office plus the sheriff of the county where any fire is located. The conductor or other individuals in charge of a train shall attempt to discover the cause of any fire. If any part of the train, including the locomotive, is believed to have caused the fire, efforts shall be made to rectify the part before the train returns to service.

(b) Any forest ranger, conservation warden, sheriff or other duly appointed authority may, in the performance of official

duties, require any train causing fires or suspected of causing fires to stop within a safe distance from the fires to avoid further setting or spread of fire.

(7) FIRE PATROL. All corporations maintaining and operating a railway, during a dangerously dry season, and when so directed by the department, shall provide fire patrols for duty along their tracks. Whenever the department deems necessary it may order the corporations to provide for fire patrol personnel to follow each train throughout forest protection areas as may be necessary to prevent fires. When the department has given a corporation notice that in its opinion the conditions require a patrol after trains, the corporation shall immediately comply with the instructions throughout the areas designated. If the corporation fails to do so, the department may employ fire patrol personnel, and furnish them with the necessary equipment to patrol the rights–of–way of the corporations, and the expense of the patrols shall be charged to the corporation and may be recoverable in a civil action in the name of this state. In addition, the corporation is subject to the penalties under sub. (9). The corporation, acting independently of the department, shall patrol its rights–of–way after the passage of each train when necessary to prevent the spread of fires and use the highest degree of diligence to prevent the setting and spread of fires, and its officers and employees operating trains in this state shall use diligence in extinguishing fires set by locomotives or found existing upon their respective rights–of–way, and any negligence in this regard shall render the corporation or any officer or employee subject to the penalties under sub. (9). Every corporation affected by this section shall designate and register with the department an officer or some other person to be responsible for carrying out the corporation's responsibilities with the highest degree of diligence. If the officer or person fails in the duty, he or she shall forfeit not more than $500.

(8) INSPECTION AND ENTRY. The department 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 it deems it necessary in order to see that this section is duly complied with.

(9) PENALTY. (a) Any corporation, by its officers, agents, or employees, violating this section, shall forfeit not more than $500.

(b) Any corporation, by its officers, agents or employees, willfully violating this section shall be fined not more than $1,000.

(c) Any conductor, individual in charge of a train or officer, agent or employee of a railway who violates this section shall forfeit not more than $500.

(10) APPEAL TO OFFICE OF THE COMMISSIONER OF RAILROADS. In case the department 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 office of the commissioner of railroads.

(11) EXEMPTION. The department may exempt from subs. (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: 1975 c. 365; 1977 c. 29 ss. 448b to 448t, 1654 (9) (f); 1977 c. 224; 1981 c. 347 s. 80 (2); 1983 a. 422 ss. 10, 15; 1993 a. 16, 123, 490.

26.205 Tractors, spark arresters. Tractors operating in a forest protection area or on other land where there is danger of setting fire, shall be equipped so that the tractors will not set fire on the lands and to reduce to a minimum the danger of setting fire. The department or its locomotive inspector is authorized and directed to reject from service all tractors not properly equipped to prevent the setting of fires. The department 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.

History: 1977 c. 224.

26.21 Civil liability for forest fires. (1) 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 forest fires, may recover, in a civil action, double the amount of damages suffered, if the fires occurred through willfulness, malice or negligence. In a civil action, a court may award reasonable costs for legal representation to provide owners recovering damages under this subsection.

(2) 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 forest fires and shall be liable to municipalities in an action for debt, to the full amount of all damages to the municipal lands and for all expenses incurred by the municipalities fighting such fires.

History: 1977 c. 29.

This statute does not create liability in favor of a town. Town of Howard v. Soo Line Railroad Co. 63 Wis. 2d 500, 217 N.W.2d 329 (1974).

Sub. (1) is not limited to a specific class of tortfeasor, such as a railroad corporation, and a violation under s. 26.20 is not a prerequisite for applying sub. (1). The plain language of sub. (1) does not require "gross negligence." Heritage Farms, Inc. v. Markel Insurance Company, 2009 WI 27, 316 Wis. 2d 47, 762 N.W.2d 652, 07–0983.

If it is determined that the owner's property was injured or destroyed by a forest fire that occurred through willfulness, malice, or negligence, the property owner is entitled to double damages as a matter of course. The use of "may" in sub. (1) does not authorize the recovery of double damages within the court's discretion. Rather, the use of "may recover" indicates that a property owner, whose property is injured or destroyed by a forest fire, "may" choose to bring a civil action against the tortfeasor to recover double damages. Heritage Farms, Inc. v. Markel Insurance Company, 2012 WI 26, 339 Wis. 2d 125, 810 N.W.2d 465, 10–0355.

26.22 Sales, etc. The department may sell any timber on land under the department's jurisdiction which has been damaged by fire, snow, hail, ice, insects, disease, or wind, on such terms and in such manner as the department determines is in the best interest of the state.

History: 2003 a. 242.

26.30 Forest insects and diseases; department 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. The department 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 department for the silvicultural control of forest pests on any land. This section shall apply only to the detection and control of forest pests on forest lands and does not affect the authority of the department of agriculture, trade and consumer protection under chs. 93 and 94. The action of the department under sub. (4) shall be coordinated with the department of agriculture, trade and consumer protection in accordance with s. 20.901. The secretaries of natural resources and agriculture, trade and consumer protection shall execute annually a memorandum of agreement to enable the coordination of pest control work of their departments.

(3) DEFINITIONS. As used in this section:

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

(b) "Control zone" means an area of land which, in the judgment of the department, 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.

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

(d) "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.

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

(4) SURVEYS, INVESTIGATIONS AND CONTROL. The department 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 department or its wardens may enter public and private lands at reasonable times without incurring a liability to anyone.

(5) COOPERATIVE AGREEMENTS. To carry out the purposes of this section the department may enter into arrangements or agreements with the University of Wisconsin System, the department of agriculture, trade and consumer protection, 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 or under the control of the owner. In case of the owner's failure, neglect or inability to do so, the work may be performed as provided in this section.

(6m) GYPSY MOTH SUPPRESSION. (a) If the department establishes a program for the suppression of gypsy moths, and that program includes the awarding and administering of federal cost–sharing funds to counties for aerial insecticide treatment, the department shall promulgate rules to implement the program. The rules shall specify that an area is not eligible for aerial insecticide treatment under the program unless the area is at least 20 compact and contiguous acres in size.

(ag) The rules promulgated under par. (a) shall require that an eligible applicant for funding provide notification to landowners and tenants within the eligible proposed treatment blocks and within an area surrounding those blocks to be determined by the applicant. Notification under this paragraph shall include all of the following:

1. Publication of a class 1 notice under ch. 985 in a local newspaper at least 10 days before a deadline, as designated by the applicant for funding in the notice, for registering an objection by a landowner or tenant to treatment on the land under the landowner's or tenant's control.

2. Issuance of a press release at least 10 days before the deadline for objections under subd. 1. that announces the public meeting under subd. 3.

3. Holding of a public meeting by the applicant for funding at least 7 days before the deadline for objections under subd. 1.

(ar) The published notice and press release under par. (ag) shall provide information on the location of proposed treatment blocks, the insecticide to be used, the approximate timing of treatment, the method for registering an objection to the treatment of property, and the name, address, and phone number of the applicant for funding or the applicant's designee.

(av) The published notice under par. (ag) 1. and the press release under par. (ag) 2. shall state, and a statement shall be made at the public meeting under par. (ag) 3., that all of the following apply:

1. If a landowner or tenant registers a timely objection to treatment on land under the landowner's or tenant's control, the applicant for funding may not treat that land.

2. If a landowner or tenant does not register a timely objection to treatment on land under the landowner's or tenant's control, the applicant for funding may treat that land.

(b) Subsections (7) to (10) do not apply to a gypsy moth suppression program established under this subsection.

(7) DESIGNATION OF INFESTATION CONTROL ZONES. (a) Whenever the department 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 cooperative agreements as provided in subs. (5) and (8) or the department 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 department 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 department shall consider any statements received in determining whether the zone shall be established. If the department 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 department, 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 department 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 deems feasible.

(8) DEPARTMENT TO CONTROL INFESTATION IF OWNER FAILS TO ACT. Upon the establishment of a zone of infestation, the department 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 department shall endeavor to enter into agreements with owners of forest lands concerning the control work on their lands and fixing a proportional basis on which the costs of such work will be shared between the state and such owner. Failure of the department to offer an agreement to or execute an agreement with any owner shall not relieve the owner of any liability under this section or impair the right of the department 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 department 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 department, or operating costs for such regular equipment as may be owned or purchased by the department for insect pest control work. The statement shall show the amount which the department determines to be the state's share of the expenses, but this amount shall not be less than 50 percent 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 cooperators. 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 department 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 the owner's land, and other such factors as in the discretion of the department 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 secretary of administration, the department 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 department 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 the secretary of state 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 department 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. 779, and shall have the necessary remedies to enforce the lien.

(10) DISSOLUTION OF INFESTATION CONTROL ZONES. Whenever the department 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: 1977 c. 29 s. 1650m (1); 1979 c. 32 s. 92 (9); 1979 c. 110 s. 60 (11); 1983 a. 189; 1985 a. 13; 1991 a. 316; 2003 a. 33, 57.

Cross–reference: See also s. NR 47.910, Wis. adm. code.

26.35 Forest productivity. The department shall identify types of privately owned forest lands which are most likely to provide high forest productivity benefits to the economy of the state. The department shall target its activities in providing assistance to owners of privately owned forest lands in order to concentrate on those types of forest lands identified as most likely to provide high forest productivity benefits to the economy of the state.

History: 1983 a. 27.

26.36 Forest energy resources. Biennially, in consultation with the department of agriculture, trade and consumer protection and any other appropriate agency, the department shall prepare a report regarding the extent of forest lands in this state and the potential of such lands to provide fuel for use in electric generating facilities, industrial facilities and home heating systems. The report shall evaluate progress made in meeting the afforestation goal under s. 1.12 (3) (c). The department shall submit the report before April 1 of each even–numbered year to the legislature under s. 13.172 (3).

History: 1993 a. 414.

NOTE: 1993 Wis. Act 414, which creates this section, contains extensive explanatory notes.

26.37 Lake states wood utilization consortium. (1) The department of natural resources shall develop a plan to establish a lake states wood utilization consortium to provide research, development, and demonstration grants to enhance the forest products industry in Wisconsin and other states. The plan shall do all of the following:

(a) Define the powers, duties and responsibilities of the consortium.

(b) Establish an implementation committee for the consortium. Members of the committee may include one or more representatives from the department of natural resources, the Wisconsin Economic Development Corporation, and the forest products industry.

(c) Specify eligibility requirements for the grants and criteria for awarding the grants, including how the grants are to be distributed to each state participating in the consortium.

(d) Require that the grants require matching funds or in–kind contributions by industrial recipients of the grants.

(e) Require the implementation committee to identify an organization that can administer and award the grants and oversee the grant program.

(f) Require the consortium to actively pursue funding from the states of Michigan and Minnesota of $200,000 annually from each state for 3 years.

(g) Require the consortium to actively pursue federal and other funding sources.

(2) The department of natural resources may not expend moneys from the appropriations under s. 20.370 (5) (ax) or (6) (bt), 1997 stats., unless the department of natural resources and the Wisconsin Economic Development Corporation first submit to the joint committee on finance the plan required under sub. (1). If the cochairpersons of the joint committee on finance do not notify the department of natural resources within 14 working days after the date of the submittal of the plan that the committee has scheduled a meeting to review the plan, the plan may be implemented and moneys may be expended as proposed by the department of natural resources. If, within 14 days after the date of the submittal of the plan, the cochairpersons of the committee notify the department of natural resources that the committee has scheduled a meeting to review the plan, moneys may be expended only after the plan has been approved by the committee.

History: 1995 a. 27 ss. 1430m, 9116 (5); 1999 a. 185; 2011 a. 32.

26.38 Forest grant program. (1) In this section:

(a) "Community" has the meaning given in s. 28.04 (1) (b).

(ag) "Forest stewardship management plan" means a plan describing forest stewardship measures to be used on a particular site to achieve multiple natural resource goals.

(ar) "Nonindustrial private forest land" means rural land that has existing tree cover or that is suitable for growing trees.

(b) "Sustainable forestry" has the meaning given in s. 28.04 (1) (e).

(2m) (a) The department shall establish a program to award grants for developing and implementing forest stewardship management plans by owners of nonindustrial private forest land and to award grants to groups of interested parties for projects to control invasive plants in weed management areas. The department shall award the grants only to persons owning 500 acres or less of nonindustrial private forest land in this state or to groups in which each person participating owns 500 acres or less of nonindustrial private forest land in this state.

(am) Beginning with fiscal year 2008–09, from the appropriation under s. 20.370 (5) (av), the department shall allocate for each fiscal year at least $60,000 for grants for projects to control invasive plants in weed management areas. From the amount allocated, the department shall award grants to all eligible applicants for grants for such projects before awarding any balance of the allocated amount for grants for stewardship management plans.

(b) Each recipient of a grant under this section shall provide a matching contribution in an amount to be determined by the department for that particular grant based on criteria promulgated by rule under sub. (3). The matching contribution may be in the form of money or in–kind goods or services or both.

(c) A forest stewardship management plan developed or implemented with a grant under this section shall meet minimum standards that are promulgated by rule under sub. (3) and shall contain practices that protect and enhance all of the following:

1. Soil and water quality.

2. Endangered, threatened or rare forest communities.

3m. Sustainable forestry.

4. Habitat for fish and wildlife.

5. The recreational, aesthetic and environmental benefits that the forest land provides.

(3) The department shall promulgate rules to implement and administer this program, including all of the following:

(a) The criteria for determining the amount of a matching contribution under sub. (2m) (b).

(b) The minimum standards required under sub. (2m) (c).

(c) Eligibility requirements for groups receiving grants for weed management areas, requirements for the grants, and requirements for establishing weed management areas.

History: 1997 a. 27; 2007 a. 20.

Cross–reference: See also ch. NR 47, Wis. adm. code.

26.39 Forestry education and training. (1) DEFINITIONS. In this section:

(a) "School forest" means a community forest that is owned or operated by a school as provided in s. 28.20.

(b) "Sustainable forestry" has the meaning given in s. 28.04 (1) (e).

(2) FORESTRY EDUCATION CURRICULUM; SCHOOLS. Using the moneys appropriated under s. 20.370 (2) (cu), the department, in cooperation with the Center for Environmental Education in the College of Natural Resources at the University of Wisconsin–Stevens Point, shall develop a forestry education curriculum for grades kindergarten to 12.

(5) FUNDING FOR SCHOOL FORESTS. The department shall use the moneys allocated under s. 28.085 to provide funding to school districts that have school forests for the purposes of maintaining the school forests and for transporting pupils to and from the school forests. The department shall promulgate rules to implement and administer this subsection, including educational and forest management requirements that school districts must meet to receive funding under this subsection.

(6) FORESTRY INTERNSHIPS. The department shall use the moneys allocated under s. 28.085 to provide internships to University of Wisconsin System students who are enrolled in a course of study that will result in a bachelor's or higher degree in forestry. The department shall promulgate rules establishing the application process and the criteria for receipt of an internship under this subsection.

(7) LOGGING CERTIFICATION SCHOLARSHIPS. (a) From the appropriation under s. 20.370 (5) (ax), the department shall establish a scholarship grant program to assist individuals who are seeking certification by the Great Lakes Timber Professionals Association as master loggers or who are seeking logger safety training certified by the Great Lakes Timber Professionals Association. A scholarship grant under the program may not exceed 50 percent of the total cost of receiving the certification or training. The department shall promulgate rules that establish criteria for the program.

(b) The department shall allocate $50,000 for fiscal year 2005–06 and $150,000 for each subsequent fiscal year for scholarship grants under this program.

History: 2001 a. 16, 109; 2005 a. 25; 2009 a. 28, 181; 2011 a. 32, 258; 2017 a. 59.

26.40 Forestry education grant program. (1c) In this section, "nonprofit organization" means a nonprofit corporation, as defined in s. 181.0103 (17), and any organization described in section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(1m) The department may award grants to nonprofit organizations to develop forestry educational programs and instructional materials for use in the public schools. The department may not award a grant unless it enters into a memorandum of understanding with the grant recipient and the director of the timber management program at the University of Wisconsin–Stevens Point regarding the use of the funds.

(2) The recipient of a grant under sub. (1m) shall submit the programs and materials developed with the funds to the department and the director of the timber management program at the University of Wisconsin–Stevens Point College of Natural Resources for approval. Upon request, the grant recipient shall provide approved programs and materials to school districts free of charge.

History: 1997 a. 27; 2001 a. 109; 2005 a. 25 s. 2361m; Stats. 2005 s. 26.40.

26.42 Forestry diversification. (1) The department shall establish a forestry diversification program and shall promote and assist the development and use of industrial and commercial products from forestry products, including all of the following:

(a) Alternative fuels, including fuels that are considered to be renewable fuels under the renewable fuel program under 42 USC 7545 (o).

(b) Heat.

(c) Electricity, including electricity that satisfies the requirements in s. 196.378 (2).

(d) Marketable credits for reducing emissions of greenhouse gases, as defined in s. 285.78 (1) (c), derived from appropriate management practices used in the production of timber.

(2) The department shall promote and assist the development and use of the products identified in sub. (1) (a) to (d) in cooperation with and with the assistance of the department of agriculture, trade and consumer protection and the University of Wisconsin–Extension.

History: 2009 a. 401.

26.97 Law enforcement and police power. A state forest ranger, town chairperson, conservation warden or other duly appointed deputy may do any of the following:

(1) Arrest a person, with or without a warrant, when the person is detected actually committing a violation of this chapter, subch. VI of ch. 77, or s. 167.10 (3), 941.10 (1), 941.11, 941.12, 941.13, 943.02 (1), 943.03, 943.04, 943.05 or 943.06 (2).

(2) Arrest a person, with or without a warrant, whom the ranger, chairperson, warden or deputy has reason to believe is committing or has committed a violation of a statutory provision specified under sub. (1).

(3) Take the arrested person before the circuit court for the county where the violation occurred and make a proper complaint.

(4) Execute and serve any warrant or process in the same manner as any constable.

History: 1989 a. 79; 2003 a. 228.

26.98 General penalty. Any person who violates a provision of this chapter for which no penalty is provided shall forfeit not more than $50.

History: 1975 c. 365; 1983 a. 27 s. 643m; Stats. 1983 s. 26.98.

26.985 Penalties, repeaters. (1) In this section, "violation" means any violation under this chapter or any violation of a department order punishable under this chapter.

(2) Except as provided in subs. (3) and (4), if a person is convicted of a violation and has one or more convictions, within the 5 years prior to the current conviction, for one or more violations, the person shall be fined not more than $100 or imprisoned for not more than 6 months or both. The prosecution shall allege and prove the prior convictions in the manner specified in s. 29.974.

(3) Except as provided in sub. (4), if a person is convicted of a violation and has 3 or more convictions, within the 3 years prior to the current conviction, for one or more violations, the person shall be fined not more than $2,000 or imprisoned for not more than 9 months or both. The prosecution shall allege and prove the prior convictions in the manner specified in s. 29.974.

(4) (a) A person under this section is subject to a fine not to exceed the fine under this section or the fine or forfeiture for the underlying offense, whichever is greater.

(b) A person under this section is subject to imprisonment for a term not to exceed the amount provided under this section or the amount provided for the underlying offense, whichever is greater.

History: 1989 a. 79; 1997 a. 248.

26.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365.