

## CHAPTER 28

### PUBLIC FORESTS

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**28.005 Definition.** "Department" when used in this chapter without other words of description or qualification means the department of natural resources.

**Cross Reference:** See definitions in 24.01.

**28.01 Forestry supervision.** The department shall execute all matters pertaining to forestry within the jurisdiction of the state, direct the management of state forests, collect data relative to forest use and conditions and advance the cause of forestry within the state.

**28.02 State forests lands.** (1) **DEFINED.** State forests lands include all lands granted to the state by an act of congress entitled, "An act granting lands to the state of Wisconsin for forestry purposes," approved June 27, 1906; all lands granted to the state by an act of congress entitled, "An act granting unsurveyed and unattached islands to the state of Wisconsin for forestry purposes," approved August 22, 1912; all lands donated to the state by the Nebagamon Lumber Company for forestry purposes; all lands acquired pursuant to chapter 450, laws of 1903, chapter 264, laws of 1905, chapters 638 and 639, laws of 1911, or pursuant to sections 1494-41 to 1494-62, both inclusive, Wisconsin statutes of 1915, and all lands subsequently acquired for forestry purposes. The department may designate as state forest lands any lands within state forest boundaries which were purchased with other conservation funds and where forestry would not conflict with a more intensive use.

(2) **ACQUISITION.** The department may acquire lands or interest in lands by grant, devise, gift or purchase within the boundaries of established state forests or purchase areas; and outside of such boundaries for forest nurseries, tracts for forestry research or demonstration and for forest protection structures; or for access to such properties.

(3) **DISPOSITION OF IMPROVEMENTS.** Buildings not required for administrative or other public use may be razed for salvage material. Otherwise they shall be sold.

(4) **SALE OF STATE FOREST LANDS.** (a) Lands outside state forest boundaries may be sold pursuant to s. 24.085.

(b) Lands within state forest boundaries may be sold pursuant to s. 24.085, after public hearing in the county courthouse of the county in which the lands to be sold are located, following class 2 notices published, under ch. 985, in the county, and in the official state paper, for the following purposes only:

1. To a local unit of government when required for a public use.
2. To others for the purpose of making land adjustments due to occupancy resulting from errors of survey.
3. To convey good quality, arable land.
4. To settle land title disputes.
5. To public utilities and co-operative associations when needed for power and telephone substations, transformers, booster stations and similar installations.
6. When no longer needed for conservation purposes.

(5) **EASEMENTS.** The department may grant easements for a right-of-way for public or private roads or public utility lines, or for flowage rights where it finds that any such use at the designated location does not conflict with the planned development of the forest. Easements for public roads shall be granted for a nominal sum; in all other cases the appraised value shall be required in payment.

(6) **CERTAIN LEASES FORBIDDEN.** No lease shall hereafter be issued or any existing lease extended or renewed by the department on any unsurveyed and unattached islands in inland lakes north of the township line between townships 33 and 34 north, and granted to the state by an act of congress, approved August 22,

1912, entitled "An act granting unsurveyed and unattached islands to the state of Wisconsin for forestry purposes," except that the department may extend or renew any such leases in existence June 25, 1925, to public charitable, religious, educational or other associations not organized for profit, and except that the department may extend or renew any such leases in existence June 25, 1925, on islands upon which improvements have been made.

28.02 (2), Stats. 1967, does not authorize condemnation to acquire land in state forests; it supersedes 23 09 (7) (d) as it would otherwise apply to state forests. *Martineau v. State Conservation Comm.* 46 W (2d) 443, 175 NW (2d) 206.

**28.03 State forests.** (1) **DEFINED.** State forests shall consist of well blocked areas of state owned lands which have been established as state forests by the department.

(2) **NAMED.** The state forests are designated as follows:

(a) "American Legion State Forest" in Oneida county.

(b) "Brule River State Forest" in Douglas county.

(c) "Flambeau River State Forest" in Sawyer, Rusk and Price counties.

(d) "Kettle Moraine State Forest" in Sheboygan, Fond du Lac, Washington, Waukesha, Jefferson, Ozaukee and Walworth counties.

(e) "Northern Highland State Forest" in Vilas and Iron counties.

(f) "Point Beach State Forest" in Manitowoc county.

(3) **DEPARTMENT MAY NAME.** The department may designate by appropriate name any state forest not expressly named by the legislature.

**28.035 American Legion State Forest.** (1) The state forest located in townships 38 and 39 north, ranges 7, 8 and 9 east, Oneida county, shall be named the American Legion State Forest.

(2) The department of natural resources shall enter into an agreement with the Wisconsin department of the American Legion for hunting in the state forest lands described as lots 3, 4, 6 and 7 of section 8 and lots 2 and 3 of section 17, township 38 north, range 7 east, Oneida county, which are used in connection with Camp American Legion and which the Legion is now maintaining on this location as a restoration camp for sick and disabled veterans of World War I and World War II and their dependents.

**28.04 Management of state forests.** (1) **PURPOSE.** The primary use of forests is silviculture and the growing of recurring forest crops, with scenic values, outdoor recreation, public

hunting and stabilization of stream flow as extra benefits. Forests are productive properties which contribute to employment in the woods and mills, provide commodities essential to national defense and consumers' needs, and earn returns on the investment. However, full recognition must be given to the principle of multiple use, including designation of special use tracts ranging from natural areas receiving a high degree of protection to recreation sites with appropriate facilities.

(2) **WORK PLANS.** Maps and records for each state forest shall be compiled, covering land ownership, forest planting, cultural cutting, timber sales and special use areas. Based on these records, plans shall be projected for future work, with forest inventories and growth studies leading to determination of the allowable annual cut which can be taken while building up a normal forest growing stock of high quality. The allowable annual timber cut shall require approval by the department.

The department has no authority to construct spectator sport facilities in state forests, nor has it authority to lease state forest lands for such purpose. 63 Atty. Gen. 519

**28.05 Timber sales.** (1) **LIMITATIONS.** Cutting shall be limited to trees marked or designated for cutting by a forester in the professional series of the state classified civil service or by a department-designated employe equally qualified by reason of long, practical experience. The department may sell products removed in cultural or salvage cuttings and standing timber designated in timber sale contracts, but all sales shall be based on tree scale or on the scale, measure or count of the cut products.

(2) **PROCEDURE.** Sales of cut products or stumpage having an estimated value of \$500 or more shall be by public sale after publication of a class 2 notice under ch. 985, in the county wherein the timber to be sold is located. Sales with a value of \$1,000 or more shall require approval by the secretary.

**28.06 Forest nurseries.** (1) **LIMITATION.** Only planting stock of species and sizes suitable for forest and woodlot planting shall be produced in state forest nurseries. The department may employ labor at prevailing local wages for nursery operation or reforestation.

(2) **DISTRIBUTION.** In addition to use of planting stock on state lands, the department may distribute stock for growing forest products, for establishing windbreaks or shelterbelts, for control of soil erosion, and for game food or cover, but not for ornamental or landscape planting. Prices of planting stock shall be approved annually by the department and shall be based on the cost of production and

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packaging. To encourage forest planting free stock may be allotted to any nonprofit organization.

(3) **EXCHANGE.** For the purpose of adjusting forest planting programs, exchange of stock with counties or the U. S. forest service is authorized.

(4) **RESALE OF NURSERY STOCK.** Any person who sells forestry stock secured from the department shall forfeit not more than \$100.

(5) **FORFEITURES.** Any person who uses planting stock which he or she knows was produced in state forest nurseries for any purpose other than those specified in sub. (2) or for ornamental or landscape planting shall forfeit not more than \$500.

History: 1975 c. 365.

**28.07 Cooperation.** The department may cooperate with the college of agriculture of the university of Wisconsin and with departments of this or other states, with federal agencies or with counties, towns, corporations or individuals, to the best interest of the people and the state, in forest surveys, research in forestry and related subjects, forest protection and in assistance to landowners to secure adoption of better forestry practice.

**28.08 Income.** All income from state forest lands shall be paid into the state treasury to the credit of the reforestation fund.

**28.10 County forests.** The county board of any county may by resolution establish a county public forest and acquire land by tax deed or otherwise for that purpose.

**28.11 Administration of county forests.**

(1) **PURPOSE.** The purpose of this section is to provide the basis for a permanent program of county forests and to enable and encourage the planned development and management of the county forests for optimum production of forest products together with recreational opportunities, wildlife, watershed protection and stabilization of stream flow, giving full recognition to the concept of multiple-use to assure maximum public benefits; to protect the public rights, interests and investments in such lands; and to compensate the counties for the public uses, benefits and privileges these lands provide; all in a manner which will provide a reasonable revenue to the towns in which such lands lie.

(2) **DEFINED.** "County forests" include all county lands entered under and participating under ch. 77 on October 2, 1963, and all county lands designated as county forests by the county board or the forestry committee and entered under the county forest law and designated as

"county forest lands" or "county special-use lands" as hereinafter provided.

(3) **POWERS OF COUNTY BOARD.** The county board of any such county may:

(a) Enact an ordinance designating a committee to have charge of the county forests and specifying the powers, duties, procedures and functions of such committee. The members of such committee shall be appointed pursuant to s. 59.06 and may include well-qualified residents of the county who are not members of the county board.

(b) Establish regulations for the use of the county forests by the public and to provide penalties for their enforcement.

(c) Appropriate funds for the purchase, development, protection and maintenance of such forests and to exchange other county-owned lands for the purpose of consolidating and blocking county forest holdings.

(d) Enter into cooperative agreements with the department for protection of county forests from fire.

(e) Establish aesthetic management zones along roads and waters and enter into long-term cooperative leases and agreements with the department and other state agencies or federal agencies for the use of the county forests for natural resources research.

(f) Establish transplant nurseries for growing seedlings, from the state forest nurseries, to larger size for planting in county forests, but no ornamental or landscape stock shall be produced in such nurseries.

(g) Establish forest plantations and engage in silviculture, forest management and timber sales.

(h) Engage in other projects designed to achieve optimum development of the forest.

(i) Enter into agreements, for terms not exceeding 5 years, to prospect for ore or minerals upon any county forest lands. Such agreements shall contain proper covenants to safeguard the public interests in the lands involved and to guard against trespass and waste. Proper security shall be taken that the prospector will fully inform the county of every discovery of ore or minerals and will restore the land surface to an acceptable condition and value if no discovery of valuable deposit is made or if said lands are not withdrawn from entry under this section. Before any such agreement shall be effective it shall first be submitted to the department for approval. If the department finds that the proposed agreement fully complies with the law and contains the proper safeguards it shall approve the same.

(4) **ENTRY OF COUNTY FOREST LANDS.** (a) A county may file with the department an application for entry of county-owned land under this section. Such application shall include

the description of the land and a statement of the purposes for which the lands are best suited. Upon the filing of such application the department shall investigate the same and it may conduct a public hearing thereon if it deems it advisable to do so at such time and place as it sees fit.

(b) If after such investigation the department finds that the lands constitute a well blocked county forest unit or that they block in with other established county forest lands and are otherwise suitable for the purposes of this section it shall make an order of entry designating such lands as county forest lands. All county lands entered under and participating under ch. 77 on October 2, 1963 shall be designated "county forest lands" without further order of entry.

(c) If the department finds that the lands are not suited primarily for timber production and do not otherwise qualify for entry under par. (b) but that they are suitable for scenic, outdoor recreation, public hunting and fishing, water conservation and other multiple-use purposes it shall make an order of entry designating such lands as "county special-use lands".

(d) A copy of the order of entry shall be filed with the county clerk, the register of deeds and with the county forestry committee. The register of deeds shall record the entry and withdrawal of all lands under this section without charge.

(e) From and after the filing of such order of entry, the lands therein described shall be "county forest lands" or "county special-use lands", as the case may be, and shall so remain until withdrawn as hereinafter provided.

(f) The department may construct and use forest fire lookout towers, telephone lines and fire lanes or other forest protection structures on any lands entered under this section and the county clerk of such county shall execute any easement on or over such lands which the department may require for forest protection. The general public shall enjoy the privilege of entering such lands for the purpose of hunting, fishing, trapping and other recreation pursuits subject to such regulation and restrictions as may be established by lawful authority.

(5) **MANAGEMENT.** (a) A comprehensive county forest land use plan shall be prepared for a 10-year period by the county forestry committee with the assistance of technical personnel from the department and other interested agencies, and shall be approved by the county board and the department. The plan shall include land use designations, land acquisition, forest protection, annual allowable timber harvests, recreational developments, fish and game management activities, roads, silvicultural operations and operating policies and procedures; it shall include a complete inventory

of the county forest and shall be documented with maps, records and priorities showing in detail the various projects to be undertaken during the plan period. The initial plan shall be completed within 2 years from October 2, 1963 and may be revised as changing conditions require and shall be revised upon expiration of the plan period.

(b) An annual work plan and budget based upon the comprehensive plan shall be prepared by the county forestry committee with the assistance of a forester of the department. The plan shall include a schedule of compartments to be harvested and a listing by location of management projects for the forthcoming year. In addition the plan shall include other multiple-use projects where appropriate. A budget, listing estimated expenditures for work projects, administration and protection of the forest, shall accompany the annual plan both to be submitted to the county board for approval at the November meeting.

(6) **TIMBER SALES AND CULTURAL CUTTINGS.**

(a) *Limitations.* The county forestry committee is authorized to sell merchantable timber designated in timber sale contracts and products removed in cultural or salvage cuttings. All timber sales shall be based on tree scale or on the scale, measure or count of the cut products; the Scribner Decimal C log rule shall be used in log scaling. All cuttings shall be limited to trees marked or designated for cutting by qualified personnel recognized as such by the department.

(b) *Procedures.* 1. Any timber sale in excess of \$1,000 shall be by sealed bid or public auction after publication of notice of sale in a newspaper having general circulation in the county. Timber sales with an estimated value below \$1,000 may be made without prior advertising. Any sale with an estimated value exceeding \$2,500 requires approval of the secretary.

2. Timber sales shall be subject to presale appraisals by qualified personnel recognized as such by the department to establish minimum sales value. Appraisal methods and procedures shall be approved by the department.

3. No merchantable wood products shall be cut on any lands entered under this section unless a cutting notice on forms furnished by the department has been filed with and approved by said department. Any unauthorized cutting shall render the county liable to the state in an amount equal to double the stumpage value of the cut products which amount shall be paid by the county to the state and credited to the appropriation under s. 20.370 (1). If the county does not pay the amount of such penalty to the state, the department may withhold such amount from future state contributions to the county.

4. Within 90 days after completion of any cutting operation (including timber trespass) but not more than 2 years after filing the cutting notice, the county shall transmit to the department on forms furnished by the department, a report of merchantable wood products cut. The department may conduct such investigations on timber cutting operations as it deems advisable, including the holding of public hearings thereon, and may assess severance share payments accordingly.

(7) **COUNTY FOREST CREDIT.** The department shall set up an account for each county showing the lands entered; the sums previously paid under s. 28.14 [Stats. 1961]; the sums hereafter paid under this section; the sums previously received in the form of four-fifths severance tax collected pursuant to s. 77.06 (5) [Stats. 1961]; the sums received as forestry fund severance share under this section; and the sums previously reimbursed to the state on withdrawn lands pursuant to s. 28.12 (4) [Stats. 1961]. Whenever the forestry fund account of any county shows an overpayment of such severance tax or severance share as of June 30 of any year, the department shall return such overpayment to the county. All severance taxes previously paid by any county and deposited in the general fund shall be credited to the forestry fund account of the county. If such credit exceeds the balance due to the forestry fund account from such county, the overpayment shall be credited to the county and applied in lieu of future severance shares due to the state until the county account is balanced.

(8) **STATE CONTRIBUTION.** (a) *General fund account.* As soon after April 20 of each year as feasible, the department shall pay to each town treasurer 20 cents per acre, based on the acreage of such lands as of the preceding June 30, as a grant out of the appropriation made by s. 20.370 (1) on each acre of county lands entered under this section. Payments so made shall be from the general fund transfer made by s. 20.370 (1) (b) and shall be known as the "general fund account".

(b) *Forestry fund account.* 1. Any county having established and maintaining a county forest under this section shall receive from the state out of the appropriation made by s. 20.370 (1) 10 cents for each acre entered and designated as "county forest land" as a noninterest bearing loan to be used for the purchase, development, preservation and maintenance of such county forest lands and such payment shall be credited to a county account to be known as the county forestry aid fund. If any lands purchased from said fund are sold the county shall restore the purchase price to the county forestry aid fund. The department shall

pay to such county the amount due to it on or before March 31 of each year, based on the acreage of such lands as of the preceding June 30.

2. Out of the appropriation made by s. 20.370 (1) the department may allot additional interest free forestry aid loans on a project basis to individual counties to permit such counties to undertake meritorious and economically productive forestry operations. These additional aids shall not be used for the construction of roads, recreational facilities or for fish and game management projects. Application shall be made in the manner and on forms prescribed by the department and specify the purpose for which the additional aids will be used. The department shall thereupon make such investigation as it deems necessary to satisfy itself that the project is feasible, desirable and consistent with the comprehensive plan. If the department so finds it may make allotments in such amounts as it determines to be reasonable and proper and charge the same to the forestry fund account of the county. Such allotments shall be credited by the county to the county forestry aid fund.

3. All payments made under this paragraph shall be known as the "forestry fund account".

(9) **COUNTY FOREST SEVERANCE SHARE.** (a) On timber cut from lands entered as "county forest lands" the county shall pay a severance share of not less than 20% of the actual stumpage sales value of such timber, except that a higher rate of payment may be applied when so agreed upon by the department and the county. When cutting is done by the county and timber is not sold or is sold as cut forest products the severance share thereon shall be 20% of the severance tax schedule in effect pursuant to s. 77.06 (2). Of the severance share paid by a county to the state the entire amount shall be restored to the appropriation made by s. 20.370 (1) and credited to the forestry fund account of the county.

(b) Of the gross receipts from all timber sales on the county forests 10% shall be paid annually by the county to the towns having county forest lands on the basis of acreage of such lands in the towns.

(11) **WITHDRAWALS.** (a) The county board may by resolution adopted by not less than two-thirds of its membership make application to the department to withdraw lands entered under this section. The county board shall first refer the resolution to the county forestry committee which shall consult with an authorized representative of the department in formulating its withdrawal proposal. The county board shall not take final action thereon until 90 days after such referral or until the report thereon of the forestry committee has been filed with the board. Such

application shall include the land description and a statement of the reasons for withdrawal and any restrictions or other conditions of use attached to the land proposed for withdrawal. Upon the filing of such application the department shall investigate the same and it may conduct a public hearing thereon if it deems it advisable at such time and place as it sees fit. If requested by the county in writing the department shall hold a public hearing. During the course of its investigation the department shall make an examination of the character of the land, the volume of timber, improvements and any other special values and in the case of withdrawal for the purpose of sale to any purchaser other than the state or a local unit of government it shall establish a minimum value on the lands to be withdrawn. In making its investigation the department shall give full weight and consideration to the purposes and principles set forth in sub. (1) and it shall also weigh and consider the benefits to the people of the state as a whole, as well as to the county, from the proposed use against the benefits accruing to the people of the state as a whole and to the county under the continued entry of such lands. If the department finds that the benefits after withdrawal outweigh the benefits under continued entry and that the lands will be put to a better and higher use it shall make an order withdrawing such lands from entry, otherwise it shall deny the application. If the application is denied the county board may by resolution adopted by not less than two-thirds of its membership appeal to a review committee. The department shall submit the findings of its investigation and of any hearing on a proposed withdrawal to the committee which shall be composed of one member appointed by the county board submitting the application for withdrawal; one member from another county which has land enrolled under the county forest law, this member to be appointed by the governor and to be chairman of the review committee; one member appointed by the department; one member appointed by the university of Wisconsin from the college of agriculture; and a 5th member to be selected by unanimous vote of the appointed members or by the governor if they fail to achieve unanimity. This committee by majority vote shall, within 60 days after receiving the findings of the department, either approve the application for withdrawal if it finds the proposed use to be of a greater benefit considering all losses and benefits to the people of the state as a whole, as well as to the people of the county, or shall provisionally deny the application giving specific reasons why it finds the proposal deficient and making any suggestions for revising the application to reduce the

conflict of the proposed use with the public interest. If the committee approves a withdrawal it shall notify the county board of its approval stating, as necessary, specific procedures to be followed by the county relating to such withdrawal. The county board may then by a resolution approved by not less than two-thirds of its membership, withdraw the lands from the county forest law and shall send copies of this resolution to the department and to the county register of deeds who shall record the same. If the committee provisionally denies the proposed withdrawal it may consider an amended application for withdrawal upon presentation of the application and supporting information, or it may require additional investigation of the amended application by the department before reconsidering the application. Any additional investigation shall include additional public hearings if requested by either the county, department or by the committee.

(b) If the application is approved the county shall reimburse the state the amounts previously paid to the county pursuant to sub. (8) (b) which reimbursement shall be credited to the county forestry fund account; except that the department may waive all or part of such reimbursement if it finds that the lands are withdrawn for a higher public use or that the amount of such reimbursement is unreasonable when compared to the value of the land. If the department has waived any portion of such reimbursement and if at any subsequent time the land ceases to be used for the purpose designated in the application for withdrawal, the full amount of reimbursement due the forestry fund account on the lands withdrawn shall immediately become due and payable to the department and shall be credited to the forestry fund account, unless the department finds and determines that the lands will continue to be put to another higher public use in which case payments of such reimbursement may be deferred by the department so long as the lands are devoted to a higher public use. If payment is not made prior to the time of the next forestry aid payment to the county, forestry aid payments in an amount to be determined by the department shall be withheld until the amount due the forestry fund account is reimbursed.

**(12) ENFORCEMENT.** If at any time it appears to the department that the lands are not being managed in accordance with this section it shall so advise the county forestry committee and the county clerk. If the condition persists the department may proceed against the persons responsible for such noncompliance under s. 30.03 (4).

**(13) REVIEW.** All orders of the department made under this section may be reviewed under ss. 227.15 to 227.21.

**History:** 1971 c. 215; 1975 c. 39 s. 734; 1975 c. 342.

**28.20 Community forests.** Any city, village, town or school district may acquire land, engage in forestry and appropriate funds for such purpose. In the case of a city or village or its school forest, the forest property may be located outside the city or village limits.

**28.21 Management.** Any municipality, by registering its forest with the department, shall be eligible to receive free planting stock from the state forest nurseries and the services of foresters in preparing and carrying out planting and forest management plans. No trees shall be cut except those marked or designated for cutting by a state forester. Products of the forest may be devoted to public use.

**28.22 Timber sales.** All sales shall be based on the scale, measure or count of the cut products. Any sale with an estimated value of

\$250 or more shall be by notice published as a class 2 notice, under ch. 985 and public sale.

**28.23 Income.** All income from community forests shall be paid into the treasury, but may be assigned to the support of any legally authorized activity.

**28.99 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.