

Regulatory Board Evaluation

Board of Registration for Foresters

**Board of Registration for Foresters is Not
Necessary to Protect Public Interest**

**Board Complies with Most of the General
Provisions of Chapter 30**



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John Sylvia
Director

May 4, 2003

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J. D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a *Regulatory Board Evaluation of the Board of Registration for Foresters*, which will be presented to the Joint Committee on Government Operations on Sunday, May 4, 2003. The issues covered herein are "Board of Registration for Foresters is Not Necessary to Protect Public Interest" and "Board Complies with Most of the General Provisions of Chapter 30".

We transmitted a draft copy of the report to the Board of Registration for Foresters on April 18, 2003. We held an exit conference on April 23, 2003. We received the agency response on April 24, 2003.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The Board of Registration for Foresters is Not Necessary to Protect Public Interest.

The Legislative Auditor finds that the Board of Registration of Foresters is not necessary to protect the public health and welfare of the citizens of West Virginia. Foresters when performing their usual duties pose minimal risk to harming the public. Eighty-eight percent (88%) of foresters in West Virginia are under supervised employment which requires the verification of education and work experience. Therefore, to a great extent, the Board duplicates what the market dictates in employing foresters. Individuals who require the expertise of a consulting forester (self-employed foresters only consist of only 11%-12% of total licensed foresters) may choose one based on references and education. In addition, the Board receives no complaints from citizens against current licensees for unethical conduct or for poor professional service, and only fifteen other states require any regulation of the profession.

The public is not required to consult a forester prior to harvesting the timber on their private property. The public could harvest the timber on their own or use the services of an individual that does not identify his or herself as a forester. The code states in §30-19-1 that creation of the Board does not *...prevent any person...from practicing forestry...¹*. Any person wishing to pursue a career in forestry may still do so and be successful without the Board's existence. That individual may still choose an institution of higher learning that is accredited by the Society of American Foresters and obtain a degree in the study of forestry. They then could have the option of receiving endorsement from the Society of American Foresters through its certification program.

Issue 2: The Board Complies with Most of the General Provisions of Chapter 30.

The Board complies with most of the general provisions that are specified by Chapter 30 of the West Virginia Code. It has enforced continuing education requirements as well as remained financially self-sufficient, although fees may have to be raised in order to remain self-sufficient in the future. While the Board does not receive complaints against licensees for professional misconduct or service, the Board does receive complaints for the misuse of the forestry title. These cases are taken care of in a consistent manner.

The Board should become more accessible to the public in which it was created to protect. Providing a telephone number listing in the Charleston telephone directory as required by Code, and establishing an internet site would increase the Board's accessibility. In addition, a web page could also be used

to list a complete roster of the foresters registered in West Virginia. Should the Legislature decide to continue the Board, the Legislative Auditor offers the following recommendations to be considered.

Recommendations

- 1. The Legislative Auditor recommends that the Legislature sunset the Board of Registration for Foresters.*
- 2. The Legislative Auditor recommends that the Board of Registration for Foresters provide a listing in the Charleston telephone directory, as required by West Virginia Code §30-1-12.*
- 3. The Board of Registration for Foresters should file notices of all meetings with the Secretary of State's Office in accordance with the Open Government Proceedings Act.*
- 4. The Board of Registration for Foresters should consider raising fees associated with licensure in order to ensure financial solvency.*

Review Objective, Scope, and Methodology

This regulatory board review of the Board of Registration for Foresters was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the *West Virginia Code* as amended. As stated in the *Code*, a regulatory board review is to determine whether 1) continuation is in the public's interest, and 2) whether the Board is operating in compliance with applicable laws and rules.

Objective

This report will assist the Joint Committee on Government Operations in making one of the following recommendations to the Legislature for its next Regular Session:

1. The Board be terminated;
2. The Board be continued; or
3. The Board be continued, but statutes governing it be amended in specific ways to correct ineffective practices or procedures, burdensome rules and regulations, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact and any other deficiencies.

Scope

The regulatory board evaluation covers the period from 1998 to 2003. The Legislative Auditor examined: the relationship between the Board's function and the public safety, and the Board's compliance or non-compliance with the general provisions of Chapter 30 of the *West Virginia Code*.

Methodology

Information compiled in this report has been acquired from the *West Virginia Code*, information from the Board, annual reports, and meeting minutes. This review was conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS).

The Board of Registration for Foresters is Not Necessary to Protect Public Interest.

This report is a *Regulatory Board Evaluation* of the Board of Registration for Foresters. By law, it must be determined if this board is necessary for the protection of public health and safety. The Board primarily registers individuals, which means that those who show proof of educational attainment in the field of forestry and work experience are given the right to use a title which suggests that they are a forester, such as registered professional forester, or professional forester. The statute restricts only the use of the titles and it clearly indicates that any person may practice forestry as long as they do not use the associated titles. The Board does not administer an examination, but it does require continuing education. The risks associated with an incompetent forester providing poor consultation include economic harm and potential environmental harm. Economic harm could arise by a poor appraisal of a landowner's timber by a forester, while environmental harm could occur from recommendations that would damage an ecosystem on the landowner's property or adjacent property. **The finding of this issue is that the registration of Foresters offers little additional protection to the public than if registration were not required. Therefore, the Legislative Auditor does not recommend the Board be continued.**

Reasons that the Board is Not Necessary

In making this recommendation, the following reasons are cited:

- i **Workforce** - Eighty-eight percent (88%) of licensees work for governments, private corporations, or teach at colleges. These are generally supervised positions that would require proof of educational attainment and work experience upon employment. The supervision of such employees and the competitiveness of the market provides for the verification of education, work experience and need for continuing education. **Thus, the Board duplicates what the market dictates in most cases.**

88% of licensees have supervised employment

The Board has never received complaints for unethical conduct or poor professional service

- i **Lack of Complaints** - The Board has never received any complaints against the conduct of a licensee or for poor

professional service. Complaints are only received regarding the misuse of the title. The fact that the Board has never received a complaint concerning service or conduct suggests that there is little risk to the public health and welfare. Furthermore, registration of foresters does not guarantee that the professional will practice in an ethical manner.

The Board has limited public access and benefit

- i **Minimal Public Benefit** - The Board has no physical office location, no office staff, no telephone listing in major city directories and it does not provide a list to the public of registered foresters through a website. Thus, there is limited public access to the Board. In addition, the Board does not accredit schools such as some other licensing boards, nor does it provide an initial examination to test the competency of foresters. In fact, the Legislative Auditor found that the Board of Registration for Foresters is the only Chapter 30 licensing board that does not require an initial examination. The Board does meet in the spring and fall each year, but according to meeting minutes, the Board discusses issues that are administrative, such as approving or denying applications. Other discussions do occur, but minutes show that they are mainly administrative also, such as the increase in stamp prices, rising insurance premiums, and Board membership.

Only 16 states have a licensing board

- i **Boards in Other States** - West Virginia is one of only sixteen states that have a board for registration of foresters. Table 1 displays the states that have licensing boards. Maryland is the only surrounding state that requires regulation of foresters. The state of Florida previously had registration requirements for foresters, but found reason to allow the law to expire, mainly because of the lack of consumer complaints that did not justify retaining the requirement.

| Table 1 States That Have Forestry Regulation Boards | | |
|--|---------------------|------------------------------|
| State | Statute Type | Examination Required? |
| Alabama | License | Yes |
| Arkansas | Registration | Yes |
| California | License | Yes |
| Connecticut | Certification | Yes |
| Georgia | Registration | Yes |
| Maine | License | Yes |
| Maryland | License | No |
| Massachusetts | License | No |
| Michigan | Registration | No |
| Mississippi | Registration | Yes |
| New Hampshire | License | Yes |
| New Jersey | Registration | No |
| North Carolina | Registration | Yes |
| Oklahoma | Registration | No |
| South Carolina | Registration | Yes |
| West Virginia | Registration | No |
| <i>Source: Society of American Foresters</i> | | |

- i **Cost Imposition to Licensees and to the State** - The Board imposes an unnecessary cost to both the licensee and to the State. The licensee is required to pay an initial fee of \$50 and annual renewal fee of \$15. Various state agencies, such as the State Auditor, the Secretary of State, the State Treasurer, the Department of Administration, the Legislative Auditor, and the Attorney General provide services to the Board that are costly and unnecessary if the Board is not necessary to protect the people of West Virginia.

The public is not required to use a registered forester

- i **Public Involvement** - The public is not required to consult a forester prior to harvesting the timber on their private property. The public could harvest the timber on their own or use the services of an individual that does not identify his or herself as a forester. The code states in §30-19-1 that creation of the Board does not *...prevent any person...from practicing forestry...* The economic danger that a citizen faces from receiving bad consultation cannot be prevented with registration of foresters because registration does not guarantee ethical practice.

When asked why licensure was necessary to protect the public, the current President of the Board stated:

The law that stipulates licensing for foresters and forestry technicians establishes credentials for those who use the title. This title ensures the public that the person representing them is a professional with the education and professional experience to make decisions to continue a healthy and productive forest resource for the future.

Thus, the license as provided by this Board is only title registration, since it only prevents individuals from using the professional title rather than practicing the profession in the state.

Employment Composition of Foresters

The roster provided in the Board's 2002 Annual Report, lists 488 foresters from multiple disciplines. According to the roster, foresters registered in this state can be classified in one of six fields: Retired, Self-Employed, Company/Industry, Academia, State/Federal, and Other. According to the data in Figures 1 and 2 below, the majority of foresters registered in West Virginia are employed by a company, the government, or a college or university.

Figure 1:

Registered Foresters Employment

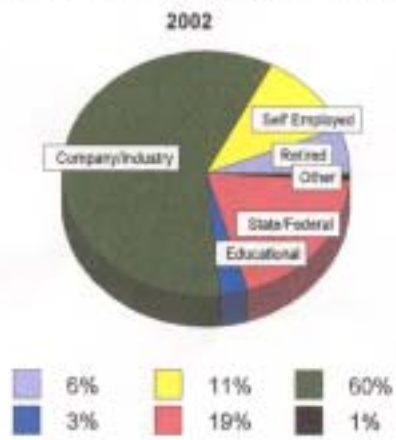
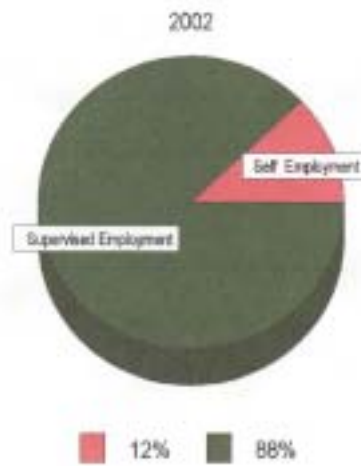


Figure 2:

Nature of Employment



As shown in Figure 2, 88% of foresters registered with the Board have supervised employment, meaning a company or government employer. These employers include large companies such as Georgia Pacific, and the state of West Virginia. Thus, for a large majority of foresters working in the state, the employers may require education, experience and credentials, which makes the necessity of a licensing board less important. In addition, the employer supervises the abilities and work effort of their foresters.

The Society of American Foresters

SAF offers a higher level certification than the Board

The Society of American Foresters (SAF) is a national organization that promotes the profession of forestry. The Society accredits Forestry degree programs found at colleges and universities across the country. Two forestry programs in West Virginia are accredited by the SAF. West Virginia University offers a SAF accredited four year degree in forestry, and Glenville State College offers a SAF accredited two year associate degree in forestry. The West Virginia Board of Registration for Foresters registers only those individuals that have graduated from a program with this status. The Board itself does not accredit schools. The SAF also offers a national certification program which gives national accreditation to individuals meeting certain educational, experience, and testing requirements. This is a higher level of criteria than what is required by the Board. As shown in Table 2 below, there are 59 individuals in the state of West Virginia that are certified with the Society. The Legislative Auditor concludes that those foresters who would like some sort of certification could become certified with the SAF, which is recognized nationally.

| West Virginia | Kentucky | Ohio | Pennsylvania | Maryland | Virginia |
|----------------------|-----------------|-------------|---------------------|-----------------|-----------------|
| 59 | 37 | 61 | 108 | 24 | 155 |

Registration By The Division Of Forestry Is Not An Option

*Certification of foresters
could be done by the
Division of Forestry*

Discontinuing the Board and continuing the registration function under the Division of Forestry may not be an option. Approximately 76 registered foresters are employees of the Division of Forestry. A conflict of interest would occur if the Division registered foresters. If desired, the Legislature could charge the Division of Forestry with the responsibility of **certifying** foresters in West Virginia. Certification could have the same educational requirements and continuing education as that of the Board, but omit the work experience requirement. Since many of the functions of the Board are administrative, the Division of Forestry could takeover that function, and would be more accessible to the public. However, this function, if performed by the Division would likely be more expensive than what currently exists. While the Legislative Auditor does not find that certification is a necessary option, it is provided for informational purposes as an option for the Legislature to consider.

Conclusion

The Legislative Auditor finds that the Board of Registration of Foresters is not necessary to protect the public health and welfare of the citizens of West Virginia. Foresters when performing their usual duties pose minimal risk to harming the public. Although there is a potential for harm, it is relatively low. Eighty-eight percent (88%) of foresters in West Virginia are under supervised employment which requires the verification of education and work experience. **Therefore, to a great extent, the Board duplicates what the market dictates in employing foresters.** Individuals who require the expertise of a consulting forester (self-employed foresters only consist of only 11%-12% of total licensed foresters) may choose one based on references and education. In addition, the Board receives no complaints from citizens against current licensees and only fifteen other states require any regulation of the profession.

Any person wishing to pursue a career in forestry may still do so and be successful without the Board's existence. That individual may still choose an institution of higher learning that is accredited by the Society of American Foresters and obtain a degree in the study of forestry. They then could have the option of receiving endorsement from the Society of American Foresters through its certification program.

Recommendation 1

The Legislative Auditor recommends that the Legislature sunset the Board of Registration for Foresters.

The Board Complies with Most of the General Provisions of Chapter 30.

The Board of Registration for Foresters has complied with most of the general provisions of Chapter 30 of the West Virginia State Code. There are however, a few instances where non-compliance has occurred. Following are the requirements in which the Board has complied:

- ï An official seal has been adopted (β30-1-4);
- ï The Board meets annually (β30-1-5);
- ï The Board maintains a record of its proceedings (β30-1-12);
- ï The Board submits an annual report to the Governor and the Legislature (β30-1-12);
- ï The Board maintains a roster (β30-1-12);
- ï The Board maintains a register (β30-1-12a);
- ï The Board requires continuing education (β30-1-7a);
- ï A representative of the Board has attended the orientation session provided by the State Auditor's Office (β30-2-2a);
- ï The Board has promulgated Legislative Rules relating to a code of ethics for registered professional foresters and registered forestry technicians (β30-19-9);
- ï The Board has promulgated Legislative Rules specifying a procedure for the investigation and resolution of complaints against persons licensed (β30-1-8).

The Board is Not Easily Accessible to the Public

The Legislative Auditor had some difficulty locating the Board in order to start the review. The telephone number listed for the Board in the state agency telephone directory is actually that of the Division of Forestry, rather than the Board. For the public, who does not have the resources of the Legislative Auditor, contacting the Board if necessary could be difficult. The Board is not listed in the Charleston area directory as required by β30-1-12 of the West

Virginia State Code. However, the President stated that the listing will be available in the 2004 Charleston Directory. In addition, a search of agencies on the state web page yielded no return for the Board, and although not required, the board does not maintain its own web page. The Board does not maintain a physical office location and therefore must operate out of a member's business or home. Thus, the Legislative Auditor concludes that the Board is not easily accessible to the public, in order for citizens or perspective licensees to contact with questions or concerns about the profession.

The Board has Failed to file Meeting Notices in Some Cases

The Board does not consistently meet the requirements of the Open Government Proceeding Act §6-9a-1 *et seq.* According to staff from the Secretary of State's Office, the Board did not file meeting notices for two meetings. The unfiled meeting dates are those of April 13, 2000 and October 10, 2002. Board staff provided the Legislative Auditor with a copy of a dated letter which notified the Secretary of State's Office of the October 10, 2002 meeting, although the Secretary of State did not receive the letter or possibly misfiled the letter. All other notices of Board meetings were filed properly with the Secretary of State. The Board should file meeting notices in all cases with the Secretary of State's Office as required by Code.

The Board Requires Continuing Education

The West Virginia State Code §30-1-7a establishes that boards must require continuing education. The Board outlines the specific requirements in its legislative rules. Ten hours of continuing forestry education must be taken at an institution which is accredited by the Society of American Foresters or by the Board. The credit may not be carried over from one twelve-month period to the next. The Board requires that each Registered Forester completes the minimum ten hours of continuing education prior to the renewal of registration. Proof of completion of continuing education is required in the form of a transcript which is sent along with renewal fees. According to the Board, there is 100% compliance by licensees.

The Board Receives Minimal Complaints

The Board has not received any complaints against licensees regarding the unethical conduct of a forester or complaints of poor professional service.

The Board has only received complaints regarding the misuse of the associated titles of forestry. In these few instances, the Board has issued a letter to the alleged violators informing them of their violation. This has resulted in the discontinuation of misuse. There has never been a need for further action.

The Board has promulgated Legislative Rules regarding a complaint process. The rules include the process by which the licensees and complainants will be notified, and that licensees have 30 days to respond in writing to the complaint. The Board is also required to keep a complaint log, and separate file on each complaint received. Also, the Board is to conduct an investigation into the complaint which it deems necessary. Rules also give the Board the option to assign the case to an ethics investigator. If the licensee's practices or acts constitute an immediate danger to the public, then the Board may refuse to renew a license or suspend a license. The Board does not keep a log of the complaints that have been received, although they have not had any complaints for ethical violations, nor have they conducted any hearings regarding complaints against licensees. The Legislative Auditor recommends that the Board keep a complaint log and an individual file for **all** complaints as required by the Board's Legislative Rules.

The Board is Financially Self-Sufficient

The West Virginia Code §30-1-6c states that regulatory boards are to maintain financial self-sufficiency. The Board of Registration for Foresters receives no appropriations and operates entirely off its own revenue which is attained from registration and renewal fees. The Board has set forth a fee of \$50.00 for first time registration, with an annual renewal fee of \$15.00 that must be paid prior to expiration. If renewal of registration lapses more than 90 days, the licensee is charged a late fee of \$3.00. If a forester or forestry technician allows his or her registration to expire for a matter of a year or years, that person must pay the *back* renewal fees for the time missed plus the \$3.00 late fee, the sum of which shall not exceed \$50.00.

According to the annual reports, from calendar years 1999 - 2002, the Board has been financially self-sufficient. As shown in Table 3 below, expenses exceeded receipts in 2000 and 2001, but a surplus balance prevented the Board from entering a deficit. Should the Legislature continue the Board, the Legislative Auditor recommends that the Board consider raising its current fees in order to ensure that the Board remains financially solvent in the future. If the Board were to continue with the existing schedule of fees with revenues and expenses being similar to 2000 and 2001, the surplus cash balance could possibly be depleted.

Table 3
Receipts and Disbursements (1999-2002)

| Calendar Year | January 1 Balance | Receipts | Disbursements | December 31 Balance |
|----------------------|--------------------------|-----------------|----------------------|----------------------------|
| 1999 | \$5,561.47 | \$12,495.00 | \$8,751.65 | \$9,304.82 |
| 2000 | \$9,304.82 | \$7,775.00 | \$8,617.37 | \$8,912.45 |
| 2001 | \$8,912.45 | \$9,785.00 | \$10,445.84 | \$8,251.61 |
| 2002 | \$8,321.61 | \$8,672.00 | \$8,009.76 | \$8,962.24 |

Conclusion

The Board complies with most of the general provisions that are specified by Chapter 30 of the West Virginia Code. It has enforced the continuing education requirement as well as remained financially self-sufficient, although fees may have to be raised in order to remain self-sufficient in the future. While the Board does not receive complaints against licensees for professional misconduct or service, the Board does receive some complaints for the misuse of the forestry title. These cases are taken care of in a consistent manner.

The Board should become more accessible to the public in which it was created to protect. Providing a telephone number listing in the Charleston telephone directory as required by Code, and establishing an internet site would increase the Board's accessibility. In addition, a web page could also be used to list a complete roster of the foresters registered in West Virginia.

Recommendations

2. *The Legislative Auditor recommends that the Board of Registration for Foresters provide a listing in the Charleston telephone directory, as required by West Virginia Code §30-1-12.*

3. *The Board of Registration for Foresters should file notices of all meetings with the Secretary of State's Office in accordance with the Open Government Proceedings Act.*

4. *The Board of Registration for Foresters should consider raising fees associated with licensure in order to ensure financial solvency.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
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John Sylvia
Director

April 18, 2003

Mr. David Lilly, President
Board of Registration for Foresters
1900 Kanawha Blvd. E
Charleston, WV 25305-0180

Dear Mr. Lilly:

This is to transmit a draft copy of the Regulatory Board Evaluation of the Board of Registration for Foresters. This report is scheduled to be presented at the Sunday, May 4 interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to schedule the meeting on April 22. Please notify us to schedule an exact time. In addition, we need your written response by noon on Thursday, April 24 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, May 1 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

_____ *Joint Committee on Government and Finance* _____

Appendix B: Agency Response



WEST VIRGINIA STATE BOARD OF REGISTRATION FOR FORESTERS

8 Kepner Street, Buckhannon, WV 26201

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April 23, 2003

Denny Rhodes, Senior Research Analyst
Legislative Auditor's Office
Building 1, Room W-314
1900 Kanawha Blvd., East
Charleston, WV 25305-0610

Dear Mr. Rhodes:

Thank you for your attention today as I "plead the Board's case" in the exit conference for the Regulatory Board Evaluation of the Board of Registration for Foresters. As I indicated, I was disappointed, not only personally, but for the State by your audit recommendation that the Board not be continued.

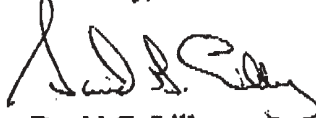
Our State is unique in that it is the third most heavily forested state in the nation with nearly 78% of its surface being occupied by forests. These forests provide employment for approximately 30,000 residents and contribute \$3.2 billion to the State's economy. Over 260,000 non-industrial private landowners own the majority of this forestland and many struggle to make decisions daily that impacts the future of this valuable resource and the State's economy. At a time when the need for sound forest management advice is needed more than ever, the forestry profession finds itself defending an action to eliminate a Board that sets standards for all foresters and forestry technicians.

Among the questions that will need to be addressed by the Legislature if the Board is discontinued will be how does a lack of a license standard impact the planning of strip-mined land when now only a licensed forester can develop a forestry plan and prescription for the future; what state will now get the \$300,000 the federal government provides annually to the Division of Forestry to have license standard foresters provide comprehensive Stewardship Forestry Plans for small landowners; who will answer to the State's landowners when over \$1,000,000 of federal forestry subsidies are not available due to the loss of the license standard that will cause eligibility problems; how will wood industry companies deal with the lack of standards when it complicates the certifying of their land holding in order to sell a finished product in the market place and

how, on a everyday basis will a judge determine who is the expert in forestry as landowners try to resolve legal problems and no one meets the lost standard.

The Board of Registration for Foresters is small, but the foresight of the Legislature to establish a Board in 1963 and then update the standards established for professionals in the field of forestry in 1999 was commendable. A working system is in place and although the number of license holders, 487, may be small as compared to other Boards, the profession is being monitored and most importantly the public is ensured that the people they rely on have the education and professional experience to make the decisions that will impact generations to come.

Sincerely,



David G. Lilly
President (RPF #178)

DGL:dgl

CC: Board Members