

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 458**

5 (SENATORS LAIRD, FANNING, D. FACEMIRE, WILLIAMS, McCABE AND PLYMALE,  
6 *original sponsors*)

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8 [Passed March 12, 2011; in effect ninety days from passage.]  
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12 AN ACT to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7,  
13 §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931,  
14 as amended, all relating to updating the Logging Sediment  
15 Control Act; increasing licensure and certification fees;  
16 requiring the Division of Forestry to report certain  
17 information to the Tax Commissioner on a monthly basis;  
18 requiring the Director of the Division of Forestry to notify  
19 the Director of the Division of Water and Waste Management of  
20 the Department of Environmental Protection of licensure  
21 suspension or revocation within thirty days; modifying  
22 licensure and certification renewal and application  
23 procedures; revising certification training requirements;  
24 permitting the director the discretion to immediately suspend  
25 a timbering operator or operation, or any part of a timbering  
26 operation, in any part of the state; and requiring the

1 Director of the Division of Forestry to convene a committee to  
2 review best management practices every five years.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and  
5 §19-1B-12a of the Code of West Virginia, 1931, as amended, be  
6 amended and reenacted, all to read as follows:

7 **ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING**  
8 **OPERATIONS.**

9 **§19-1B-3. Definitions.**

10 (a) "Best management practices" means sediment control  
11 measures, structural or nonstructural, used singly or in  
12 combination, to reduce soil runoff from land disturbances  
13 associated with commercial timber harvesting.

14 (b) "Chief" means the Director of the Division of Water and  
15 Waste Management of the Department of Environmental Protection, or  
16 his or her designee.

17 (c) "Director" means the Director of the Division of Forestry  
18 of the Department of Commerce or his or her designee.

19 (d) "Operator" means any person who conducts timbering  
20 operations.

21 (e) "Timbering operation," or the plural, means activities  
22 directly related to the severing or removal of standing trees from  
23 the forest as a raw material for commercial processes or purposes.  
24 For the purpose of this article, timbering operations do not include  
25 the severing of evergreens grown for and severed for the traditional

1 Christmas holiday season; the severing of trees incidental to  
2 ground-disturbing construction activities, including well sites,  
3 access roads and gathering lines for oil and natural gas operations;  
4 the severing of trees for maintaining existing, or during  
5 construction of, rights-of-way for public highways or public  
6 utilities or any company subject to the jurisdiction of the Federal  
7 Energy Regulatory Commission unless the trees so severed are being  
8 sold or provided as raw material for commercial wood product  
9 purposes; or the severing of trees by an individual on the  
10 individual's own property for his or her individual use provided  
11 that the individual does not have the severing done by a person  
12 whose business is the severing or removal of trees.

13 (f) "Sediment" means solid particulate matter, usually soil or  
14 minute rock fragments, moved by wind, rainfall or snowmelt into the  
15 streams of the state.

16 **§19-1B-4. Timbering license required; requirement for license;**  
17 **exemption; annual fee; rules.**

18 (a) A person may not conduct timbering operations, purchase  
19 timber or buy logs for resale until he or she has obtained a license  
20 and met the requirements of this article.

21 (b) *Exemptions.*- A person who severs or removes, or hires or  
22 contracts with another to sever or remove, standing trees from his  
23 or her own land is exempted from the timbering operations licensure  
24 requirement of this section during any calendar year in which all  
25 trees severed or removed by or for this owner have an aggregate  
26 stumpage value that does not exceed \$15,528. A person hired or

1 contracted to sever or remove standing trees from the land of  
2 another is exempted from the timbering operations licensure  
3 requirement of this section during any calendar year in which all  
4 trees severed or removed by the hired or contracted person have an  
5 aggregate stumpage value that does not exceed \$15,528.

6 (c) An applicant for a timbering operation license shall submit  
7 an application and the fee of \$150 for each biennial renewal of the  
8 license. The application shall contain the following information:

9 (1) Name, address and telephone number of the applicant and if  
10 the applicant is a business entity other than a sole proprietor, the  
11 names and addresses of the principals, officers and resident agent  
12 of the business entity;

13 (2) The applicant's West Virginia business registration number  
14 or a copy of the current West Virginia business registration  
15 certificate. The Division of Forestry shall submit this information  
16 and a list of all applicants to the Tax Commissioner each month of  
17 the calendar year to ensure compliance with payment of severance,  
18 income withholding and all other applicable state taxes; and

19 (3) Any other information as required by the director.

20 (d) The director shall propose rules for legislative approval  
21 pursuant to the provisions of article three, chapter twenty-nine-a  
22 of this code, regarding the acquisition, suspension and revocation  
23 a license under this article. The rules are the proper subject of  
24 emergency legislative rules that may be promulgated in accordance  
25 with the provision of section fifteen, article three, section  
26 twenty-nine-a of this code.

1 (e) The director shall prescribe a form providing the contents  
2 and manner of posting notice at the timbering operation. The notice  
3 shall include, at a minimum, the operator's name and license number.

4 **§19-1B-5. Compliance orders; suspension of timbering operation**  
5 **license.**

6 (a) Upon a finding by the chief that failure to use a  
7 particular best management practice is causing or contributing, or  
8 has the potential to cause or contribute, to soil erosion or water  
9 pollution, the chief shall notify the director of the location of  
10 the site, the problem associated with the site, and any suggested  
11 corrective action. Upon the failure of the director to take  
12 appropriate action within three days of providing notice to the  
13 director, the chief may seek relief through the conference panel in  
14 accordance with section eleven of this article.

15 (b) Upon notification of the chief or upon a finding by the  
16 director that failure to use a particular best management practice  
17 is causing or contributing, or has the potential to cause or  
18 contribute, to soil erosion or water pollution, the director shall  
19 issue a written compliance order requiring the person conducting the  
20 timbering operation to take corrective action. The order shall  
21 mandate compliance within a reasonable and practical time not to  
22 exceed ten days. The person subject to the order may appeal the  
23 order within forty-eight hours of its issuance to the conference  
24 panel in accordance with section eleven of this article.

25 (c) The director has the discretion to immediately suspend a  
26 timbering operator or operation, or any part of a timbering

1 operation, in any part of the state if:

2       (1) The director believes that the observed damage or  
3 circumstances on a timbering operation are sufficient to endanger  
4 life or result in uncorrectable soil erosion or water pollution, or  
5 if the;

6       (2) The operator is not licensed pursuant to this article; or

7       (3) A certified logger is not supervising the timbering  
8 operation.

9       (d) The timbering operation, the operator, or both shall remain  
10 suspended until the corrective action mandated in the compliance  
11 order is instituted. The director shall not lift the suspension  
12 until compliance is satisfactory or until overruled on appeal.  
13 Failure to comply with any compliance order is a violation of this  
14 article. The timbering operator or operation subject to the  
15 compliance order may appeal to the conference panel in accordance  
16 with the provisions of section eleven of this article.

17       (e) For a second violation within any two-year period, the  
18 director may suspend the license of any operator conducting a  
19 timbering operation or the certification of any certified logger  
20 supervising a timbering operation for no less than thirty nor more  
21 than ninety days if the person is found in violation of this article  
22 or article eleven, chapter twenty-two of this code. One or more  
23 violations for the same incident is only one violation for purposes  
24 of this subsection.

25       (f) For a third violation within any two-year period, the  
26 director may revoke the license of any operator conducting timbering

1 operations or the certification of any certified logger if the  
2 person is found in violation of this article or article eleven,  
3 chapter twenty-two of this code. One or more violations for the  
4 same incident is only one violation for purposes of this subsection.  
5 A revoked license is not subject to reissue during the current  
6 licensing period.

7 (g) The director shall notify the chief of any order issued or  
8 any suspension or revocation of a license pursuant to this section  
9 within thirty days of the director's action.

10 **§19-1B-7. Certification of persons supervising timbering**  
11 **operations; timbering operations to be supervised;**  
12 **promulgation of rules.**

13 (a) Any individual supervising any licensed timbering  
14 operation, or any individual supervising any timbering operation  
15 that is not exempted from the licensing requirements set forth in  
16 section four of this article, must be certified pursuant to this  
17 section.

18 (b) The director is responsible for the development of  
19 standards and criteria for education, training and examination that  
20 must be successfully completed for persons to be certified to  
21 supervise any timbering operation. The certified logger shall  
22 attend a training program every four years after certification. The  
23 program for certified loggers shall provide for education and  
24 training in the safe conduct of timbering operations, in first aid  
25 procedures and in the use of best management practices to prevent

1 soil erosion on timbering operations. The goals of this program  
2 will be to assure that timbering operations are conducted in  
3 accordance with applicable state and federal safety regulations in  
4 a manner that is environmentally sound and safe.

5 (c) The director shall provide programs using the resources of  
6 the division, other appropriate state agencies, educational entities  
7 and other qualified persons. Each inspector under the jurisdiction  
8 of the chief shall attend a certification program free of charge and  
9 complete the certification requirements of this section.

10 (d) The director shall propose rules for legislative approval  
11 in accordance with article three, chapter twenty-nine-a of this  
12 code, to effectuate the purposes of this article.

13 (e) Upon a person's successful completion of the certification  
14 requirements, the director shall provide proof of the completion by  
15 issuing a numbered certificate and a wallet-sized card to that  
16 person. The division shall maintain a record of each certificate  
17 issued and the person to whom it was issued.

18 (f) The certified logger shall submit a fee of \$150 for the  
19 initial certification application and the renewal application every  
20 two years thereafter.

21 (g) Every timbering operation that is required to be licensed  
22 under section four of this article must have at least one person  
23 certified pursuant to this section supervising the operation at any  
24 time the timbering operation is being conducted. All timbering  
25 operators shall be guided by the West Virginia forest practice  
26 standards and the West Virginia silvicultural best management



1 practices to reduce sediment movement during a timber operation.

2 (h) The director shall, at no more than five-year intervals,  
3 convene a committee to review the best management practices to  
4 ensure that they reflect and incorporate the most current  
5 technologies. The committee shall, at a minimum, include a person  
6 researching silvicultural best management practices, a person in the  
7 field of silviculture, two loggers certified under this article, a  
8 representative of the Division of Water and Waste Management of the  
9 Department of Environmental Protection and a representative of an  
10 environmental organization. The director shall chair the committee  
11 and may amend the best management practices according to the  
12 suggestions of the committee for the next certification cycle.

13 **§19-1B-11. Creation of conference panels; authority.**

14 (a) Each forestry region in this state shall contain an  
15 informal conference panel composed of three persons to decide  
16 appeals of the director's orders. One member of the panel shall be  
17 selected by the director, one member shall be selected by the chief  
18 and one member shall be selected by agreement between the chief and  
19 the director. If a vacancy exists on the panel, the vacancy shall  
20 be filled by whomever made the initial selection. The members of  
21 the panel shall serve without compensation.

22 (b) Upon appeal of a decision under this section or upon  
23 petition by the chief, pursuant to the provisions of subsection (a),  
24 section five of this article, the panel shall hold an informal  
25 conference affirming, modifying or vacating an order of the  
26 director, or issuing an order in the name of the director. The

1 panel shall forthwith notify the parties of its decision and as soon  
2 as practicable send written notice of its decision to the parties.  
3 The decision of the panel is final.

4 (c) A party aggrieved by a decision of a panel may appeal to  
5 the circuit court of the county wherein the cause for the order  
6 arose. The appeal must be filed with the circuit court within  
7 twenty days of the date of decision of the panel and shall be heard  
8 de novo by the court. The court may reverse, vacate or modify the  
9 decision of the panel. The decision of the circuit court is final  
10 unless reversed, vacated or modified on appeal to the Supreme Court  
11 of Appeals in the manner provided by law.

12 **§19-1B-12a. Criminal penalties.**

13 (a) A person who knowingly or willingly commits one of the  
14 following violations is guilty of a misdemeanor and, upon conviction  
15 thereof, shall be fined not less than \$250 and not more than \$500  
16 for each violation:

17 (1) Conducts timbering operations or purchases timber or buys  
18 logs for resale in this state without holding a valid license from  
19 the Director of the Division of Forestry, as required by section  
20 four of this article;

21 (2) Conducts timbering operations or severs trees for sale at  
22 a location in this state, without providing the Director of the  
23 Division of Forestry with notice of the location where the timbering  
24 or harvesting operations are to be conducted, as required by section  
25 six of this article;

26 (3) Conducts a timbering operation in this state that is not

1 supervised by a certified logger who holds a valid certificate from  
2 the Director of the Division of Forestry, as required by section  
3 seven of this article; or

4 (4) Continues to conduct timbering operations in violation of  
5 an existing suspension or revocation order that has been issued by  
6 the Director of the Division of Forestry or a conference panel under  
7 sections five, ten or eleven of this article.

8 (b) For the purposes of this section, each day that a person  
9 conducts timbering operations in this state without a license as  
10 required by this article, without the supervision of a certified  
11 logger as required by this article, without providing notice of the  
12 location to the director as required by this article, or in  
13 violation of an outstanding suspension or revocation order shall  
14 constitute a separate offense.

15 (c) In addition to any other law-enforcement agencies that have  
16 jurisdiction over criminal violations, any forester or forest  
17 technician employed by the Division of Forestry, who, as a part of  
18 his or her official duties is authorized by the Director of the  
19 Division of Forestry to inspect timbering operations, is authorized  
20 to issue citations for any of the listed violations in this article  
21 that he or she has witnessed. The limited authority granted to  
22 employees of the Division of Forestry to issue citations to enforce  
23 the provisions of this section does not include the power to place  
24 any individual or person under arrest.