

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 458**

4 (By Senators Laird, Fanning, D. Face mire, Williams, McCabe and
5 Plymale)

6 _____
7 [Originating in the Committee on Natural Resources;
8 reported February 17, 2011.]
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11
12 A BILL 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; establishing
22 renewal of licensure and certification on a biennial basis;
23 permitting the director the discretion to immediately suspend
24 a timbering operator or operation, or any part of a timbering
25 operation, in any part of the state; and requiring the
26 Director of the Division of Forestry to convene a committee to

1 review best management practices at least every five years.

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

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

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

8 **§19-1B-3. Definitions.**

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

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

17 (c) "Director" means the Director of the Division of Forestry
18 of the Department of Commerce ~~labor and environmental resources~~ or
19 his or her ~~authorized~~ designee.

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

22 (e) "Timbering ~~operations~~ operation," or the plural, means
23 activities directly related to the severing or removal of standing
24 trees from the forest as a raw material for commercial processes or
25 purposes. For the purpose of this article, timbering operations do

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

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

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

19 (a) ~~No~~ A person may not conduct timbering operations, purchase
20 timber or buy logs for resale until he or she has obtained ~~the a~~ a
21 license ~~pursuant to this article from the division and met all other~~
22 ~~requirements pertaining to his or her timbering operation or other~~
23 ~~wood product business contained in~~ and met the requirements of this
24 article. ~~.: Provided, That a~~

25 (b) Exemptions.- A person who severs or removes, or hires or

1 contracts with another to sever or remove, standing trees from his
2 or her own land is ~~specifically~~ exempted from the timbering
3 operations licensure requirement of this section during any calendar
4 year in which all trees severed or removed by or for this owner have
5 an aggregate stumpage value that does not exceed \$15,528. ~~—~~
6 ~~Provided, however, That a~~ A person hired or contracted to sever or
7 remove standing trees from the land of another is ~~specifically~~
8 exempted from the timbering operations licensure requirement of this
9 section during any calendar year in which all trees severed or
10 removed by ~~this~~ the hired or contracted person have an aggregate
11 stumpage value that does not exceed \$15,528.

12 ~~(b)~~ (c) An applicant for a timbering operation license shall
13 submit an application ~~on a form to be designed and provided by the~~
14 ~~director. A fee of fifty dollars shall be submitted with each~~
15 ~~application and with each annual~~ and the fee of \$150 for each
16 biennial renewal of the license. The application shall, ~~at a~~
17 ~~minimum,~~ contain the following information:

18 (1) Name, address and telephone number of the applicant and if
19 the applicant is a business entity other than a sole proprietor, the
20 names and addresses of the principals, officers and resident agent
21 of the business entity;

22 (2) The applicant's West Virginia business registration number
23 or a copy of the current West Virginia business registration
24 certificate. The Division of Forestry shall submit this information
25 and a list of all applicants to the Tax Commissioner each ~~quarter~~
26 month of the calendar year to ensure compliance with payment of

1 severance, income withholding and all other applicable state taxes;
2 and

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

4 ~~(c)~~ (d) The director shall ~~promulgate legislative rules~~ propose
5 rules for legislative approval pursuant to the provisions of article
6 three, chapter twenty-nine-a of this code, ~~which provide procedures~~
7 ~~by which a license may be acquired, suspended or revoked~~ regarding
8 the acquisition, suspension and revocation a license under this
9 article. The ~~Legislature expressly finds that these legislative~~
10 rules are the proper subject of emergency legislative rules ~~which~~
11 that may be promulgated in accordance with the provision of section
12 fifteen, article three, section twenty-nine-a of this code.

13 ~~(d)~~ (e) The director shall prescribe a form providing the
14 contents and manner of posting notice at the timbering operation.
15 The notice shall include, at a minimum, the operator's name and
16 license number.

17 **§19-1B-5. Compliance orders; suspension of timbering operation**
18 **license.**

19 (a) Upon a finding by the chief that failure to use a
20 particular best management practice is causing or contributing, or
21 has the potential to cause or contribute, to soil erosion or water
22 pollution, the chief shall notify the director of the location of
23 the site, the problem associated with the site, and any suggested
24 corrective action. Upon the failure of the director to take
25 appropriate action within three days of providing notice to the
26 director, the chief may seek relief through the conference panel in

1 accordance with section eleven of this article.

2 (b) Upon notification of the chief or upon a finding by the
3 director that failure to use a particular best management practice
4 is causing or contributing, or has the potential to cause or
5 contribute, to soil erosion or water pollution, the director shall
6 issue a written compliance order requiring the person conducting the
7 ~~timber~~ timbering operation to take corrective action. The order
8 shall mandate compliance within a reasonable and practical time not
9 to exceed ten days. The person subject to the order may appeal the
10 order within forty-eight hours of its issuance to the conference
11 panel in accordance with section eleven of this article.

12 (c) The director has the discretion to immediately suspend a
13 timbering operator or operation, or any part of a timbering
14 operation, in any part of the state if: ~~In any circumstance where~~

15 (1) The director believes that the observed damage or
16 circumstances on a ~~logging~~ timbering operation, ~~in the opinion of~~
17 ~~the director,~~ are sufficient to endanger life or result in
18 uncorrectable soil erosion or water pollution, or if the;

19 (2) The operator is not licensed pursuant to this article; ~~or~~
20 ~~if a~~ or

21 (3) A certified logger is not supervising the timbering
22 operation., ~~the director shall order the immediate suspension of the~~
23 ~~timber operation and the~~

24 (d) The timbering operation, the operator, or both shall remain
25 suspended until the corrective action mandated in the compliance
26 order ~~suspending the operation~~ is instituted. The director shall

1 not ~~issue an order cancelling~~ revoke the suspension compliance order
2 lifting the suspension until compliance is satisfactory or until
3 overruled on appeal. Failure to comply with any compliance order
4 is a violation of this article. The ~~person~~ timbering operator or
5 operation subject to the compliance order may appeal to the
6 conference panel in accordance with the provisions of section eleven
7 of this article.

8 ~~(d)~~ (e) For a second violation within any two-year period, the
9 ~~The~~ director may suspend the license of any ~~person~~ operator
10 conducting a timbering operation or the certification of any
11 certified logger supervising a timbering operation for no less than
12 thirty nor more than ninety days~~,~~ if the person is found in
13 violation of this article or article eleven, chapter twenty-two of
14 this code.~~.; for a second time within any two-year period~~ ~~Provided,~~
15 ~~That one~~ One or more violations for the same ~~occurrence~~ incident is
16 only one violation for purposes of this subsection.

17 ~~(e)~~ (f) For a third violation within any two-year period, the
18 director may revoke the license of any ~~person~~ operator conducting
19 timbering operations or the certification of any certified logger
20 if the person is found in violation of this article or article
21 eleven, chapter twenty-two of this code.~~.; for a third time within~~
22 ~~any two-year period~~ ~~Provided,~~ ~~That one~~ One or more violations for
23 the same ~~occurrence~~ incident is only one violation for purposes of
24 this subsection. A revoked license is not subject to reissue during
25 the current licensing period. ~~for which it was issued.~~

26 ~~(f)~~ (g) The director shall notify the chief of any order issued

1 or any suspension or revocation of a license pursuant to this
2 section within ~~three~~ thirty days of ~~the date of~~ the director's
3 action.

4 **§19-1B-7. Certification of persons supervising timbering**
5 **operations; timbering operations to be supervised;**
6 **promulgation of rules.**

7 (a) Any individual supervising any licensed timbering
8 operation, or any individual supervising any timbering operation
9 that is not exempted from the licensing requirements set forth in
10 section four of this article, must be certified pursuant to this
11 section.

12 (b) The director is responsible for the development of
13 standards and criteria for ~~establishment of a regularly scheduled~~
14 ~~program of~~ education, training and examination that ~~all persons~~ must
15 be successfully complete in order completed for persons to be
16 certified to supervise any timbering operation. The program for
17 certified loggers shall provide, ~~at a minimum,~~ for education and
18 training in the safe conduct of timbering operations, in first aid
19 procedures and in the use of best management practices to prevent,
20 ~~insofar as possible,~~ soil erosion on timbering operations. The
21 goals of this program will be to assure that timbering operations
22 are conducted in accordance with applicable state and federal safety
23 regulations in a manner that is ~~safest for the individuals~~
24 ~~conducting the operations and that they are performed in an~~
25 environmentally sound manner and safe.

1 (c) The director shall provide ~~for such~~ programs ~~by~~ using the
2 resources of the division, other appropriate state agencies,
3 educational ~~systems~~ entities and other qualified persons. Each
4 inspector under the jurisdiction of the chief shall attend a
5 certification program free of charge and complete the certification
6 requirements of this section.

7 (d) The director shall ~~promulgate legislative rules~~ propose
8 rules for legislative approval in accordance with article three,
9 chapter twenty-nine-a of this code, ~~which provide the procedure by~~
10 ~~which certification pursuant to this article may be obtained and~~
11 ~~shall require the payment of an application fee and an annual~~
12 ~~renewal fee of fifty dollars~~ to effectuate the purposes of this
13 article.

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

19 (f) A certification granted pursuant to this section is
20 renewable only for ~~two~~ four succeeding years. For the ~~third~~ second
21 renewal and every ~~third~~ other renewal thereafter, the licensee shall
22 first attend a program designed by the director to update the
23 training.

24 (g) Every timbering operation that is required to be licensed
25 under section four of this article must have at least one person
26 certified pursuant to this section supervising the operation at any

1 time the timbering operation is being conducted. ~~and all~~ All
2 timbering operators shall be guided by the West Virginia forest
3 practice standards and the West Virginia silvicultural best
4 management practices ~~in selecting practices appropriate and adequate~~
5 ~~for reducing~~ to reduce sediment movement during a timber operation.

6 (h) The director shall, ~~at no more than three-year intervals~~
7 ~~after the effective date of this article,~~ convene a committee to
8 review the best management practices every five years ~~so as~~ to
9 ensure that they reflect and incorporate the most current
10 technologies. The committee shall, at a minimum, include a person
11 ~~doing research in the field of~~ researching silvicultural best
12 management practices, a person ~~doing research~~ in the field of
13 silviculture, two loggers certified under this article, a
14 representative of the ~~office of water resources~~ Division of Water
15 and Waste Management of the Department of Environmental Protection
16 and a representative of an ~~environmentally active~~ environmental
17 organization. The director shall chair the committee and may ~~adjust~~
18 ~~the then current~~ amend the best management practices according to
19 the suggestions of the committee ~~in time~~ for the next certification
20 cycle.

21 **§19-1B-11. Creation of conference panels; authority.**

22 (a) Each forestry ~~district~~ region in this state shall contain
23 an informal conference panel composed of three persons ~~which shall~~
24 ~~act on behalf of the state~~ to decide appeals of the director's
25 orders ~~of the director~~. One member of the panel shall be selected
26 by the director, one member shall be selected by the chief and one

1 member shall be selected by agreement between the chief and the
2 director. If a vacancy exists on the panel, the vacancy shall be
3 filled by whomever made the initial selection. The members of the
4 panel shall serve without compensation.

5 (b) Upon appeal of a decision under this section or upon
6 petition by the chief, pursuant to the provisions of subsection (a),
7 section five of this article, the panel shall hold an informal
8 conference affirming, modifying or vacating an order of the
9 director, or issuing an order in the name of the director. The
10 panel shall forthwith notify the parties of its decision and as soon
11 as practicable send written notice of its decision to the parties.
12 The decision of the panel ~~shall be~~ is final ~~unless reversed, vacated~~
13 ~~or modified on appeal to the circuit court of the county wherein the~~
14 ~~cause for the decision arose.~~

15 (c) A party aggrieved by a decision of a panel may appeal to
16 the circuit court of the county wherein the cause for the order
17 arose. ~~Such~~ The appeal must be filed with the circuit court within
18 twenty days of the date of decision of the panel and shall be heard
19 de novo by the court. The court may reverse, vacate or modify the
20 decision of the panel. The decision of the circuit court ~~shall be~~
21 is final unless reversed, vacated or modified on appeal to the
22 Supreme Court of Appeals. ~~Any such appeal shall be sought in the~~
23 ~~manner provided by law for appeals from circuit courts in other~~
24 ~~civil cases.~~

25 **§19-1B-12a. Criminal penalties.**

26 (a) ~~After July 1, 2002, any~~ A person who knowingly or willingly

1 commits one of the following violations is guilty of a misdemeanor
2 and, upon conviction thereof, shall be fined not less than \$250 and
3 not more than \$500 for each violation:

4 (1) Conducts timbering operations or purchases timber or buys
5 logs for resale in this state without holding a valid license from
6 the Director of the Division of Forestry, as required by ~~subsection~~
7 ~~(a)~~, section four of this article;

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

13 (3) Conducts a timbering operation in this state that is not
14 supervised by a certified logger who holds a valid certificate from
15 the Director of the Division of Forestry, as required by section
16 seven of this article; or

17 (4) Continues to conduct timbering ~~or logging~~ operations in
18 violation of an existing suspension or revocation order that has
19 been issued by the Director of the Division of Forestry or a
20 conference panel under ~~section~~ sections five, ten or eleven of this
21 article.

22 (b) For the purposes of this section, each day that a person
23 conducts ~~logging or~~ timbering operations in this state without a
24 license ~~that is~~ as required by this article, without the supervision
25 of a certified logger as required by this article, without providing
26 notice of the location to the director ~~of forestry~~ as required by

1 this article, or in violation of an outstanding suspension or
2 revocation order shall constitute a separate offense.

3 (c) In addition to any other law-enforcement agencies that have
4 jurisdiction over criminal violations, any forester or forest ~~ranger~~
5 technician employed by the Division of Forestry, who, as a part of
6 his or her official duties is authorized ~~or designated~~ by the
7 Director of the Division of Forestry to inspect ~~logging or~~ timbering
8 ~~activities~~ operations, is ~~hereby~~ authorized to issue citations for
9 any of the listed violations ~~set forth above~~ in this article that
10 he or she has ~~personally~~ witnessed. The limited authority granted
11 ~~by this section~~ to employees of the Division of Forestry to issue
12 citations to enforce the provisions of this section does not include
13 the power to place any individual or person under arrest.

(NOTE: The purpose of this bill is to update the Logging
Sediment Control Act and to include a biennial licensure and \$150
license fee.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.)