

H. B. 2974

(By Delegates Fleischauer, Marshall, Barill, Manypenny, Ellem, Staggers, Butcher, Jones, Hatfield and Stephens)

[Introduced February 1, 2011; referred to the Committee on Natural Resources then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §19-1A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-1-7 of said code, all relating to Coopers Rock State Forest; transferring the supervisory and jurisdictional responsibilities of Coopers Rock State Forest from the Division of Forestry to the Division of Natural Resources; and prohibiting the sale of timber from the Coopers Rock State Forest.

Be it enacted by the Legislature of West Virginia:

That §19-1A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-1-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of Forestry; Division Director; duties, powers, dedication of certain moneys; creation of a special revenue account.

The Division of Forestry heretofore created is hereby continued. And, except as otherwise provided in this article, all

1 powers and duties previously exercised by the Director of Natural
2 Resources under subsection (13), section seven, article one and
3 article three, chapter twenty of this code, except those powers and
4 duties relating solely to wildlife areas as described in section
5 three, article three, chapter twenty of this code, heretofore
6 transferred to the Division of Forestry, are hereby continued in
7 the Division of Forestry, except Kanawha State Forest and Coopers
8 Rock State Forest as hereinafter provided. The Division of
9 Forestry has within its jurisdiction and supervision the state
10 forests, other forests and woodland areas, the protection of forest
11 areas from injury and damage by fire, disease, insects and other
12 pestilences and forces, the management of forest areas for natural
13 resources, conservation and undeveloped recreational activities,
14 administration of the southeastern interstate forest fire
15 protection compact and other compacts and agreements relating to
16 forest management and husbandry, and the administration and
17 enforcement of laws relating to the conservation, development,
18 protection, use and enjoyment of all forest land areas of the state
19 consistent with the provisions of sections one and two of this
20 article. All moneys collected from the sale of timber realized
21 through management of the state-owned forests and the sale of
22 seedlings from the tree nurseries shall be paid into the State
23 Treasury and shall be credited to a special account within the
24 Division of Forestry and used exclusively for the purposes of this
25 article and article three, chapter twenty of this code.

26 The Division of Forestry has jurisdiction to regulate the
27 growing, digging, collecting, gathering, possession and sale of

1 ginseng as provided in section three-a, of this article.

2 The chief of the Division is the Director of the Division of
3 Forestry who shall be appointed and qualified as provided in
4 section five of this article.

5 The Director of the Division of Forestry shall study means and
6 methods of implementing the provisions of section fifty-three,
7 Article VI of the Constitution of West Virginia, relating to forest
8 lands, and shall prepare and recommend legislation thereon.

9 The Division lines within the state forests between improved
10 recreation areas under the management of the Division of Natural
11 Resources and the demonstration forests under the management of the
12 Division of Forestry, heretofore established by agreement, are
13 hereby continued with the exception of Kanawha State Forest and
14 Coopers Rock State Forest where the entire ~~forest~~ forests will be
15 managed by and under the jurisdiction of the Division of Natural
16 Resources for multiple uses and the Division of Natural Resources
17 shall continue to provide recreational opportunities, including,
18 but not limited to, mountain-biking trails, hiking trails,
19 horseback-riding trails and hunting, fishing and trapping lands.
20 The forest may not be designated as a state park or state
21 recreation area; however, any sale of timber from Kanawha State
22 Forest and Coopers Rock State Forest shall ~~continue to~~ be
23 prohibited.

24 In the event of disagreement over the placement of a Division
25 line or dual occupancy of a building, the disposition shall be
26 decided by the Legislature's Joint Committee on Government and
27 Finance at a regularly scheduled meeting.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the Division of Natural Resources any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the Natural

1 Resources Commission may appear to be necessary and proper for the
2 purpose of giving interested persons in the various sections of the
3 state an opportunity to be heard concerning open season for their
4 respective areas, and report the results of the meetings to the
5 Natural Resources Commission before such season and bag limits are
6 fixed by it;

7 (7) Suspend open hunting season upon any or all wildlife in
8 any or all counties of the state with the prior approval of the
9 Governor in case of an emergency such as a drought, forest fire
10 hazard or epizootic disease among wildlife. The suspension shall
11 continue during the existence of the emergency and until rescinded
12 by the director. Suspension, or reopening after such suspension,
13 of open seasons may be made upon twenty-four hours' notice by
14 delivery of a copy of the order of suspension or reopening to the
15 wire press agencies at the State Capitol;

16 (8) Supervise the fiscal affairs and responsibilities of the
17 division;

18 (9) Designate such localities as he or she shall determine to
19 be necessary and desirable for the perpetuation of any species of
20 wildlife;

21 (10) Enter private lands to make surveys or inspections for
22 conservation purposes, to investigate for violations of provisions
23 of this chapter, to serve and execute warrants and processes, to
24 make arrests and to otherwise effectively enforce the provisions of
25 this chapter;

26 (11) Acquire for the state in the name of the Division of
27 Natural Resources by purchase, condemnation, lease or agreement, or

1 accept or reject for the state, in the name of the Division of
2 Natural Resources, gifts, donations, contributions, bequests or
3 devises of money, security or property, both real and personal, and
4 any interest in such property, including lands and waters, which he
5 or she deems suitable for the following purposes:

6 (a) For state forests for the purpose of growing timber,
7 demonstrating forestry, furnishing or protecting watersheds or
8 providing public recreation;

9 (b) For state parks or recreation areas for the purpose of
10 preserving scenic, aesthetic, scientific, cultural, archaeological
11 or historical values or natural wonders, or providing public
12 recreation;

13 (c) For public hunting, trapping or fishing grounds or waters
14 for the purpose of providing areas in which the public may hunt,
15 trap or fish, as permitted by the provisions of this chapter and
16 the rules issued hereunder;

17 (d) For fish hatcheries, game farms, wildlife research areas
18 and feeding stations;

19 (e) For the extension and consolidation of lands or waters
20 suitable for the above purposes by exchange of other lands or
21 waters under his or her supervision;

22 (f) For such other purposes as may be necessary to carry out
23 the provisions of this chapter;

24 (12) Capture, propagate, transport, sell or exchange any
25 species of wildlife as may be necessary to carry out the provisions
26 of this chapter;

27 (13) Sell timber for not less than the value thereof, as

1 appraised by a qualified appraiser appointed by the director, from
2 all lands under the jurisdiction and control of the director,
3 except those lands that are designated as state parks and those in
4 the Kanawha State Forest and Coopers Rock State Forest. The
5 appraisal shall be made within a reasonable time prior to any sale,
6 reduced to writing, filed in the office of the director and shall
7 be available for public inspection. The director must obtain the
8 written permission of the Governor to sell timber when the
9 appraised value is more than \$5,000. The director shall receive
10 sealed bids therefor, after notice by publication as a Class II
11 legal advertisement in compliance with the provisions of article
12 three, chapter fifty-nine of this code and the publication area for
13 such publication shall be each county in which the timber is
14 located. The timber so advertised shall be sold at not less than
15 the appraised value to the highest responsible bidder, who shall
16 give bond for the proper performance of the sales contract as the
17 director shall designate; but the director shall have the right to
18 reject any and all bids and to readvertise for bids. If the
19 foregoing provisions of this section have been complied with and no
20 bid equal to or in excess of the appraised value of the timber is
21 received, the director may, at any time, during a period of six
22 months after the opening of the bids, sell the timber in such
23 manner as he or she deems appropriate, but the sale price shall not
24 be less than the appraised value of the timber advertised. No
25 contract for sale of timber made pursuant to this section shall
26 extend for a period of more than ten years. And all contracts
27 heretofore entered into by the state for the sale of timber shall

1 not be validated by this section if the same be otherwise invalid.

2 The proceeds arising from the sale of the timber so sold shall be
3 paid to the Treasurer of the State of West Virginia and shall be
4 credited to the division and used exclusively for the purposes of
5 this chapter: *Provided*, That nothing contained herein shall
6 prohibit the sale of timber which otherwise would be removed from
7 rights-of-way necessary for and strictly incidental to the
8 extraction of minerals;

9 (14) Sell or lease, with the approval in writing of the
10 Governor, coal, oil, gas, sand, gravel and any other minerals that
11 may be found in the lands under the jurisdiction and control of the
12 director, except those lands that are designated as state parks.
13 The director, before making sale or lease thereof, shall receive
14 sealed bids therefor, after notice by publication as a Class II
15 legal advertisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and the publication area
17 for such publication shall be each county in which such lands are
18 located. The minerals so advertised shall be sold or leased to the
19 highest responsible bidder, who shall give bond for the proper
20 performance of the sales contract or lease as the director shall
21 designate; but the director shall have the right to reject any and
22 all bids and to readvertise for bids. The proceeds arising from
23 any such sale or lease shall be paid to the Treasurer of the State
24 of West Virginia and shall be credited to the division and used
25 exclusively for the purposes of this chapter;

26 (15) Exercise the powers granted by this chapter for the
27 protection of forests and regulate fires and smoking in the woods

1 or in their proximity at such times and in such localities as may
2 be necessary to reduce the danger of forest fires;

3 (16) Cooperate with departments and agencies of state, local
4 and federal governments in the conservation of natural resources
5 and the beautification of the state;

6 (17) Report to the Governor each year all information relative
7 to the operation and functions of the division and the director
8 shall make such other reports and recommendations as may be
9 required by the Governor, including an annual financial report
10 covering all receipts and disbursements of the division for each
11 fiscal year, and he or she shall deliver such report to the
12 Governor on or before December 1, next after the end of the fiscal
13 year so covered. A copy of such report shall be delivered to each
14 house of the Legislature when convened in January next following;

15 (18) Keep a complete and accurate record of all proceedings,
16 record and file all bonds and contracts taken or entered into and
17 assume responsibility for the custody and preservation of all
18 papers and documents pertaining to his or her office, except as
19 otherwise provided by law;

20 (19) Offer and pay, in his or her discretion, rewards for
21 information respecting the violation, or for the apprehension and
22 conviction of any violators, of any of the provisions of this
23 chapter;

24 (20) Require such reports as he or she may deem to be
25 necessary from any person issued a license or permit under the
26 provisions of this chapter, but no person shall be required to
27 disclose secret processes or confidential data of competitive

1 significance;

2 (21) Purchase as provided by law all equipment necessary for
3 the conduct of the division;

4 (22) Conduct and encourage research designed to further new
5 and more extensive uses of the natural resources of this state and
6 to publicize the findings of such research;

7 (23) Encourage and cooperate with other public and private
8 organizations or groups in their efforts to publicize the
9 attractions of the state;

10 (24) Accept and expend, without the necessity of appropriation
11 by the Legislature, any gift or grant of money made to the division
12 for any and all purposes specified in this chapter and he or she
13 shall account for and report on all such receipts and expenditures
14 to the Governor;

15 (25) Cooperate with the state historian and other appropriate
16 state agencies in conducting research with reference to the
17 establishment of state parks and monuments of historic, scenic and
18 recreational value and to take such steps as may be necessary in
19 establishing such monuments or parks as he or she deems advisable;

20 (26) Maintain in his or her office at all times, properly
21 indexed by subject matter and also in chronological sequence, all
22 rules made or issued under the authority of this chapter. Such
23 records shall be available for public inspection on all business
24 days during the business hours of working days;

25 (27) Delegate the powers and duties of his or her office,
26 except the power to execute contracts not related to land and
27 stream management, to appointees and employees of the division, who

1 shall act under the direction and supervision of the director and
2 for whose acts he or she shall be responsible;

3 (28) Conduct schools, institutions and other educational
4 programs, apart from or in cooperation with other governmental
5 agencies, for instruction and training in all phases of the natural
6 resources programs of the state;

7 (29) Authorize the payment of all, or any part of, the
8 reasonable expenses incurred by an employee of the division in
9 moving his or her household furniture and effects as a result of a
10 reassignment of the employee: *Provided*, That no part of the moving
11 expenses of any one such employee shall be paid more frequently
12 than once in twelve months; and

13 (30) Promulgate rules, in accordance with the provisions of
14 chapter twenty-nine-a of this code, to implement and make effective
15 the powers and duties vested in him or her by the provisions of
16 this chapter and take such other steps as may be necessary in his
17 or her discretion for the proper and effective enforcement of the
18 provisions of this chapter.

NOTE: The purpose of this bill is to transfer the supervisory and jurisdictional responsibilities of Coopers Rock State Forest from the Division of Forestry to the Division of Natural Resources. The bill limits timbering in the Coopers Rock State Forest. The bill treats Coopers Rock State Forest like the Kanawha State Forest.

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