

Senate Bill No. 458

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

[Introduced February 8, 2011; referred to the Committee on
Natural Resources; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7,
§19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931,
as amended, all relating to updating the Logging Sediment
Control Act; increasing licensure and certification fees;
requiring the Division of Forestry to report certain
information to the Tax Commissioner on a monthly basis;
requiring the Director of the Division of Forestry to notify
the Director of the Division of Water and Waste Management of
the Department of Environmental Protection of licensure
suspension or revocation within thirty days; establishing
renewal of licensure and certification on a biennial basis;
permitting the director the discretion to immediately suspend
a timbering operator or operation, or any part of a timbering
operation, in any part of the state; and requiring the
Director of the Division of Forestry to convene a committee to
review best management practices at least every five years.

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

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

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

7 **§19-1B-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) The applicant's West Virginia business registration number
22 or a copy of the current West Virginia business registration
23 certificate. The Division of Forestry shall submit this information
24 and a list of all applicants to the Tax Commissioner each ~~quarter~~
25 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 required by the director.

4 (c) 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 under this
8 article. The Legislature expressly finds that these legislative
9 rules are the proper subject of emergency legislative rules which
10 may be promulgated in accordance with the provision of section
11 fifteen, article three, section twenty-nine-a of this code.

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

15 **§19-1B-5. Compliance orders, suspension of timbering operating**
16 **license.**

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

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

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

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

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

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

23 (d) The timbering operation, the operator, or both shall remain
 24 suspended until the corrective action mandated in the compliance
 25 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~~ operator is found
13 in violation of this article or article eleven, chapter twenty-two
14 of this code: ~~for a second time within any two-year period~~
15 *Provided*, That one or more violations for the same ~~occurrence~~
16 incident is 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~~ operator is found in violation of this article or
21 article eleven, chapter twenty-two of this code: ~~for a third time~~
22 ~~within any two-year period~~ *Provided*, That one or more violations
23 for the same ~~occurrence~~ incident is only one violation for purposes
24 of this subsection. A revoked license is not subject to reissue
25 during the current licensing period. ~~for which it was issued.~~

1 ~~(f)~~ (g) The director shall notify the chief of any order issued
2 or any suspension or revocation of a license pursuant to this
3 section within ~~three~~ thirty days of the date of the director's
4 action.

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

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

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

1 manner.

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

8 (d) The director shall ~~promulgate legislative rules~~ propose
9 rules for legislative approval in accordance with article three,
10 chapter twenty-nine-a of this code, which provide the procedure by
11 which certification pursuant to this article may be obtained and
12 shall require the payment of an application fee and ~~an annual~~ a
13 biennial renewal fee of ~~fifty dollars~~ \$150.

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

1 certified pursuant to this section supervising the operation at any
2 time the timbering operation is being conducted and all timbering
3 operators shall be guided by the West Virginia forest practice
4 standards and the West Virginia silvicultural best management
5 practices in selecting practices appropriate and adequate for
6 reducing sediment movement during a timber operation.

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

20 **§19-1B-11. Creation of conference panels; authority.**

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

1 shall be selected by agreement between the chief and the director.
2 If a vacancy exists on the panel, the vacancy shall be filled by
3 whomever made the initial selection. The members of the panel shall
4 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 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 final unless reversed, vacated or modified on appeal to the Supreme
22 Court of Appeals. Any such appeal shall be sought in the manner
23 provided by law for appeals from circuit courts in other civil
24 cases.

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

1 (a) ~~After July 1, 2002, any~~ A person who knowingly or willingly
2 commits one of the following violations is guilty of a misdemeanor
3 and, upon conviction thereof, shall be fined not less than \$250 and
4 not more than \$500 for each violation:

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

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

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

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

1 notice of the location to the director ~~of forestry~~ as required by
2 this article, or in violation of an outstanding suspension or
3 revocation order shall constitute a separate offense.

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

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