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PE 13-15-551

## REGULATORY BOARD REVIEW

# WEST VIRGINIA BOARD OF REGISTRATION FOR FORESTERS

## AUDIT OVERVIEW

The West Virginia Board of Registration for Foresters Is Not Necessary to Protect the Public Welfare of the Citizens of West Virginia

The West Virginia Board of Registration for Foresters Has Complied With Most Chapter 30 Requirements

The Board's Website Needs Improvement



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## EXECUTIVE SUMMARY

The Legislative Auditor conducted a Regulatory Board Review of the West Virginia Board of Registration for Foresters authorized pursuant to West Virginia Code §4-10-10(b)(6). Objectives of this audit were to determine the need for the Board, assess compliance with provisions of Chapter 30 and other applicable laws, and evaluate the website for user-friendliness and transparency. The report contains the following issues:

### Report Highlights

#### **Issue 1: The West Virginia Board of Registration for Foresters Is Not Necessary to Protect the Public Health and Welfare of the Citizens of West Virginia.**

- The 2003 PERD review recommended the Legislature sunset the Board of Foresters because the Board primarily exists to provide title protection. West Virginia Code does not prevent any person or private company from practicing forestry, managing forests, removing products or planting trees in any manner desired. Furthermore, the Board has never received any complaint against the conduct of a licensee or for direct harm to the public, which further suggests a relatively low risk of harm to the public from this profession.
- If the Board were terminated, there would be no consequence with respect to federal programs, grants, or funding. Furthermore, national organizations could provide registration to foresters in West Virginia.
- Only 14% of West Virginia's foresters are self-employed, leaving the vast majority in supervised positions in which hiring standards should provide sufficient assurance that foresters possess the knowledge, experience, and education necessary to perform their jobs.

#### **Issue 2: The West Virginia Board of Registration for Foresters Has Complied With Most Chapter 30 Requirements.**

- The Board is in compliance with continuing education requirements, complaints are resolved in a timely manner with due process, the Board is financially sufficient, and the Board is publicly accessible.
- The Board's internal control for financial management is deficient because it lacks proper segregation of duties. The Board has only one employee who handles all financial matters. The Legislative Auditor recommends the Board utilize the State Treasurer's lockbox system, deposit all fees within 24 hours of receipt, and allow licensees to pay fees online.

- The Board has not consistently filed meeting notices in compliance with the *Open Governmental Proceedings Act*.

### **Issue 3: The Board’s Website Needs Improvement.**

- The Board’s website needs increased transparency and user-friendliness to improve accountability and public accessibility.

### **PERD’s Evaluation of the Agency’s Written Response**

The Office of the Legislative Auditor’s Performance Evaluation and Research Division received a written response from the West Virginia Board of Registration for Foresters response on January 2, 2014. The agency response can be found in Appendix F. The agency strongly disagreed with the report, and provided the following arguments.

- a. **Agency response:** *To suggest that the public cannot be harmed by someone who ‘practices’ forestry without formal training shows pure ignorance of our profession. For example, picture a landowner who seeks advice from a person who claims to be a forester, but in reality has no training or experience in the biology, ecology, economics, or ethics of professional forestry. If the landowner follows the advice of such an individual, the harm to the landowner is likely to include a dramatic reduction in land value, a dramatic loss of species diversity, a dramatic loss of wildlife food and habitat, a dramatic loss of revenue for decades, a dramatic loss of soil stability, and a dramatic reduction in stream quality.... Their recommendation suggests that private landowners in West Virginia should follow the advice of anyone who claims to be a forester.*

**PERD’s Evaluation:** This review does not state or suggest that the public cannot be harmed by someone who practices forestry without formal training. Rather, this review argues there is harm but the risk of harm is relatively low, and the Board does not provide an adequate level of protection against this harm to justify its continuance. As stated throughout this review, West Virginia Code allows any person or private company to practice forestry, manage forests, remove products, or plant trees in any manner desired. The only restriction is the person or private company cannot assume or advertise any title or description that gives the impression the person or private company is registered with the Board. This reveals that the Board primarily exists to provide title protection to its members.

Furthermore, this review is in no way suggesting that private landowners should follow the advice of anyone who claims to be a forester. Currently, any landowner can choose to manage or harvest their land without any interaction or assistance from an individual providing forestry services. Furthermore, if the landowner chooses to hire an individual for forestry services, that individual by law could practice forestry with or without being registered by the Board. While the Board does evaluate the credentials of its registered foresters, the Board’s response does not consider the possibility that landowners who choose to hire a forester could evaluate said forester’s credentials without the Board’s assistance. As with any employer,

the landowner who seeks the advice of a forester can contact the forester's references, degree-granting institute, or employer (since only 14% of foresters are self-employed).

- b. Agency response** *An additional reference is made to the low number of complaints reviewed by this Board. However, no quantification was made of the number of complaints reviewed by either ACF [Association of Consulting Foresters] or SAF [Society of American Foresters] within the state.*

**PERD's Evaluation:** The review states the following in regards to national complaints: "While the SAF currently does not handle complaints in West Virginia, it informed the Legislative Auditor it could take over those responsibilities for the states that have closed their forester boards." Therefore, the number of complaints reviewed by the SAF is zero.

- c. Agency response:** *The analysts say WVBORF receives few formal complaints, implying that the Board is not needed. This fact SUPPORTS keeping the Board in place. The system works. Foresters in West Virginia register with the Board to PROTECT their profession. And they notify the Board when someone claims to be a forester who is not registered.*

**PERD's Evaluation:** Complaints that come to the Board primarily come from within the profession and are in regards to use of the title, as opposed to complaints from the public regarding the professional conduct of foresters. This further demonstrates that the risk of harm to the general public is relatively low.

- d. Agency response:** *The analysts claim that West Virginia would not lose federal funds if the WVBORF is sunset. Currently, most cost-share funds available to West Virginia landowners are from federal programs. If the WVBORF is sunset, West Virginia has no mechanism in place to approve stewardship plans so that landowners can get these funds.*

**PERD's Evaluation:** The Board previously argued that the West Virginia Forest Stewardship Program, and the funding attached to it, required that only state-licensed foresters can participate. However, as stated in the review, this requirement was established by the W.V. Division of Forestry. According to the U.S. Department of Agriculture (USDA), which manages the Forest Stewardship Program through the U.S. Forest Service, there are no federal regulations requiring that foresters must be registered with the Board. The USDA, not the Legislative Auditor, stated that West Virginia would not lose federal funds if the Board were sunset: "If the WVBORF was discontinued, it would not impact federal funding through the U.S. Forest Service to the WV Division of Forestry or West Virginia landowners."

- e. Agency response:** *The auditors indicate that only 14% of current registered foresters were self-employed, leaving a vast majority of foresters in supervised positions. Although this is what the data indicated, it is not really a good picture of our current status.... Just including the "consultants" group with "self-employed" would push the percentage to approximately 30% which would be a conservative estimate in our opinion. This represents a significant increase from 12% in 2003, which we believe better reflects the changes within the state over the past 10 years.*

**PERD’s Evaluation:** The review’s estimate of 14% is based entirely from data provided by the Board. When the Board provided these data, its annotation for the “consulting” foresters data stated that the consulting category “includes self employed as many if not all are consultants.” The Board stated the number of consulting foresters for 2013-2014 was 115 out of a total of 390 registered foresters. When PERD requested the percentage of self-employed foresters, the Board’s President responded with the following:

*I combined the SELF category with the CONS category as most were consulting forestry related. You can reduce the CONS group by the following value:*

*2013-2014: 59*

As such, the review found the percentage of current registered foresters that are self-employed by using the data provided by the Board and following the Board’s instructions for the data interpretation, leaving 56 self-employed foresters out of a total of 390 registered foresters. Therefore, the Board’s written response to the report contradicts its previous statements.

**f. Agency response:** *In the methodology section the PERD utilized New Jersey and Arkansas agencies as a bench mark as part of this review. Neither of these states compare to the forest or forest industries in West Virginia.*

**PERD’s Evaluation:** The Board is referring to the following sentence in the review’s methodology section:

*PERD also obtained information from the Association of Consulting Foresters, the Society of American Foresters, the U.S. Forest Service, the U.S. Department of Agriculture, the West Virginia Division of Forestry, the New Jersey Department of Environmental Protection, and the Missouri Department of Conservation.*

This review does not use, and does not claim to use, the New Jersey and Arkansas agencies as a benchmark for this evaluation. The Legislative Auditor did indeed contact New Jersey and Missouri, not Arkansas, because SAF informed our office that these states had closed their forester registration programs. However, in interviews with the New Jersey Department of Environmental Protection and the Missouri Department of Conservation, both states explained that the SAF was mistaken, and both states have not created or sunset a forester registration program.

**g. Agency response:** *It has been stated many times in the WV PERD report that the SAF education requirement requires a degree from an SAF accredited institution – close examination of their requirements will show that this is not true.*

**PERD’s Evaluation:** The Legislative Auditor acknowledges the oversight, and the statement regarding SAF education requirements has been modified to reflect the Board’s correction.

## **Recommendations**

1. *The Legislative Auditor recommends the Legislature consider terminating the West Virginia Board of Registration for Foresters.*
2. *The Board should reduce the potential for fraud by utilizing the State Treasurer's lockbox system, deposit all fees within 24 hours of receipt, and allow licensees to pay fees online.*
3. *The Board should include in its register the applicant's age, date of application, and the date the Board either approved or rejected the application, as required by West Virginia Code §30-1-12(a).*
4. *The Board should file meeting notices with the Secretary of State within the time frame required by the Open Governmental Proceedings Act.*
5. *The Legislative Auditor recommends that the Board of Registration for Foresters should consider enhancing the user-friendliness and transparency of its website by incorporating more of the website elements identified.*



# ISSUE 1

## Issue Summary

The West Virginia Board of Registration for Foresters provides title protection to the foresters operating in West Virginia by evaluating the credentials, experience, and knowledge of each applicant prior to registration. West Virginia Code §30-19-1(a) states that no individual may assume, use, or advertise any title or description tending to convey the impression that he or she is a registered forester or registered forestry technician unless they are registered with the Board. However, in a 2003 PERD review and in this current review, PERD determines that the risk of harm to the public without regulations of the forester profession is relatively low and therefore the Board is not necessary for public protection. For the most part, the Board's existence is primarily providing title protection, and the West Virginia Code does not preclude individuals from practicing forestry without being registered by the Board. The Legislative Auditor has consistently determined that if regulations allow others to practice a profession without a board's credential, then this reveals that harm to the public is considered relatively low, and the regulations serves primarily as title protection. This review and the 2003 review found that the large majority of foresters operate in supervised positions (federal and state government, and the private sector) and there is no record of this Board ever receiving a complaint regarding professional conduct or harm to the public. In response to the 2003 report, the Board indicated West Virginia could lose access to federal programs and funds without the Board. However, the Legislative Auditor finds this is not true; West Virginia would not lose access to federal funds and programs without this Board. **Therefore, the Legislative Auditor recommends the Legislature consider terminating the West Virginia Board of Registration for Foresters.**

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*West Virginia Code does not prevent any person or private company from practicing forestry, managing forests, removing products or planting trees in any manner desired.*

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## Background

In 1963, the Legislature created the Board and required that no individual could use, advertise, or otherwise assume the title of "forester" without first being licensed and registered by the Board. However, West Virginia Code does not prevent any person or private company from practicing forestry, managing forests, removing products or planting trees in any manner desired. For an applicant to become a registered forester, the individual must pass an examination provided by the Board, while the Board must approve the individual's education and experience. In 2003, PERD conducted a regulatory board review of the Board of Foresters, which recommended that the Legislature sunset the Board. The review determined the Board was not necessary to protect public interest due

to the lack of consumer complaints, minimal public access, low number of self-employed foresters, and lack of boards in other states, and the cost imposition to licensees and the State. In addition, the report noted that landowners were not legally required to consult a forester prior to harvesting timber on their property, and therefore the Board's registration was primarily title protection. The Legislature chose not to sunset the Board of Foresters, and the Board took the opportunity to improve public access, raise fees, and begin administering an exam as a result of the PERD review. Despite these improvements, many of the concerns from the previous review remain in place, and therefore the Legislative Auditor still finds the Board of Foresters is not necessary to protect public interest.

## The Board of Foresters Primarily Provides Title Protection

When the Legislative Auditor requested from the Board a narrative describing why licensure of this profession is needed, the Board concluded its response with the following:

*Without regulation, anyone could present themselves as a forester without the basic knowledge of sound land management, which could jeopardize both the unknowing public and the state's abundant natural resources.*

Yet, as noted in the 2003 PERD review, the public is not required to consult a forester prior to harvesting the timber on their private property. Indeed, the enabling statute for the Board of Foresters, West Virginia Code §30-19-1, restricts the use of the titles "registered forester" and "registered forestry technician" but does not preclude any individual or corporation from practicing forestry:

### **§30-19-1. Use of descriptive title restricted.**

*(a) No person may use in connection with his or her name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is a registered forester or registered forestry technician unless he or she is certified in accordance with this article.*

*(b) Nothing contained in this article shall be construed as preventing any person, firm, partnership or corporation from practicing forestry, managing woodlands or forests,*

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*In 2003, PERD conducted a regulatory board review of the Board of Foresters, which recommended that the Legislature sunset the Board.*

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*The enabling statute for the Board of Foresters, West Virginia Code §30-19-1, restricts the use of the titles "registered forester" and "registered forestry technician" but does not preclude any individual or corporation from practicing forestry.*

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*removing any products or planting trees on any land, in any manner desired.*

As such, the existence of the Board does not prevent a landowner from utilizing non-registered forestry services. For example, if landowners were to hire individuals for forestry services, individuals would not need to be registered with the Board unless they are indicating through title or description that they are registered with the Board. Therefore, the Board exists to primarily provide foresters with title protection. If this profession is allowed to be practiced by individuals without the Board's credential, then that reveals a relatively low concern for risk to the public.

The Board's complaint log and the lack of legal cases against foresters also demonstrate the Board exists for the primary purpose of title protection. The 2003 PERD review noted the Board had never received any complaint against the conduct of a licensee or for direct harm to the public. That statement still holds true for this current review, because during the 10 years since that report the Board has received a total of 10 complaints, none of which regarded unethical conduct or direct harm to the public (see Appendix D). Complaints to the Board regarded either unregistered foresters operating without a license, or licensed foresters conducting surveying work without a license from the Board of Surveyors. In addition, the legal staff in Legislative Services conducted a legal search for cases filed against foresters. Their search found no publicly-available record of any cases against foresters in the last five years.

The Board of Foresters was created in 1963, prior to the creation of the Legislature's sunrise process. Had the Board gone through the sunrise process, the Legislative Auditor would not have recommended its creation. The Legislative Auditor has consistently not recommended the creation of boards that would primarily create a title while at the same time allow any individual to practice the profession without the title.

## **National Forestry Organizations Already Register Foresters**

There are two national forestry organizations that maintain a register of members in West Virginia: the Society of American Foresters (SAF) and the Association of Consulting Foresters (ACF). As Table 1 shows, the Board has a significantly higher number of registered members than SAF or ACF, though West Virginia foresters are only required to register with the Board. If the Legislature chooses to close the Board, foresters operating within West Virginia can choose to register with either the ACF or the SAF. Indeed, the SAF established the national "Certified

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Forester” credential in 1994 specifically to “address the inconsistent state-by-state approach to forester credentialing through licensing and registration.” Much like the Board, the SAF requires its foresters possess a degree from an SAF-accredited university, and pass a certification exam, and undergo continuing education. While the SAF currently does not handle complaints in West Virginia, it informed the Legislative Auditor that it could take over those responsibilities for the states that have closed their forester boards.

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<b>Table 1</b>	
<b>Number of West Virginia Members Per Forestry Organization</b>	
<b>Organization</b>	<b>2013 WV members</b>
Board - state	390
Association of Consulting Foresters (ACF) - national	7
Society for American Foresters (SAF) - national	49
<i>Source: Membership data from the Board, ACF, and SAF</i>	

The SAF provides a potential alternative to the Board as the professional standard for foresters in West Virginia. Indeed, the Board relies heavily on the standards established by the SAF for its operations. First, West Virginia Code §30-19-4(d) requires the SAF recommend board member nominees to the Governor. Second, applicants to the Board must submit education credentials from a university accredited by the SAF. Third, foresters registered with the Board must complete 10 hours of Continuing Forestry Education, and these hours “must be recognized by the Society of American Foresters, a college or university approved by the Society of American Foresters or by the board.” Lastly, the Board has established a Code of Ethics in its procedural rules, which relies entirely on the SAF as its basis: “The board adopts as a basis for its standards the national code of ethics of the Society of American Foresters.”

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If the Legislature were to sunset the Board, West Virginia’s foresters would not need to acquire certification or registration from any organization in place of the Board. However, it should be noted if the Legislature were to sunset the Board, and a forester chooses to register with the SAF, that forester will face paying higher fees than those the

individual currently pays to the Board (See Appendix E). For example, a forester registered with the Board for four years would pay the exam fee, application fee, and three years of renewal fees for a total of \$255. If instead the forester is certified by the SAF for four years and is not a member of SAF (lowest membership package is \$95 a year), the forester would pay the application fee, recertification fee, and three years of renewal fees for a total of \$515. While this would increase the cost of certification for West Virginia's foresters, certification is not necessary for West Virginia to acquire federal funding or participate in federal programs, as demonstrated in the next section.

## **Closing the Board Will Not Impact Federal Funding or Programs**

If the Legislature were to sunset the Board, neither the public nor the State would lose federal funding or lose the ability to participate in federal programs. West Virginia currently participates in the Forest Stewardship Program in which foresters provide technical assistance to private forestland owners for the management of their land. In response to the 2003 PERD review, the Board stated that if the Legislature were to sunset the Board it would risk annual federal funding related to the Forest Stewardship Program to the sum of \$300,000 to the W.V. Division of Forestry and over \$1,000,000 to the state's landowners. The Division of Forestry, however, informed the Legislative Auditor that closing the Board would not risk any of the Division's federal funding. Furthermore, the U.S. Department of Agriculture (USDA), which manages the Forest Stewardship Program through the U.S. Forest Service, informed the Legislative Auditor that closing the Board of Foresters would not risk any federal funding to the state's landowners.

If the Legislature were to sunset the Board, the foresters who are currently employed in federal programs or utilizing federal funding would not need to seek a new license, certification, or registration. According to the Division of Forestry and the U.S. Forest Service, the Board's presence helps to ensure West Virginia's foresters are qualified and elevates the quality of forestry services. However, both agencies noted there are no federal regulations that require the existence of a state registration or licensing program. Indeed, there are 35 states that do not have boards, and these states can participate in the same types of federal programs and receive the same types of federal grants as states with a registration/licensing program.

In regards to the Forest Stewardship Program, if the Legislature were to sunset the Board, the foresters participating in the program would

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not be required under federal regulations to seek a new license, certification, or registration from any organization. In its Forest Stewardship Operating Plan, the Division of Forestry states that participating foresters must be licensed by the Board. However, this is a state requirement, and can be modified without jeopardizing federal funding.

It should be noted that state regulations (CSR §38-2-7.4.b.1.A.1) state that the Secretary of the DEP can only permit forestry as a post-mining use of a surface mine if a forester registered with the Board of Foresters develops the planting plan and long-term management plan. This plan must follow the requirements of the West Virginia Surface Coal Mining and Reclamation Act and be included in the surface mining permit application. If the Legislature were to sunset the Board, the DEP would need to remove this language from its procedural rules.

## **A Large Majority of Foresters Operate Under Supervision**

The 2003 PERD review noted that only 12% of foresters in West Virginia were self-employed. As of 2013, that number has increased slightly to 14% of foresters (see Table 2), leaving a vast majority of foresters in supervised positions. As such, the hiring standards of the private and public sectors should provide sufficient assurance that foresters possess the knowledge, experience, and education necessary to perform their jobs. Indeed, in noting the potential barriers against state licensure, the SAF noted the following regarding supervised employment:

*As part of this factor, there is often limited incentive for large organizations and agencies that hire many foresters (e.g., state and federal agencies, industry) to advocate for registration or licensing. They are able to manage their own staffs and thus can set hiring standards, provide continuing education, assign individuals, and take other steps to ensure they have qualified individuals making decisions for the forests they manage.*

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*In its Forest Stewardship Operating Plan, the Division of Forestry states that participating foresters must be licensed by the Board. However, this is a state requirement, and can be modified without jeopardizing federal funding.*

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*The hiring standards of the private and public sectors should provide sufficient assurance that foresters possess the knowledge, experience, and education necessary to perform their jobs.*

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<b>Table 2</b>		
<b>Employment Breakdown of Board Registered Foresters and Forestry Technicians (2013-2014)</b>		
<b>Employment type</b>	<b>Licensees</b>	<b>Percent</b>
Self-employed	56	14.3%
Consulting (supervised)	59	15.1%
Federal Government	9	2.3%
State Government	94	24.1%
Forest Industry	129	33.1%
Oil and Gas	1	0.3%
Non-profit	2	0.5%
Retired	31	7.9%
Not reported	9	2.3%
<b>Total</b>	<b>390</b>	<b>100%</b>
<i>Source: Data provided by the Board</i>		

## Conclusion

The Legislative Auditor finds that the Board of Foresters is not necessary to protect the public health and welfare of the citizens of West Virginia. The USDA and the West Virginia Division of Forestry believe forester registration elevates professional forestry standards and provides assurance to landowners that West Virginia's foresters are qualified and professional. However, as stated in the 2003 PERD review and in this current review, the risk of harm to the public without the regulation of the forester profession is relatively low. The Board primarily provides title protection because West Virginia Code still allows individuals and companies to practice forestry in any manner without registering with the Board so long as they do not use any title or description indicating they are registered. The Board provides minimal regulatory value beyond what is provided by national organizations and the employment standards of the public and private sector. Furthermore, the Board handles a relatively small number of complaints, none of which regard professional conduct or harm to the public. If the Legislature closed the Board, foresters could register with national organization such as the ACF or SAF. This sunset would not risk any federal programs or federal funding currently provided to landowners and the State. **Therefore, the Legislative Auditor recommends the Legislature consider terminating the West Virginia Board of Registration for Foresters.**

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*The Legislative Auditor finds that the Board of Foresters is not necessary to protect the public health and welfare of the citizens of West Virginia.*

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## **Recommendation**

1. *The Legislative Auditor recommends the Legislature consider terminating the West Virginia Board of Registration for Foresters.*

## ISSUE 2

### **The West Virginia Board of Registration for Foresters Has Complied With Most Chapter 30 Requirements**

The West Virginia Board of Registration for Foresters is compliant with most of the general provisions of Chapter 30 of the West Virginia Code. The Board complies with the following provisions:

- The Board has attended the State Auditor's orientation session (§30-1-2a (b));
- The Board has adopted an official seal (§30-1-4);
- The Board meets at least once annually (§30-1-5(a));
- The Board's complaints are investigated and resolved with due process (§30-1-5(b)); (30-1-8);
- The Board has promulgated rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k));
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c));
- The Board has established continuing education (§30-1-7a);
- The Board has a register of all applicants which states the name, place of residence, and license status of each applicant, though this register does not contain the date of application or the education acquired for each applicant (§30-1-12(a));
- The Board has submitted its annual report containing a statement of its receipts and disbursements and a list of complaints filed against its licensees to the Governor and the Legislature (§30-1-12(b)); and
- The Board maintains a complete roster of the names and addresses of all licensees and applicants (§30-1-13).

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*The West Virginia Board of Registration for Foresters is compliant with most of the general provisions of Chapter 30 of the West Virginia Code.*

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*The Legislative Auditor reviewed the 10 complaints received in fiscal years 2003 through 2013.*

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### **The Board Resolves Complaints in a Timely Manner But Should Improve Complaint Process**

As noted in Issue 1, the Board receives a minimal number of complaints, and none of these complaints are in regards to the professional conduct or service of a forester. The Legislative Auditor reviewed the 10 complaints received in fiscal years 2003 through 2013. These complaints

regarded either unregistered foresters, or registered foresters conducting surveying work without a license from the Board of Surveyors. This was previously noted in the PERD's 2003 review, and the frequency and nature of complaints have not changed since that report.

Nine of the 10 complaints from the past decade were resolved within the code-mandated 18-month time frame, and the one remaining case was resolved but does not contain a date of resolution. As Table 3 demonstrates, the Board received only two complaints in the past three years, but resolved those complaints well within the code-mandated 18-month time frame. See Appendix D for a table of all official complaints the Board has received in the past ten years.

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*These complaints regarded either unregistered foresters, or registered foresters conducting surveying work without a license from the Board of Surveyors.*

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**Table 3**  
**Board Complaint Decision Statistics**

<b>Fiscal Year</b>	<b>Number of Complaints Received</b>	<b>Number of Complaints Closed Within 18 Months</b>	<b>Number of Complaints Exceeding 18 Months</b>	<b>Average Days to Decision</b>
2011	2	2	0	98
2012	0	N/A	N/A	N/A
2013	0	N/A	N/A	N/A

*Source: Legislative Auditor's review of the Board's complaint files*

While the Board has established procedural rules regarding the due process for the investigation and resolution of all complaints, the rules have not been updated despite modifications to the complaint process. According to the Board, the Board formalized its complaint process in 2011. Yet, the Board has not updated its procedural rules since 2001, meaning any modifications to the complaint process have not been added to the procedural rules. The Board is currently examining its complaint procedures, and has contacted the Attorney General's Office to develop a "checklist on how to handle the complaint process."

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*While the Board has established procedural rules regarding the due process for the investigation and resolution of all complaints, the rules have not been updated despite modifications to the complaint process.*

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## The Board Is Financially Self-sufficient But Lacks Internal Controls

The Board is maintaining an end-of-year cash balance that is in excess of one year of expenditures. Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). The Board's end-of-year cash balances increased from 2009 to 2012 and confirm that the Board is currently self-sufficient (see Table 4).

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*The Board's end-of-year cash balances increased from 2009 to 2012 and confirm that the Board is currently self-sufficient.*

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<b>Table 4</b>				
<b>Revenues and Expenditures 2009-2012</b>				
<b>Year</b>	<b>Beginning of Year Cash Balance</b>	<b>Total Revenue</b>	<b>Total Expenditures</b>	<b>End-of-Year Cash Balance</b>
2009	\$21,741	\$12,312	\$12,208	\$21,844
2010	\$21,844	\$12,035	\$6,011	\$27,869
2011	\$27,869	\$12,585	\$6,589	\$33,864
2012	\$33,864	\$15,891	\$9,285	\$40,471

*Source: Board Annual Reports: 2011-2013*

The Legislative Auditor considers a prudent cash reserve to be between one to two times a board's annual expenditures. In 2003, the PERD review found that the Board's expenses exceeded receipts in 2000 and 2001, and in 2001 the Board's cash balance dropped below its annual expenditures. Therefore, the 2003 review recommended the Board raise its fees to ensure it remained financially solvent. The Board complied with this recommendation and raised its fees accordingly (see Table 5). As listed in Table 4 above, for the past three years the Board's end-of-year cash balance exceeds twice the total expenditures. The largest end-of-year cash balance in 2012 is over three times the largest total expenditures in 2009. Although it was clearly necessary for the Board to raise fees, it appears that the current fee structure is adequate to operate the Board.

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*Although it was clearly necessary for the Board to raise fees, it appears that the current fee structure is adequate to operate the Board.*

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**Table 5**  
**Board of Registration of Foresters**  
**Comparison of Fees**

Fees	2003	2013
Application Fee	\$50	\$50
Annual Renewal Fee	\$15	\$35
Late Fee	\$3	\$10
Exam Fee*	N/A	\$100

\*According to the Board, exams were scheduled to start in December 2013.  
Source: 2003 PERD review, the Board's Legislative Schedule of Fees

*In evaluating the finances of the Board, the Legislative Auditor found some certain aspects of the Board's finances that indicate a low risk of fraud.*

In evaluating the finances of the Board, the Legislative Auditor found some certain aspects of the Board's finances that indicate a low risk of fraud. Like other regulatory boards, the Board has a relatively few board members (five) and the Secretary Treasurer for the Board performs all financial duties. While this would normally increase the potential for fraud, in this instance the risk is offset by the fact that the entire Board conducts an annual self-audit of financial records. The Legislative Auditor calculated the minimum expected revenue for the Board by multiplying the annual renewal fee (\$35) by the number of individuals on the Board's register, and determined that the minimum expected revenue is lower than the actual revenue, which indicates a lowered risk of fraud (see Table 5). Furthermore, the Legislative Auditor evaluated the Board's 2012 expenditures and found over 90% of the Board's budget consisted of unquestionable expenditures, which further lowers the risk of fraud.

*Despite these findings, the Board is still at risk for fraud, and should consider adopting additional steps to further reduce the potential for fraud.*

**Table 6**  
**Evaluation of Fraud Risk**

2012-2013 Members	Annual Renewal Fee	2012 Expected Revenue	2012 Actual Revenue
390	\$35	\$13,650	\$15,891

Source: The Board's Schedule of Fees and 2013 Annual Report

Despite these findings, the Board is still at risk for fraud, and should consider adopting additional steps to further reduce the potential for fraud. The Board does not utilize the State Treasurer's lockbox system, wherein licensees mail fees directly to a post office box accessible only by the State Treasurer. The lockbox system lowers the potential for fraud

in smaller regulatory boards that do not have segregation of duties. The Board also does not deposit all fees within 24 hours of receipt, which further increases the potential for fraud. Furthermore, the Board could establish an online system wherein licensees can pay their fees directly to the State Treasurer. **Therefore, the Legislative Auditor recommends the Board reduce the potential for fraud by utilizing the State Treasurer’s lockbox system, depositing all fees within 24 hours of receipt, and allowing licensees to pay fees online.**

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*The Legislative Auditor recommends the Board reduce the potential for fraud by utilizing the State Treasurer’s lockbox system, depositing all fees within 24 hours of receipt, and allowing licensees to pay fees online.*

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## **The Board Has Established Continuing Education Requirements**

The Board has established continuing education requirements for its licensees. Each registered forester is required to obtain at least 10 Continuing Forestry Education (CFE) hours per year. As stated in the Board’s procedural rules, all CFEs must be recognized by the SAF, a college or university approved by the SAF or by the Board. For its part, the SAF requires its Certified Foresters acquire 20 hours of CFEs per year, twice what the Board requires.

## **The Board Is Not Consistently Adhering to the Open Governmental Proceedings Act**

According to the Open Governmental Proceedings Act (§6-9A), regulatory boards must file meeting notices with the Secretary of State “in a manner to allow each notice to appear on the Secretary of State’s website at least five business days prior to the date of the meeting.” The Board held ten meetings from 2009 to 2013, six of which were filed within the time frame required by West Virginia Code (see Table 6). The Secretary of State’s website lists two of the meetings as non-compliant, which, according to the Secretary of State’s Office, means the board did not file a meeting within the required number of days. The website does not list two of the meetings, which, according to the Secretary of State’s Office, means the Board did not file a meeting notice. **Therefore, the Legislative Auditor recommends the Board file meeting notices with the Secretary of State within the time frame required by the Open Governmental Proceedings Act.**

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*Board held ten meetings from 2009 to 2013, six of which were filed within the time frame required by West Virginia Code.*

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**Table 7  
Board Meeting Notices (2009-2013)**

Date	Filed on time	Filed late	Not filed
2009 – April	X		
2009 – October			X
2010 – April	X		
2010 – October	X		
2011 – April			X
2011 – October	X		
2012 – April		X	
2012 – October	X		
2013 – April		X	
2013 – October	X		
<b>Total</b>	<b>6</b>	<b>2</b>	<b>2</b>

*Source: West Virginia Secretary of State – Online Data Services*

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*The Legislative Auditor recommends the Board file meeting notices with the Secretary of State within the time frame required by the Open Governmental Proceedings Act.*

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## Despite Its Attempts, the Board Is Not Listed in the Charleston Phone Directory

The Board is currently not listed in the Charleston phone directory, as required by West Virginia Code §30-1-12. In 2011, the Board applied for a listing under the government pages of the Charleston area Yellow Pages, but Yellow Pages cannot locate the listing in their database. As such, the Board's phone number is available on its website, but the number is not listed in any Charleston phone directory. According to the Yellow Pages, the Board of Foresters can add its cell phone number to the directory either online or by phone.

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*The Board is currently not listed in the Charleston phone directory, as required by West Virginia Code §30-1-12.*

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## The Board's Register Requires Additional Data

The Board has a register of all applicants for licensure, which contains the name, license number, address, and license status of each individual, as required by West Virginia Code §30-1-12. However, Code also requires that these registers must also contain the age, date of application, and the date the Board either approved or rejected the

application, which is currently missing in the Board's register. **Therefore, the Legislative Auditor recommends the Board adhere to Code by including in its register the applicant's age, date of application, and the date the Board either approved or rejected the application.**

## Conclusion

The Board is in compliance with most of the general provision of Chapter 30 of the West Virginia Code. The Board is accessible to the public, financially self-sufficient, addresses complaints in a timely manner, and has established continuing education. However, the Board needs to improve its internal controls for finances, include additional information in its register, file meeting notices in accordance with the Open Governmental Proceedings Act.

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*The Legislative Auditor recommends the Board adhere to Code by including in its register the applicant's age, date of application, and the date the Board either approved or rejected the application.*

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## Recommendations

2. *The Board should reduce the potential for fraud by utilizing the State Treasurer's lockbox system, deposit all fees within 24 hours of receipt, and allow licensees to pay fees online.*
3. *The Board should include in its register the applicant's age, date of application, and the date the Board either approved or rejected the application, as required by West Virginia Code §30-1-12(a)*
4. *The Board should file meeting notices with the Secretary of State within the time frame required by the Open Government Proceedings Act.*



## ISSUE 3

### The West Virginia Board of Registration for Foresters Website Needs Improvement

#### Issue Summary

The Legislative Auditor’s Office conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia’s state agency websites (see Appendix C). The assessment tool lists several website elements. Some elements should be included in every website, while other elements such as social media links, graphics and audio/video features may not be necessary or practical for state agencies. Table 7 indicates that the Board integrates 36 percent of the checklist items in its website. This measure shows that the Board needs to make more improvement in the user-friendliness and transparency of its website.

*This measure shows that the Board needs to make more improvement in the user-friendliness and transparency of its website.*

Table 8 Board Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	<b>36%</b>		
<i>Source: The Legislative Auditor’s review of the Board’s website</i>			

#### The Board’s Website Scores Relatively Low in User-Friendliness and Transparency

In order for citizens to engage with a board online, they should be able to gain access to the website and to comprehend the information posted there. Therefore, the website should be designed with the public in mind. A user-friendly website employs up-to-date software applications, is readable, well-organized and intuitive, provides a thorough description of the organization’s role, displays contact information prominently and allows citizens to understand the organization of the board. Governmental websites should also include budget information and income sources to maintain transparency and the trust of citizens. The Legislative Auditor reviewed the Board’s website for both user-friendliness and transparency. As illustrated below in Table 8, the website requires improvement to increase its user-friendliness and transparency. **The Board should consider making website improvements to provide a better online experience for the public and for its licensees.**

**Table 9**  
**Website Evaluation Score**

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	4	22%
Transparent	32	14	44%
<b>Total</b>	<b>50</b>	<b>18</b>	<b>36%</b>

*Source: The Legislative Auditor's review of the Board's website*

## The Board's Website Is Navigable, But Needs Additional User-Friendly Features

The Board's website is easy to navigate as there is a link to every page on the left-hand side; however, the page lacks a search tool that acts as an index of the entire website. According to the Flesch-Kincaid Reading Test, the average readability of the text is on a 9<sup>th</sup> grade reading level, making it readable for the majority of citizens.

### User-Friendly Considerations

The following are a few attributes that could lead to a more user-friendly website:

- **Search Tool** – A search box, preferably on every page.
- **Foreign Language Accessibility** - A link to translate all webpages into languages other than English.
- **Site Functionality** – The website should use sans serif fonts, include buttons to adjust the font size, and resizing of text should not distort site graphics or text.
- **Mobile Functionality** - The Board's website is available in a mobile version and/or the agency has created mobile applications (apps).
- **FAQ Section** – A page that lists the Board's most frequent asked questions and responses.

## The Board's Website Is Transparent, But Could Provide Additional Information

A website that is transparent will have elements such as email contact information, the location of the agency, the agency's phone number, as well as public records, the budget and performance measures. The Board's website has only 44% of the core elements that are necessary for a general understanding of the Board.

### Transparency Considerations

The Board should consider providing additional elements to create a more transparent website. The following are a few attributes that could be beneficial to the Board in increasing its transparency:

- **FOIA information** – Information on how to submit a FOIA request, ideally with an online submission form.
- **e-Publications** - The Board's annual report, ideally in a downloadable format.
- **Privacy Policy** - A clear explanation of the agency/state's online privacy policy.
- **Administrators biography** - A biography explaining the administrators professional qualifications and experience.
- **Performance measures/outcomes** - A page linked to the homepage explaining the agencies performance measures and outcomes.
- **Agency history** - The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.

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*The Board's website has only 44% of the core elements that are necessary for a general understanding of the Board.*

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## Conclusion

The Legislative Auditor finds that improvements are needed in the areas of user-friendliness and transparency to the Board's website. The website could benefit from incorporating several common website features. The Board has pertinent public information on its website including its mission statement, rules and regulations, a roster of licensees, and registration requirements for applicants. The Board's contact page

has the Board office's email, telephone number, and an online complaint form. This provides citizens with several options to communicate with the Board. However, the Board's website does not provide a privacy policy or annual reports, and users will not have access to search functionalities, foreign-language capabilities, graphics capabilities, mobile functionality, or an FAQ section. Providing website users with these additional elements and capabilities would greatly improve user-friendliness. Based on the results of this website evaluation, **the Legislative Auditor recommends that Board enhance the user-friendliness and transparency of its website by incorporating more of the website elements identified.**

## **Recommendation**

5. *The Legislative Auditor recommends that the Board of Registration for Foresters should consider enhancing the user-friendliness and transparency of its website by incorporating more of the website elements identified.*

## 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  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

December 23, 2013

Dr. John R. Brooks, President  
West Virginia Board of Registration for Foresters  
P.O. Box 1032  
Ripley, WV 25271

Dear President Brooks:

This is to transmit a draft copy of the Regulatory Board Review of the West Virginia Board of Registration for Foresters. This report is scheduled to be presented during the January 5-7 interim meeting of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your board be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Monday, December 30<sup>th</sup> to schedule an exact time. If it is convenient for you, this exit conference can be conducted by conference call. In addition, we need your written response by noon on Thursday, January 2<sup>nd</sup> 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 304-340-3192 by Thursday, January 2<sup>nd</sup> to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

Enclosure

cc: Cinda Francis; David Hill; Dr. Gary Miller; Daniel Parker

*Joint Committee on Government and Finance*



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## Appendix B

# Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the West Virginia Board of Registration for Foresters as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the Board of Foresters, as established in West Virginia Code §30-19, is to protect the public through its license process, and to be the regulatory and disciplinary body for foresters throughout the state.

### Objectives

The objectives of this review are to determine if the Board of Foresters should be continued, consolidated or terminated, and if conditions warrant a change in the degree of regulations. In addition, this review is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1 of the *West Virginia Code*, the Board's enabling statute (WVC §30-19), and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A) and purchasing requirements. Finally, it is the objective of the Legislative Auditor to assess the Board's website for user-friendliness and transparency.

### Scope

The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from 2003 to 2013, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of 2009 to 2012, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1) for regulatory boards and other applicable laws, and key features of the Board's website.

### Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

Testimonial evidence gathered for this review through interviews with the Board's staff or other agencies was confirmed by written statements and in some cases by corroborating evidence. PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education. PERD also obtained information from the Association of Consulting Foresters, the Society of American Foresters, the U.S. Forest Service, the U.S. Department of Agriculture, the West Virginia Division of Forestry, the New Jersey Department of Environmental Protection, and the Missouri Department of Conservation. This information was assessed against statutory requirements in §30-1 and §6-9A of the West Virginia Code as well as the Board's enabling statute (WVC §30-19) to determine the Board's compliance with such laws. Some information was also used as supporting evidence to determine the sufficiency and appropriateness of the overall evidence.

The Legislative Auditor compared the Board's actual revenues to expected revenues in order to assess the risks of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate. Expected revenues were approximated by applying license fees to the number of licensees for the period of 2012. The Legislative Auditor found the correlation between the Board's revenue and the number of licensees is consistent. Therefore, our evaluation of expected and actual revenues allowed us to conclude that the risks of fraud on the revenue side were at reasonable levels and would not affect the audit objectives, and actual revenues were sufficient and appropriate.

The Legislative Auditor also tested the Board's expenditures for calendar year 2012 to assess risks of fraud on the expenditure side. The test involved determining if verifiable expenditures were at least 90 percent of total expenditures. Verifiable expenditures include: salaries, travel reimbursement, board-member compensation, insurance, office rent and utilities, printing and binding costs, rental fees, and telecommunication costs. The Legislative Auditor determined that during the scope of the review, verifiable expenses were 92% percent of total expenditures. These percentages gave reasonable assurance that the risks of fraud on the expenditure side were not significant enough to affect the audit objectives.

In order to evaluate state agency websites, the Legislative Auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states in regards to e-government. The Legislative Auditor identified three states (Indiana, Maine and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and open government. The Legislative Auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the Legislative Auditor compared the Board's website to the established criteria for user-friendliness and transparency so that the Board's can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix C

### Website Criteria Checklist and Points System

West Virginia Board of Registration for Foresters			
User-Friendly	Description	Total Points Possible	Total Agency Points
<b>Criteria</b>	The ease of navigation from page to page along with the usefulness of the website.	<b>18</b>	<b>4</b>
		<b>Individual Points Possible</b>	<b>Individual Agency Points</b>
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	0 points
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	1 point
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0 points
Content Readability	The website should be written on a 6 <sup>th</sup> -7 <sup>th</sup> grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	0 points
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page.	1 point	0 points
Mobile Functionality	The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	0 points

<b>West Virginia Board of Registration for Foresters</b>			
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2 points
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	0 points
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	1 point
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0 points
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0 points
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0 points
<b>Transparency</b>	<b>Description</b>	<b>Total Points Possible</b>	<b>Total Agency Points</b>
<b>Criteria</b>	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	<b>32</b>	<b>14</b>
		<b>Individual Points Possible</b>	<b>Individual Agency Points</b>
Email	General website contact.	1 point	1 point
Physical Address	General address of stage agency.	1 point	1 point
Phone Number	Correct phone number of state agency.	1 point	1 point
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0 points

West Virginia Board of Registration for Foresters			
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2 points
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0 points
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0 points
Public Records	<p>The website should contain all applicable public records relating to the agency's function. If the website contains more than one of the following criteria the agency will receive two points:</p> <ul style="list-style-type: none"> <li>• Statutes</li> <li>• Rules and/or regulations</li> <li>• Contracts</li> <li>• Permits/licensees</li> <li>• Audits</li> <li>• Violations/disciplinary actions</li> <li>• Meeting Minutes</li> <li>• Grants</li> </ul>	2 points	2 points
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	1 point
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	1 point
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1 point
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1 point
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	0 points
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	1 point
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0 points
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0 points

West Virginia Board of Registration for Foresters			
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0 points
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0 points
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0 points
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	2 points
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0 points

## Appendix D Complaint Data

<b>Board Complaints July 2003-June 2013</b>			
<b>Date Received</b>	<b>Nature of Complaint</b>	<b>Action Taken</b>	<b>Date Resolved</b>
10/9/2003	WVFA was listing individuals in their newsletter as Foresters who were not licensed	Sent a letter to WVFA informing them of the violation	11/1/2003
10/9/2003	Using title of Forester without being licensed (several individuals)	Sent a letter informing them of the complaint	4/8/2004
4/8/2004	Using title of Forester without being licensed (two individuals)	Sent a letter informing them of the complaint	10/14/2004
4/13/2006	Board of Surveyors noted a licensed Forestry Technician was advertising "marking boundary lines" which can only be done by a licensed surveyor.	Sent a letter to Board of Surveyors and individual in question regarding the complaint	10/12/2006
4/13/2006	Board of Surveyors noted that a publication by a private company contained language they perceived as giving the impression to landowners that they can mark their own boundary lines	Sent a letter to Board of Surveyors and individual in question regarding the complaint	10/12/2006
10/12/2006	Board of Surveyors noted a licensed Forestry Technician was advertising "marking boundary lines" which can only be done by a licensed surveyor.	Sent a letter to Board of Surveyors and individual in question regarding the complaint	4/12/07 (4/9/2009 - received notice that complaint had been dropped)
10/17/2008	Notified of a non-licensed individual advertising as a "Forester"	Sent a letter informing them of the complaint and also the State Board of Foresters of Maryland, the state of the complainant's residence.	4/9/2009
10/8/2009	Notified of a civil suit brought against a non-licensed forester	Sent a letter to attorney involved in the civil suit and the individual in question informing them of the complaint and violation in question	*never received a response regarding licensing, but since individual resides in another state, he simply stopped working in WV.

<b>Board Complaints July 2003-June 2013</b>			
<b>Date Received</b>	<b>Nature of Complaint</b>	<b>Action Taken</b>	<b>Date Resolved</b>
4/19/2011	Received complaints regarding three individuals advertising as a "Forester" without being licensed	Sent letter to all three individuals informing them of the complaint	10/13/2011
11/21/2011	Received official written complaint regarding a complaint against a licensed forester who is delinquent on his registration.	Sent letter to the persons filing the complaint and the individual in question	12/7/2011 (7/26/12- received his renewal form and appropriate CFEs and fee to get back in good standing)

## Appendix E

### SAF Fees and Board Fees

<b>West Virginia Board of Registration for Foresters (Board) Schedule of Fees</b>	
Description	Cost
Examination fee to be certified as a registered forester	\$100
Application fee to be certified as a registered forester or forestry technician	\$50
Annual certification renewal fee	\$35
Late renewal fee <i>Plus a \$10 late fee for each 12 months late not to exceed \$50</i>	\$10
<i>Source: Code of State Regulations, Title 200, Series 4</i>	

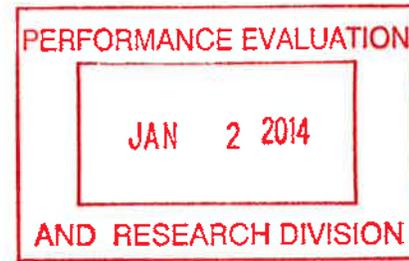
<b>Society of American Foresters (SAF) Schedule of Fees</b>	
Description	Cost
Application fee to be a Certified Forester <i>Includes exam fee</i>	SAF members: \$260 Non-SAF members: \$335
Recertification every three years.	SAF members: \$50 Non-SAF members: \$75
Annual renewal fee	SAF members: \$35 Non-SAF members: \$60
Late renewal fee <i>Plus a \$10 late fee for each 12 months late not to exceed \$50</i>	\$10
<i>Source: SAF website, <a href="http://www.safnet.org/certifiedforester/become/faq.cfm#ques_18">http://www.safnet.org/certifiedforester/become/faq.cfm#ques_18</a></i>	



## Appendix F Agency Response

January 2, 2014

John Sylvia  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610



Mr. Silvia,

The West Virginia Board of Registration for Foresters has received and reviewed the audit conducted by the Regulatory Board of Review and would like to respond to your evaluation.

To suggest that the public cannot be harmed by someone who “practices” forestry without formal training shows pure ignorance of our profession. For example, picture a landowner who seeks advice from a person who claims to be a forester, but in reality has no training or experience in the biology, ecology, economics, or ethics of professional forestry. If the landowner follows the advice of such an individual, the harm to the landowner is likely to include a dramatic reduction in land value, a dramatic loss of species diversity, a dramatic loss of wildlife food and habitat, a dramatic loss of revenue for decades, a dramatic loss of soil stability, and a dramatic reduction in stream quality. While the loss to the landowner may be limited to his or her lifetime, the loss of the land’s productivity will likely affect the economy and citizens of West Virginia for generations. Once forestland is abused and exploited, science has shown that its productivity and desirability is not easily recovered without expensive remedial prescriptions. We believe the analysts have failed to consider the consequences of their recommendation. In fact, we believe their recommendation has the potential to do great harm to the natural resources in West Virginia. Perhaps the analysts do not realize that forests cover 78 percent of the land area in West Virginia and that the vast majority of those forests are privately owned. Their recommendation suggests that private landowners in West Virginia should follow the advice of anyone who claims to be a forester. The spirit of the statute that created the West Virginia Board of Registration for Foresters (WVBORF) was not merely protection of the title “forester.” The spirit of the statute was protection of the citizens and natural resources of West Virginia by assuring the public that the title of forester may only be used by a reputable person who has the proper training, knowledge, and experience in the science and application of forestry. Their recommendation would return West Virginia to the days when science played no role in the management of forest resources, essentially eliminating an important safeguard in protecting landowners and their land from charlatans. Their lack of intellectual curiosity about the complexity of the forestry profession and their recommendation to allow anyone to practice forestry will likely cause great harm to the public. The Board of Registration for Foresters and its fifty-year history is an outgrowth of the need to encourage high professional standards among those who are the managers of a resource that supports a three billion plus dollar industry (prior

to the depression of 2008 that the industry is just now exiting) in West Virginia. That alone is enough to warrant the State's interest in supporting the continuance of this Board.

**The Board of Foresters Primarily Provides Title Protection (page 2):**

It is obvious by state code that this aspect of Board's responsibility is straight forward. However, this is only part of the story. In the past 10 years the Board has established itself as the clearing house for qualified forest managers in which the public is directed by the Board's web site, phone referrals, practicing foresters, state forestry education organizations and state forestry organizations to utilize these professionals. Although state code does allow for the public to utilize any person for natural resource management, the Board has elevated itself as the accepted agency for professional foresters, although quantification of these observations would be difficult to ascertain. Review of the state timbering notification forms would be one possible source for evaluation, though response time to this audit does not permit such a determination. An additional reference is made to the low number of complaints reviewed by this Board. However, no quantification was made of the number of complaints reviewed by either ACF or SAF within the state. We would argue that the number handled by the Board is larger than that handled by these national organizations, thus implying the importance of this Board in handling public complains in the state. The analysts say WVBORF receives few formal complaints, implying that the Board is not needed. This fact SUPPORTS keeping the Board in place. The system works. Foresters in West Virginia register with the Board to PROTECT their profession. And they notify the Board when someone claims to be a forester who is not registered. The analysts imply that some foresters practice in West Virginia without being registered. To our knowledge, that situation only occurs on federal land, i.e., federal foresters practicing on federal land exclusively. Federal foresters who also practice on private land are registered with the Board. This subset of compliance is more proof of an effective regulatory Board.

**National Forestry Organizations Already Register Foresters (page 3):**

The Board agrees that many foresters registered in West Virginia are also members of national organizations such as SAF and/or ACF. As for the ACF, considering their standards for membership, after you remove government and industry foresters, forestry technicians, and 2+2 foresters, there are only a few consulting foresters that meet the ACF membership requirements. As for SAF, this is a more complicated situation. Membership in this national organization does not guarantee that members are well trained natural resource managers as membership is open to many college majors, including agricultural education, atmospheric and climate science, environmental education, fisheries, geography, geology, marine biology and wildlife biology to name a few. These majors do not have the professional training required to manage 80% of the land base in West Virginia. In addition, there is no requirement that the college attended is one of the nationally SAF accredited institutions. Even if the SAF Certified Forester classification is attained, this does not ensure that those possessing the CF title have the appropriate educational background in forest management as the SAF CF educational requirement does not require a degree from an accredited institution. One could become certified by passing the CF examination when their degree is not in forestry but have completed a minimum of 56 credit

hours in forestry-related coursework. The WVBORF requires a degree from an SAF accredited institution, work experience, continuing forestry education and recommendations from professionals in forest management. The current cost of SAF membership, CF exam and one year of annual CF fees is approximately \$395. The WVBORF would require \$150 for an application and exam, thus minimizing the financial impact to our constituents as well as providing better qualified natural resource managers. The Board has responded to the 2003 PERD request to maintain 1 to 2 years of anticipated expenses and thus the fact that the Board does conduct itself in a good fiscal manner, limits any financial impact to the state.

#### **Closing the Board Will Not Impact Federal Funding or Program (page 4):**

The analysts claim that West Virginia would not lose federal funds if the WVBORF is sunset. Currently, most cost-share funds available to West Virginia landowners are from federal programs. If the WVBORF is sunset, West Virginia has no mechanism in place to approve stewardship plans so that landowners can get these funds. Pennsylvania has no registration at this time, but such plans must be still be approved by state-approved foresters to meet federal guidelines. Indirectly, Pennsylvania and West Virginia have similar systems for approving plans. If West Virginia drops the WVBORF, then a new system is needed to recognize state-approved foresters for approving plans. The current argument can be made for WV DEP approval for forestry post-mining use of a surface mine. It is curious that the state of West Virginia is investigating the sunseting of its Board of Registration for Foresters while both Pennsylvania and Ohio are moving toward creating such an organization and while Michigan, New Hampshire, Connecticut, Massachusetts, Maryland, North Carolina, South Carolina and Georgia already have such boards.

#### **A Large Majority of Foresters Operate Under Supervision (page 5):**

The auditors indicate that only 14% of current registered foresters were self-employed, leaving a vast majority of foresters in supervised positions. Although this is what the data indicated, it is not really a good picture of our current status. The data was based on self reporting and many, if not most of those who reported their occupation as consultants are also self-employed. In addition, many who reported their occupation as "Forest Industry" or "Oil and Gas" may be the only forester working with their company with very limited forestry professional supervision. Just including the "consultants" group with "self-employed" would push the percentage to approximately 30% which would be a conservative estimate in our opinion. This represents a significant increase from 12% in 2003, which we believe better reflects the changes within the state over the past 10 years.

#### **Conclusion**

The Board strongly disagrees with the results obtained by the West Virginia PERD. In the methodology section the PERD utilized New Jersey and Arkansas agencies as a bench mark as part of this review. Neither of these state compare to the forest or forest industries in West

Virginia, Pennsylvania, Ohio, Maryland, Virginia, or North Carolina would have been better choices. The Board feels that during the past 10 years we have elevated the professional forestry standards in the state of West Virginia and the general public, who control most of our forestland, have utilized this Board as a means of assurance that those who they contract for forestry management are qualified professional foresters. No other national forestry organization (SAF or ACF) can meet these same criteria due either to their membership requirements (only a small proportion of existing foresters would qualify to be members of ACF) or due to their non-restrictive membership requirement, as stated previously. It has been stated many times in the WV PERD report that the SAF education requirement requires a degree from an SAF accredited institution – close examination of their requirements will show that this is not true. In addition, the auditors concluded that no federal funding is at risk if the Board is sunset, we disagree as there is no current replacement option for the Board. Removing the current mechanism for approving professional foresters requires the state to implement a replacement mechanism. We believe the current mechanism, i.e., WVBORF, is fully effective in recognizing state-approved foresters. We believe it is superior to states that lack registration because the West Virginia mechanism involves the advice and consent of the public through its elected legislature as well as an independent Board elected by forestry professionals throughout the state. Some states recognize competent foresters by executive branch regulation alone, while WV recognizes competent foresters through the legislative approval process involving both the legislative and executive branches embodied in the statute that initially created the WVBORF.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Dr. John R. Brooks". The signature is stylized with large, overlapping loops and a long horizontal stroke at the end.

Dr. John R. Brooks  
President  
WVBORF



WEST VIRGINIA LEGISLATIVE AUDITOR

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