

Interim Committee on Agriculture & Agribusiness

Interim Report to the Joint Committee on Government and Finance
January 9, 2006

Senate Members

Senator Edgell, Chair
Senator Bailey
Senator Dempsey
Senator Love
Senator Facemyer
Senator Guills

House Members

Delegate Stemple, Chair
Delegate Beach, Vice Chair
Delegate Tabb
Delegate Williams
Delegate Proudfoot
Delegate Pethel
Delegate Anderson
Delegate Boggs
Delegate Hamilton
Delegate Schoen

Introduction

During the 2006-2007 interim period, the Joint Committee on Government and Finance directed the Agriculture and Agribusiness interim committee to consider:

Senate Concurrent Resolution 69 - Requesting the Joint Committee on Government and Finance to study voluntary farmland protection.

The Committee heard testimony regarding several topics, including: chronic wasting disease; voluntary farmland protection programs; the Asian lady beetle; alternative fuels including ethanol; the status of the bee industry; the protection of livestock from coyotes; and the agricultural lime regulations.

Site Visitation

During the August interims, a site visitation was conducted at the West Virginia Aqua LLC facility. West Virginia Aqua LLC is an aquaculture company located in Logan County which produces the Isis Arctic Char. The aqua farm raises more than 450,000 pounds of Arctic Char every year. Isis Arctic Char is the only brand of freshwater Arctic Char produced east of the Mississippi and it is produced year round.

Guest Presentation

During the September interims, the committee invited Sandra Robison, Director of

Pennsylvania's Farmland Protection program, to discuss the program with the committee. The Pennsylvania Agricultural Conservation Easement Purchase Program was developed in 1988 and has protected the most farmland in the United States. The first easements were purchased in 1989. Counties participating in the program have appointed agricultural land preservation boards with a state board created to oversee this program. The state board is responsible for distribution of state funds, approval and monitoring of county programs and specific easement purchases.

West Virginia's Voluntary Farmland Protection Programs

West Virginia is losing farmland. From 1964 to 1997, the U.S. Department of Agriculture reports that West Virginia lost 17,732 farms and 1,823,060 acres of farmland. From 1982 through 1997, twenty-five of the most productive counties in West Virginia had a combined loss of 103,519 acres of productive farmland. Forty percent of the loss came from the three county eastern panhandle area. The U.S. Department of Agriculture also reports that West Virginia lost 21,676 acres of orchard land from 1964 to 1997. To address the loss of agriculture land and woodland as open space, the West Virginia legislature passed the Voluntary Farmland Protection Act into law on March 10, 2000.

The Farmland Protection Programs established by each county and the State Authority set uniform standards and guidelines for the eligibility of properties and the ranking criteria utilized to prioritize funds allocation to purchase conservation easements, or to pay associated costs for the purchased or donated easements. The guidelines established by the various programs outline the methods of farmland protection available to prospective participating property owners, and the procedures to be followed in applying for program consideration.

Nonnative Species

During the December interims, Steve Hannah, Deputy Commissioner Department of Agricultural, discussed the nonnative species bill. Nonnative species are not domesticated and their behavior is unpredictable. Nonnative species present health concerns to humans and to our agricultural industry.

Interim Legislation

The Committee had under consideration the nonnative specie bill and an update to the agricultural liming law. Both bill were adopted by the committee and recommended for passage during the 2007 Regular Session.

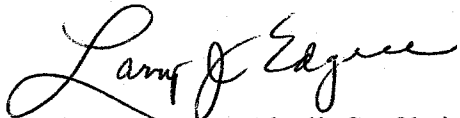
Conclusions and Recommendations

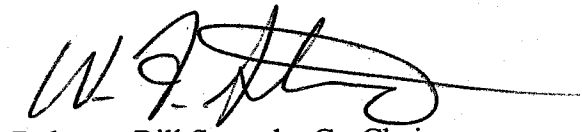
The Committee requested additional information from several of the aforementioned presenters and all handouts and information contained in the minutes for the meetings are on file in

the office of the Interim Committee on Agriculture & Agribusiness. The Committee makes the following recommendations:

- That the Department of Agricultural receive \$75,000 in additional appropriations for the Apiary industry;
- That consideration be given to finding a funding source for the West Virginia Farm Land Protection Authority including but not limited to a bond levy or a title transfer tax; and
- That the Department of Administration consider selling West Virginia farm products in the capitol cafeteria.

Respectfully Submitted,


Senator Larry Edgell, Co-Chair


Delegate Bill Stemple, Co-Chair

1 HB/SB

2 (By Delegates/Senators)

3 [Introduced ,2007]

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10 A BILL to amend and reenact §19-15A-1, §19-15A-2, §19-15A-3, §19-
11 15A-4, §19-15A-5, §19-15A-6, §19-15A-7, §19-15A-8, §19-15A-9,
12 and §19-15A-10 of the Code of West Virginia, 1931, as amended,
13 all relating to the regulation of agricultural liming
14 materials; updating definitions;

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

16 That §19-15A-1, §19-15A-2, §19-15A-3, §19-15A-4, §19-15A-5,
17 §19-15A-6, §19-15A-7, §19-15A-8, §19-15A-9, and §19-15A-10 of
18 the code of West Virginia, 1931, as amended, be amended and
19 reenacted, all to read as follows:

20 **ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.**

21 **§19-15A-1. Definitions of words and terms.**

22 As used in this article:

23 (a) "Agricultural liming material" means a product with
24 ~~calcium or~~ that contains calcium and magnesium carbonate, hydroxide

1 ~~or oxide, which is~~ ~~compounds which are~~ capable of neutralizing
2 soil acidity. ~~and which are intended to be used to neutralize soil~~
3 ~~acidity.~~

4 (b) "Brand" means the term, designation, trademark, product
5 name or other specific designation under which individual
6 agricultural liming materials are offered for sale.

7 (c) "Bulk" means ~~agricultural liming~~ materials in nonpackaged
8 form.

9 (d) "Burnt lime" means a ~~material, made from limestone which~~
10 ~~consists essentially of calcium oxide or a combination of calcium~~
11 ~~oxide with magnesium oxide~~ calcined material comprised chiefly of
12 calcium oxide in natural association with lesser amounts of
13 magnesium, and which is capable of slaking with water.

14 (e) "Calcium carbonate equivalent" ~~means the acid neutralizing~~
15 ~~capacity of agricultural liming material expressed as the weight~~
16 ~~percentage of calcium carbonate~~ (CCE) is an expression of the acid
17 neutralizing capacity of an agricultural liming material relative
18 to that of a pure calcium carbonate, expressed as a percentage.

19 (f) "Commissioner" means the Commissioner of Agriculture of
20 the state of West Virginia or his or her duly authorized agent.

21 (g) "Distributor" means any person who sells or offers for
22 sale agricultural liming products that are registered pursuant to
23 this article, ~~Exempted from this definition are~~ but does not
24 include persons who retail registered products in non-bulk form to

1 the ultimate consumer.

2 (h) "Dolomite" means an agricultural liming material composed
3 chiefly of carbonates of magnesium and calcium in substantially
4 equimolar (1-1.19) proportions.

5 (i) "Embargo" means an order prohibiting the sale, processing,
6 mixing, transporting and use of any product.

7 ~~(j) "Fineness classification" means the designation given to~~
8 ~~the product by the percentage by weight of the material which will~~
9 ~~pass U.S. standard sieves of specific sizes.~~

10 (k) "Ground shells" means a material obtained by grinding the
11 shells of mollusks.

12 (l) "High calcic liming material" means an agricultural liming
13 material containing at least twenty-five percent calcium and at
14 least ninety-one percent of the total calcium and magnesium is
15 calcium.

16 (m) "High magnesian liming material" means an agricultural
17 liming material containing at least six percent magnesium.

18 (n) "Hydrated lime" means a material made from burnt lime.
19 ~~which consists essentially of calcium hydroxide or a combination of~~
20 ~~calcium hydroxide with magnesium oxide and magnesium hydroxide, or~~
21 ~~both magnesium oxide and magnesium hydroxide.~~

22 (o) "Industrial Co-Product" means any industrial waste or by-
23 product containing calcium or calcium and magnesium in forms that
24 will neutralize soil acidity, which may be designated by prefixing

1 the name of the industry or process by which it is produced
2 including but not limited to: gas-house lime, tanners' lime,
3 acetylene lime-waste, lime-kin ashes and calcium silicate.

4 ~~(o)~~ (p) "Label" means any written or printed matter on or
5 attached to the package or on the delivery ticket which accompanies
6 bulk shipments.

7 ~~(p)~~ (q) "Limestone" means a material consisting essentially of
8 calcium carbonate or a combination of calcium carbonate with
9 magnesium carbonate capable of neutralizing soil acidity.

10 ~~(q)~~ (r) "Marl" means a granular or loosely consolidated earthy
11 material composed largely of shell fragments and calcium carbonate
12 precipitated in ponds.

13 ~~(r)~~ (s) "Percent or percentage" means ~~percent or percentage a~~
14 part of a whole expressed in hundredths by weight.

15 ~~(s)~~ (t) "Person" means any individual, partnership,
16 association, fiduciary, firm, corporation or any organized group of
17 persons whether incorporated or not.

18 ~~(t)~~ (u) "Registrant" is a person who registers agricultural
19 liming materials by product and is responsible for the guarantee of
20 ~~such the~~ product.

21 ~~(u)~~ "Slag" means ~~any industrial waste or by-product containing~~
22 ~~calcium or calcium and magnesium in forms that will neutralize soil~~
23 ~~acidity.~~

24 (v) "Type" means the designation given to the product from its

1 source material.

2 (w) "Ton" means a weight of two thousand pounds avoirdupois.

3 (x) "Weight" means the weight of undried liming material as
4 offered for sale.

5 **§19-15A-2. Registration of brands; registration fees.**

6 (a) ~~No~~ Agricultural liming material ~~shall~~ may not be used,
7 sold or offered for sale in the state unless it has been registered
8 with the commissioner.

9 (b) Application for registration shall be made to the
10 commissioner on forms approved or supplied by the commissioner.
11 Each separately identified agricultural liming material shall be
12 registered before being distributed or used in the state.

13 (c) The commissioner shall collect a ~~twenty five dollar~~
14 registration fee for each brand of the agricultural liming material
15 registered, and ~~the commissioner shall collect a ten dollar~~
16 registration fee from all distributors of agricultural liming
17 materials. The commissioner shall set the registration fees by
18 legislative rule.

19 (d) All registrations shall expire at the end of the calendar
20 year of issue unless sooner revoked by the commissioner as provided
21 in section six of this article.

22 (e) Valid registrants of agricultural liming materials are
23 exempt from obtaining a distributors permit, unless distributing
24 another registrants product.

1 **§19-15A-3. Required labeling; toxic materials prohibited.**

2 (a) ~~No~~ A person ~~shall~~ may not sell, offer to sell, or expose
3 for sale in the state any agricultural liming materials which do
4 not have affixed to the outside of each package in a conspicuous
5 manner a plainly printed, stamped or otherwise marked label, tag or
6 statement, or in the case of bulk sales, a delivery invoice
7 including at least the following:

8 (1) The name and principal business address of the
9 manufacturer or distributor.

10 (2) The brand name of the agricultural liming material.

11 (3) The identification of the product as to the type of liming
12 material.

13 (4) The net weight of the agricultural liming material.

14 (5) The minimum percentage of calcium oxide and magnesium
15 oxide or calcium carbonate and magnesium carbonate. ~~or total~~
16 ~~elemental calcium and total elemental magnesium.~~

17 (6) The calcium carbonate equivalent as determined by methods
18 prescribed by the ~~association of official analytical chemists~~ AOAC
19 International.

20 (7) The minimum percent by weight passing through United
21 States standard sieves.

22 (8) The fineness classification of the material.

23 (b) A copy of the statement provided for in subsection (a)
24 shall be posted for each brand sold in bulk at each site where

1 purchase orders are accepted or from which deliveries for such
2 liming materials are made.

3 (c) No information or statement ~~shall~~ may appear on any
4 package, label, delivery invoice or advertisement which gives a
5 false or misleading impression to the purchaser as to the quality,
6 analysis, type or composition of the liming material.

7 (d) When agricultural liming material has been adulterated
8 subsequent to packaging, labeling or loading thereof and before
9 delivery has been made to the consumer, conspicuous, plainly worded
10 notice to that effect shall be affixed by the vendor to the package
11 or delivery invoice to identify the kind and degree of adulteration
12 therein: *Provided*, That ~~no~~ agricultural liming material ~~shall~~ may
13 not be sold or offered for sale in the state which contains toxic
14 materials in quantities injurious to plants or animals when applied
15 according to directions.

16 **§19-15A-4. Inspection fee; report of tonnage; annual report.**

17 (a) ~~The amount of the inspection fee shall be clearly stated~~
18 ~~on~~ Each sales invoice prepared in normal course of business by
19 either a registrant or distributor ~~reflecting~~ shall reflect the
20 amount of ~~said~~ the inspection fee and the name of the payor. ~~of the~~
21 ~~same.~~

22 (b) Within thirty days following the thirtieth day of June and
23 the thirty-first day of December of each year, each registrant and
24 distributor shall submit on a form furnished by the commissioner a

1 summary of tons of each agricultural liming material sold or
2 distributed by ~~him~~ each registrant and distributor in the state
3 during the previous six months' period. ~~Such~~ The report of tonnage
4 shall be accompanied by payment of an inspection fee ~~at the rate of~~
5 ~~five cents per ton~~ as established by legislative rule. If ~~such~~ the
6 tonnage, or portion thereof, has been paid by another person,
7 documentation by invoice must accompany such report. The ~~minimum~~
8 ~~semiannual payment and late fee shall be established by legislative~~
9 ~~rule. shall be ten dollars. The minimum fee is waived if the total~~
10 ~~amount of the semi-annual inspection fee due is two dollars or~~
11 ~~less. A penalty of ten percent of the fees due or ten dollars~~
12 ~~whichever is greater shall be assessed a registrant or distributor~~
13 ~~whose report is not received by the fifteenth day of August and the~~
14 ~~fifteenth day of February each calendar year.~~

15 (c) The commissioner shall publish ~~and distribute at least~~
16 ~~annually~~ on the Department of Agriculture's web site, ~~to each~~
17 ~~agricultural liming material registrant, distributor and other~~
18 ~~interested persons,~~ a composite report showing the net tons of
19 agricultural liming material sold in this state during the
20 preceding period. This report ~~shall in no way~~ may not divulge
21 information that can be related to the business of any individual
22 registrant.

23 **§19-15A-5. Inspection; sampling; analysis.**

24 (a) ~~it shall be the duty of~~ The commissioner shall to audit,

1 inspect, sample, analyze and test agricultural liming materials
2 used, sold or offered for sale within the state as he or she may
3 ~~deem~~ considers necessary to determine whether ~~such~~ the agricultural
4 liming materials are in compliance with the provisions of this
5 article. ~~and~~ For this purpose the commissioner ~~is authorized to~~
6 may enter upon any public or private premises or carriers during
7 reasonable times to inspect and sample liming materials, and to
8 inspect records related to their distribution.

9 (b) The methods of analysis and sampling shall be those
10 approved by the commissioner and guided by the AOAC procedures.
11 ~~association of official analytical chemists or those approved by~~
12 ~~the commissioner.~~

13 (c) The results of official analyses of agricultural liming
14 materials and portions of official samples shall be distributed by
15 the commissioner as he or she ~~may deem~~ considers necessary to carry
16 out the enforcement of this article.

17 (d) The commissioner shall, on request, provide the registrant
18 with a portion of the official sample: *Provided,* That the request
19 ~~be~~ is made within thirty days of the assessment of a violation.

20 (e) ~~The commissioner~~ In determining whether any agricultural
21 liming material is deficient in guarantee, the commissioner shall
22 be guided solely by the official sample.

23 **§19-15A-6. Embargo; suspension or cancellation of registration;**
24 **seizure of materials.**

1 (a) The commissioner ~~is authorized to~~ may suspend or cancel
2 the registration of any brand of agricultural liming material, and
3 ~~to~~ may refuse the application for registration of any brand of
4 agricultural liming material upon being presented satisfactory
5 evidence that the registrant has used false, fraudulent or
6 deceptive practices in the evasion or attempted evasion of the
7 provisions of this article or any ~~regulation issued thereunder~~
8 related rule: *Provided*, That no registration shall be suspended,
9 revoked or refused until the registrant has been given an
10 opportunity to appear for a hearing before the commissioner.

11 (b) The commissioner may issue an embargo order to the owner
12 or custodian of any lot of agricultural liming material when he or
13 she finds said agricultural liming material is being offered or
14 exposed for sale in violation of any of the provisions of this
15 article or ~~the regulations issued thereunder~~ related rule. ~~and such~~
16 The order shall remain in effect until it has been rescinded in
17 writing by the commissioner: *Provided*, That the commissioner ~~shall~~
18 may not rescind any embargo order until the requirements of this
19 article have been complied with and all related costs and expenses
20 ~~incurred in connection therewith~~ have been paid.

21 (c) Any agricultural liming material found to be in violation
22 of the provisions of this article ~~shall be~~ is subject to seizure on
23 complaint of the commissioner to a court of competent jurisdiction
24 in the county in which such agricultural liming material is

1 located. If the court orders the condemnation of such material it
2 shall be disposed of in a manner consistent with the quality of the
3 agricultural liming material and the laws of the state. ~~In no~~
4 ~~instance shall~~ The court may not order the disposition of ~~said~~
5 agricultural liming material ~~be ordered by the court~~ without first
6 giving the ~~claimant~~ owner or custodian an opportunity to apply to
7 the court for release of ~~said~~ the agricultural liming material or
8 for permission to process or relabel ~~said~~ the agricultural liming
9 material to bring it in compliance with this article.

10 **§19-15A-7. Deficiency assessment, tolerances and payment.**

11 (a) A registrant shall pay a deficiency assessment in
12 accordance with the provisions of this section for each lot of
13 agricultural liming material found to be deficient in its
14 guaranteed analysis. Deficiencies existing in more than one
15 component shall be considered additional violations.

16 ~~(b) When the calcium carbonate equivalent is found to be over~~
17 ~~five percent deficient from the stated guarantee, the registrant~~
18 ~~shall pay a deficiency assessment equal to two times the actual~~
19 ~~cash value of the deficiency based on the retail price per ton at~~
20 ~~the distribution point where the official sample was collected.~~
21 ~~The cash value of the deficiency is calculated by multiplying the~~
22 ~~actual percent deficiency, less the five percent taken, times the~~
23 ~~retail price per ton, times the tons in the lot sampled. The~~
24 ~~minimum assessed penalty shall be fifty cents per ton in the lot~~

1 ~~sampled.~~

2 ~~(c) When the product is found to be over five percent~~
3 ~~deficient in one or more of the guarantees for fineness~~
4 ~~classification, a penalty shall be assessed at one dollar per ton~~
5 ~~in the lot sampled.~~

6 ~~(d) When the product is found to be over ten percent deficient~~
7 ~~for one or more of the following guarantees: Calcium oxide,~~
8 ~~magnesium oxide, calcium carbonate, magnesium carbonate, total~~
9 ~~elemental calcium or total elemental magnesium, a penalty shall be~~
10 ~~assessed at one dollar per ton in the lot sampled.~~

11 ~~(e) (b) Such A registrant shall pay the deficiency assessment~~
12 ~~shall be paid to the ultimate consumer of the product, with and~~
13 ~~deliver receipts for the payment ~~thereof being delivered~~ to the~~
14 ~~commissioner. ~~as evidence of payment being made.~~ If said the~~
15 ~~ultimate consumer is not known, the penalty assessed shall be paid~~
16 ~~to the commissioner and deposited as set forth in section nine of~~
17 ~~this article.~~

18 ~~(f) (c) If any a deficiency assessment has not been paid~~
19 ~~within sixty days of the notice of ~~such the~~ assessment, then a late~~
20 ~~payment penalty, as established by legislative rule, ~~of ten percent~~~~
21 ~~~~of the original penalty assessment~~ will be added for each 180 days~~
22 ~~such that the assessment remains unpaid.~~

23 **§19-15A-8. Rule-making Authority.**

24 ~~The commissioner is authorized to issue, after public hearing~~

1 ~~following due notice, and in accordance with the provisions of~~
2 ~~chapter twenty nine a of this code, such regulations in addition to~~
3 ~~any others mentioned elsewhere in the article, as he or she deems~~
4 ~~necessary to implement the full intent and meaning of this article,~~
5 ~~including, but not limited to, minimum acceptable fineness~~
6 ~~classifications and minimum acceptable calcium carbonate~~
7 ~~equivalents for agricultural liming materials.~~

8 The commissioner shall propose rules for legislative approval
9 in accordance with article three, chapter twenty-nine-a of this
10 code to establish, implement and enforce the provisions of this
11 article, which rules shall include, but not be limited to:

12 (1) The minimum acceptable fineness classifications;

13 (2) The minimum acceptable calcium carbonate equivalents for
14 agricultural liming materials; and

15 (3) The establishment of fees required by this article.

16 **§19-15A-9. Disposition of Fees.**

17 Any fees and penalties collected under the provisions of this
18 article shall be deposited with the state treasurer in a special
19 revenue account known as the "Agricultural Fee Fund" as established
20 in article one, chapter nineteen.

21 **§19-15A-10. Penalties.**

22 Any person violating any of the provisions of this article or
23 ~~the regulations issued thereunder~~ related rule shall be guilty of
24 a misdemeanor, and, upon conviction thereof, shall be fined not

- 1 less than \$200 nor more than \$300 for the first offense and not
- 2 less than \$300 nor more than \$1,000 for each subsequent offense.

Note: §19-15A-8 and §19-15A-9 have been completely rewritten therefore strike-throughs and underlines have been omitted.

House Bill/Senate Bill No. _____

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-9B-1, §19-9B-2, §19-9B-3, §19-9B-4, §19-9B-5, §19-9B-6, §19-9B-7, §19-9B-8, §19-9B-9, §19-9B-10, §19-9B-11, §19-9B-12, §19-9B-13, §19-9B-14, §19-9B-15, §19-9B-16, §19-9B-17, §19-9B-18, §19-9B-19, §19-9B-20 and §19-9B-21, all relating to regulating the sale, possession and breeding of nonnative species; defining certain terms; creating the Nonnative Species Regulation Board; establishing duties; establishing a special revenue account and authorizing expenditures; providing rule-making authority; delineating the jurisdiction of member agencies; providing owner liable for the cost of care of seized nonnative species and bonding requirements; requiring pet shop registration, renewal and fee; requiring pet shop to keep records and provide certain notification; requiring permit to possess or breed nonnative species and providing permit application process and permit requirements; providing

1 for exemptions; requiring identification number on nonnative
2 species; establishing caging, care and treatment requirements;
3 requiring liability insurance; authorizing certain
4 inspections; providing for denial of a permit; specifying
5 conditions under which nonnative species may be seized; and
6 establishing civil and criminal penalties.

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

8 That the Code of West Virginia, 1931, as amended, be amended
9 by adding thereto a new article, designated §19-9B-1, §19-9B-2,
10 §19-9B-3, §19-9B-4, §19-9B-5, §19-9B-6, §19-9B-7, §19-9B-8,
11 §19-9B-9, §19-9B-10, §19-9B-11, §19-9B-12, §19-9B-13, §19-9B-14,
12 §19-9B-15, §19-9B-16, §19-9B-17, §19-9B-18, §19-9B-19, §19-9B-20,
13 and §19-9B-21, all to read as follows:

14 **ARTICLE 9B. NONNATIVE SPECIE REGULATION ACT.**

15 **§19-9B-1. Definitions.**

16 As used in this article:

17 (1) "Board" means the Nonnative Specie Regulation Board.

18 (2) "Circus" means an entertainment consisting of trained
19 animal acts and exhibitions of human skill and daring combined with
20 clowns to thrill and amuse an audience. The term excludes
21 carnivals, animal acts and state and county fairs and any other
22 fairs or exhibitions intended to advance agricultural arts and
23 sciences and all other activities determined by the board not to be
24 a circus.

1 (3) "Domestic animal" means an animal which, through extremely
2 long association with humans, has been bred to a degree that
3 resulted in genetic changes affecting the temperament, color,
4 conformation or other attributes of the species to an extent that
5 makes the animal unique and distinguishable from wild members of
6 the species and the animal has federally approved biologics for the
7 treatment and prevention of disease.

8 (4) "Nonnative specie" means any animal, other than a domestic
9 animal or wildlife, and includes crossbreeds of animals that do not
10 occur naturally either presently or historically within the
11 boundaries of this state, as well as, all species listed as
12 threatened or endangered in accordance with 16 U. S. C. §1533 not
13 presently or historically native to this state.

14 (5) "Person" means, but is not limited to, an individual,
15 partnership, limited partnership, corporation, organization, firm,
16 limited liability company, joint venture, association, trust,
17 estate, and any officer, member, shareholder, director, employee,
18 agent or representative who is under a duty to perform or is
19 responsible for the performance of an act prescribed by the
20 provisions of this article.

21 (6) "Pet" means an animal kept by a person for companionship
22 or pleasure rather than for utility.

23 (7) "Pet shop" means a facility where an animal is kept for
24 the purpose of sale. The term excludes a facility subject to the

1 provisions of article twenty or twenty-three of this chapter;

2 (8) "Possess" means to own, harbor, keep, release, exhibit,
3 bring into the state, offer for sale, offer for trade or have
4 custody or control of an animal.

5 (9) "Possessor" means the person who owns, harbors, keeps,
6 releases, exhibits, brings into the state, offers for sale, offers
7 for trade or has custody or control of an animal.

8 (10) "Sale" means and includes, but is not limited to, any
9 transfer of ownership or title, whether for money, exchange for
10 other property or services or without any remuneration.

11 (11) "Wildlife" means wildlife and game fish as those terms
12 are defined in section two, article one, chapter twenty of this
13 code, fish and all animals commonly accepted and documented to live
14 in the wild as part of the present or historic natural fauna of
15 West Virginia.

16 **§19-9B-2. Board created; composition; chair; meetings; duties.**

17 (a) The Nonnative Specie Regulation Board is created.

18 (b) The board shall consist of three members: The Commissioner
19 of the Department of Agriculture, or his or her designee; the
20 Director of the Division of Natural Resources, or his or her
21 designee; and the Commissioner of the Bureau for Public Health, or
22 his or her designee.

23 (c) The board shall designate one of its members in rotation
24 to be chair for a term of two years. In the absence of the chair,

1 any member designated by the members present shall act as chair.

2 (d) The board shall meet as often as necessary at the time and
3 place designated by the chair. Two members shall be present in
4 order to conduct business. All decisions of the board shall be
5 determined by a majority of the members of the board.

6 (e) The board may:

7 (1) Establish requirements for the operation of pet shops
8 selling or breeding nonnative species, including standards of care
9 for those animals;

10 (2) Establish permit requirements for the possession and
11 breeding of nonnative species

12 (3) Grant, deny, suspend, revoke and reinstate possession or
13 breeding permits;

14 (4) Establish standards for the care and treatment of
15 nonnative species;

16 (5) Prohibit the importation of any nonnative species that
17 threatens the public health and safety, endangers wildlife or
18 livestock or may be injurious to the agricultural and forestry
19 industries or other natural resource interests;

20 (6) Investigate alleged violations of the provisions of this
21 article, applicable rules, orders and final decisions of the board;

22 (7) Conduct necessary hearings;

23 (8) Cooperate with appropriate state and federal officials in
24 the investigation and enforcement of violations of this article or

1 comparable acts of other states or the federal government;

2 (9) Examine, seize, test, quarantine or destroy nonnative
3 species which poses a threat to the health and safety of humans,
4 other animals or plant life;

5 (10) Grant exemptions from the requirements of this article;

6 (11) Foster national and international wildlife conservation
7 efforts by controlling the possession and use of nonnative species;
8 and

9 (12) Take all other actions necessary and proper to effectuate
10 the purposes of this article.

11 (f) The members of the board may delegate the duties set forth
12 in this article to staff members within their agencies.

13 **§19-9B-3. Establishment of Special Revenue Fund; authorized**
14 **expenditures.**

15 (a) There is created in the State Treasury a Special Revenue
16 Fund to be known as the "Nonnative Specie Regulation Fees Fund"
17 which shall consist of all fees, civil penalties, assessed costs,
18 any appropriations of moneys to the Fund made by the Legislature,
19 and all interest or other return earned from investment of the
20 Fund.

21 (b) Expenditures from the Fund shall be made by the
22 Commissioner of Agriculture for the purposes set forth in this
23 article.

24 (c) Any balance, including accrued interest and other returns,

1. in the Fund at the end of each fiscal year shall not expire to the
2. General Fund but shall remain in the Fund and be expended as
3. provided by this section.

4. **§19-9B-4. Rule-making authority.**

5. (a) The board may propose rules for legislative approval in
6. accordance with the provisions of article three, chapter
7. twenty-nine-a of this code to implement the provisions of this
8. article.

9. (b) The board may promulgate emergency rules pursuant to the
10. provisions of section fifteen, article three, chapter twenty-nine-a
11. of this code to implement the provisions of this article.

12. **§19-9B-5. Administration of article; jurisdiction of member**
13. **agencies.**

14. (a) The Department of Agriculture is responsible for the
15. administration and enforcement of the provisions of this article.

16. (b) Each member agency may examine, test, seize, quarantine or
17. destroy a nonnative specie which poses a threat to humans,
18. livestock, poultry, other animals, wildlife or the state's
19. agricultural or forestry industries or other natural resource
20. interests. In all cases in which a nonnative specie is destroyed,
21. the member agency shall safely dispose of the remains in accordance
22. with all applicable laws and rules. The agency shall advise the
23. board of action taken pursuant to this subsection no later than
24. forty-eight hours after the incident.

1 (c) Nothing in this article shall affect or abrogate the
2 authority of the Department of Agriculture, the Bureau for Public
3 Health or the Division of Natural Resources to carry out the duties
4 set forth in chapters sixteen, nineteen and twenty of this code,
5 respectively.

6 **§19-9B-6. Costs of care for seized animal; bond; placement.**

7 (a) The owner of a nonnative specie seized by the board is
8 liable for all costs of treatment and care while the nonnative
9 specie is under the control of the board.

10 (b) The board shall determine the appropriate placement of the
11 seized nonnative specie based upon the threat posed by the
12 nonnative specie.

13 (c) The board may require an owner to post a bond in an amount
14 and form to be determined by the board which is sufficient to
15 provide for the reasonable costs of treatment and care of the
16 nonnative specie during the period of confinement. If an owner
17 fails to post the required bond, the board may, after notice and an
18 opportunity for the owner to be heard, declare the nonnative specie
19 forfeited to the state.

20 (d) A nonnative specie seized by the board in accordance with
21 the provisions of this article may be returned to the owner only if
22 the board determines that the nonnative specie poses no threat to
23 humans, other animals or plant life.

24 **§19-9B-7. Pet shop registration required.**

1 Effective the first day of January, two thousand eight, a
2 person shall not operate a pet shop in this state unless he or she
3 has registered with the board.

4 **§19-9B-8. Registration; renewal; fee.**

5 (a) Each pet shop owner or operator shall register on forms
6 supplied by the board and provide all information required by the
7 board.

8 (b) Registrations expire on the thirty-first day of December
9 of each year and shall be renewed annually. The board shall mail
10 renewal forms to current registrants. The failure to receive the
11 renewal form does not relieve a registrant of the obligation to
12 renew. The board may assess a late fee when a renewal is received
13 more than sixty days after the expiration of the current
14 registration.

15 (c) A pet shop owner or operator shall pay the applicable
16 registration or renewal fee.

17 **§19-9B-9. Record keeping; notifications required.**

18 (a) A pet shop owner or operator shall keep a copy of each
19 possession permit provided by a buyer and all other records
20 required to be kept by the board for the time specified by the
21 board.

22 (b) A pet shop owner or operator shall notify the board of the
23 sale of a nonnative specie as required by the board.

24 (c) A pet shop owner or operator shall notify all customers

1 purchasing a nonnative specie of the permitting requirements of
2 this article.

3 **§19-9B-10. Possession and breeding of nonnative species.**

4 It is unlawful for any person to possess or breed a nonnative
5 specie except in compliance with this article.

6 **§19-9B-11. Permits.**

7 (a) A person may not own, possess or breed a nonnative specie
8 unless the person applies for and is granted a permit.

9 (b) A person who possesses a nonnative specie on the effective
10 date of this article shall apply for a possession permit within
11 ninety days of the effective date of this article.

12 (c) A person buying a nonnative specie shall apply for and be
13 granted a possession permit prior to taking possession of the
14 nonnative specie from the seller and shall provide the seller a
15 copy of the possession permit.

16 (d) A new state resident owning a nonnative specie shall apply
17 for a possession permit within sixty days of taking up residence in
18 this state.

19 (e) A person intending to breed a nonnative specie shall apply
20 for and must be granted a breeder permit prior to breeding a
21 nonnative specie.

22 (f) An applicant shall file an application for a permit on
23 forms supplied by the board. The application shall include, but is
24 not limited to:

1 (1) The name, address, telephone number and date of birth of
2 the applicant;

3 (2) A description of each nonnative species to be owned or
4 bred, including the scientific name, name, sex, age, color, weight
5 and any distinguishing marks or coloration that would aid in the
6 identification of the animal;

7 (3) A photograph of each nonnative species;

8 (4) The exact location and a detailed description of the
9 holding facility where the nonnative specie is to be kept;

10 (5) The name, address and telephone number of the person from
11 whom the applicant bought the nonnative specie or the possessor of
12 the nonnative specie to be used for breeding purposes;

13 (6) The identification number of the nonnative specie required
14 in accordance with the provisions of section fifteen of this
15 article or a verified statement from a veterinarian that placement
16 of an identification number would endanger the nonnative species or
17 an exemption from this requirement granted by the board;

18 (7) The name, address and phone number of the veterinarian who
19 is to provide veterinary care to the nonnative specie; and

20 (8) Additional information required by the board.

21 (g) The application for a possession or breeder's permit shall
22 be accompanied by the applicable permit fee.

23 (h) The board shall not grant a permit unless it finds the
24 following:

1 (1) The applicant is eighteen years of age or older;

2 (2) The applicant has not been convicted of or found
3 responsible for violating a state or federal law prohibiting
4 cruelty, neglect or mistreatment of a nonnative or domestic animal
5 or any state or federal law relating to the possession of wildlife
6 or endangered specie;

7 (3) The facility in which and the conditions under which the
8 nonnative specie will be kept are in compliance with this article;
9 and

10 (4) The applicant has obtained liability insurance for the
11 possession of the nonnative specie as required by section eighteen
12 of this article.

13 (h) A permit holder shall notify the board of any changes in
14 the information on the permit, including the death of the nonnative
15 specie. A possessor shall also notify the board of any births by
16 the nonnative specie.

17 (i) Possession permits expire on the thirtieth day of June of
18 each year and shall be renewed annually. The board shall mail
19 renewal forms to current permit holders. The failure to receive
20 the renewal form does not relieve the permit holder of the
21 obligation to renew. The board may assess a late fee when a
22 renewal is received more than sixty days after the expiration of
23 the current permit.

24 (j) The board shall keep records of the permits issued.

1 **§19-9B-12. Exemptions from permit requirements.**

2 (a) The permit provisions of this article do not apply to:

3 (1) Institutions accredited by the American Zoo and Aquarium
4 Association;

5 (2) A licensed or accredited research or medical institution;

6 (3) A veterinary hospital or clinic; or

7 (4) A circus operated under a valid license or registration
8 issued by the U. S. Department of Agriculture pursuant to the
9 federal Animal Welfare Act of 1970.

10 **§19-9B-13. Identification number.**

11 The possessor of a nonnative specie shall have an
12 identification number placed on the nonnative specie, at his or her
13 expense, by or under the supervision of a veterinarian. The board
14 shall prescribe the methods of identification for use by
15 veterinarians: *Provided*, That this provision does not apply to the
16 nonnative specie if a veterinarian determines that the methods of
17 identification will endanger the well-being of the nonnative
18 specie.

19 **§19-9B-14. Caging requirements.**

20 (a) The board shall establish specific caging requirements for
21 the keeping and confinement of the nonnative specie. A person
22 possessing a nonnative specie shall keep and confine the nonnative
23 specie in strict compliance with the caging requirements
24 established by the board.

1 (b) All caging requirements shall ensure that the nonnative
2 specie is confined in a primary enclosure that protects the
3 public's safety and health and ensures the safety and well-being of
4 the nonnative specie.

5 **§19-9B-15. Care and treatment of nonnative species.**

6 (a) A nonnative specie shall not be tethered, leashed or
7 chained outdoors, or allowed to run at-large.

8 (b) A nonnative specie shall not be released.

9 (c) A nonnative specie shall not be mistreated, neglected,
10 abandoned or deprived of necessary food, water and sustenance.

11 (d) A person transporting a nonnative specie in a vehicle
12 shall keep the animal securely caged in the vehicle at all times.

13 (e) Each possessor of a nonnative specie shall have a plan for
14 the quick and safe recapture of the nonnative specie if it escapes
15 and a plan for the destruction of the nonnative specie if recapture
16 becomes impossible. This plan is not a substitute for the
17 notification of law-enforcement and Department of Agriculture
18 officials required by section eighteen of this article and the plan
19 is not binding on law-enforcement officials who may be required to
20 destroy the nonnative specie, if determined necessary to protect
21 the public health and safety.

22 (f) If a possessor of a nonnative specie realizes that he or
23 she can no longer care for the nonnative specie, the possessor
24 shall contact an approved animal rescue facility or an American Zoo

1 and Aquarium Association accredited facility for possible placement
2 of the animal. The possessor shall obtain the proper permits to
3 transfer any animal. If the possessor is unable to care for the
4 nonnative specie and cannot find a permitted facility to accept the
5 nonnative specie, the animal shall be humanely euthanized at the
6 possessor's expense.

7 **§19-9B-16. Insurance; signs; and notification.**

8 (a) A possessor of a nonnative specie shall maintain liability
9 insurance in an amount to be determined by the board and shall
10 provide a copy of the policy annually to the board, unless exempted
11 by the board.

12 (b) The possessor of a nonnative specie shall post and
13 display, at each possible entrance to the premises, a conspicuous
14 sign, clearly legible and easily readable by the public, warning
15 that there is a nonnative specie on the premises. In addition, the
16 possessor shall conspicuously display a sign with a warning symbol
17 that informs children of the presence of a nonnative specie. The
18 board shall prescribe the content and size of the sign.

19 (c) If a nonnative specie escapes or is released, either
20 intentionally or unintentionally, the possessor of the nonnative
21 specie shall immediately contact a law-enforcement officer and the
22 Department of Agriculture to report the escape or release. The
23 possessor is liable for all expenses associated with efforts to
24 recapture the animal. The animal may be destroyed if necessary to

1 protect the public health or safety.

2 **§19-9B-17. Public contact.**

3 Unless specifically authorized by the board, a possessor may
4 not take a nonnative specie to a public place, except to a
5 veterinarian or a veterinarian clinic.

6 **§19-9B-18. Inspection.**

7 For the purpose of carrying out the provisions of this
8 article, an employee of the Department of Agriculture, the Division
9 of Natural Resources or the Bureau for Public Health may enter upon
10 any public or private premises, other than a dwelling house, at
11 reasonable times, after reasonable notification to the owner or
12 possessor in order to access a nonnative specie for the purpose of
13 inspection. A person may not obstruct or hinder the employee in
14 the discharge of his or her duties to enforce this article.

15 **§19-9B-19. Denial of possession permit; appeal.**

16 (a) If the board finds that an applicant for an original or
17 renewal possession permit does not meet the requirements set forth
18 in this article, it may deny the applicant a possession permit. The
19 board shall give the applicant written notice of the denial and the
20 reasons for the denial.

21 (b) If the board finds that a person has not complied with
22 this article the board may suspend or revoke the possession permit.
23 The board shall give the possessor written notice of the suspension
24 or revocation and the reasons for the suspension or revocation.

1 (c) A person who is denied a possession permit, denied a
2 renewal of a possession permit or who has had a permit suspended or
3 revoked shall be afforded a hearing before the board to be held in
4 accordance with the contested case provisions of article five,
5 chapter twenty-nine-a of this code.

6 **§19-9B-20. Seizure; return; bond.**

7 (a) A nonnative specie may be seized immediately by the board
8 if:

9 (1) The possessor does not have a possession permit as
10 required by section twelve of this article;

11 (2) The possessor does not secure and maintain liability
12 insurance as required by section eighteen of this article;

13 (3) The possessor is not in compliance with the provisions of
14 this article; or

15 (4) A nonnative specie poses a threat to humans, other
16 animals, wildlife or the state's agricultural or forestry
17 industries or other natural resource interests.

18 (b) A nonnative specie which was seized by the board may be
19 returned to the possessor only if the possessor has a possession
20 permit, is in compliance with this article and a nonnative specie
21 poses no threat to humans, other animals or plant life.

22 (c) If a nonnative specie is seized under this section, the
23 possessor shall post bond in accordance with the requirements of
24 section eight of this article.

1 **§19-9B-21. Penalties for violation of article.**

2 (a) Any person violating a provision of this article is guilty
3 of a misdemeanor and, upon conviction thereof, shall be fined not
4 less than one hundred dollars nor more than five hundred dollars
5 for the first offense and for each subsequent offense, shall be
6 fined not less than five hundred dollars nor more than one thousand
7 dollars or imprisoned in jail not more than six months, or both.
8 Magistrates have concurrent jurisdiction with circuit courts to
9 enforce the provisions of this article.

10 (b) Any person violating the provisions of this article or
11 rule promulgated pursuant to this article may be assessed a civil
12 penalty by the board. In determining the amount of the civil
13 penalty, the board shall give due consideration to the history of
14 previous violations by the person, the seriousness of the
15 violation, including any hazards to agriculture, natural resources,
16 or public health in West Virginia and the demonstrated good faith
17 of the person charged in attempting to achieve compliance with this
18 article after written notification of the violation.

19 (1) The board may assess a penalty of not more than one
20 hundred dollars for the first offense or less serious violation as
21 determined by the board, and not more than one thousand dollars for
22 a serious, repeat or intentional violation, as determined by the
23 board.

24 (2) In addition to the civil penalty, the board may assess the

1 costs to the state to recover the animal, house the animal, dispose
2 of the animal or moneys otherwise expended by the state to control
3 the spread of or to prevent the introduction of disease and
4 parasites.

5 (3) The board may negotiate and enter into a settlement
6 agreement for the payment of civil penalties and assessed costs.

7 (4) The civil penalty and assessed costs are payable to the
8 State of West Virginia and are collectable in any manner authorized
9 by law for the collection of debts. Any person liable to pay a
10 civil penalty or any assessed costs who neglects or refuses to pay
11 the same within thirty days of written notice of demand for
12 payment, shall be assessed interest at the rate of ten percent per
13 year from the date the penalty and assessed costs were imposed to
14 the date of payment. The penalty, costs and interest constitute a
15 lien in favor of the State of West Virginia and shall attach on the
16 person's property when a lien is properly recorded in the county
17 wherein the property is situated. There shall be no cost as a
18 condition precedent to recording.

19 (5) All civil penalties and assessed costs collected pursuant
20 to this article shall be deposited in the Animal Regulation Fees
21 Fund.

22 (6) A state court may not allow the recovery of damages for
23 administrative action taken if the court finds that there was
24 probable cause for the action. In the event that a court

1 determines that probable cause did not exist for an action and that
2 compensation is necessary, the compensation shall not exceed the
3 fair market value of the nonnative specie at issue. The board
4 shall pay damages as determined by a state court provided funds are
5 available.

Note: This bill is recommended by the Agriculture and Agri-
business Interim Committee for passage during the 2007 Regular
Session.