WEST VIRGINIA CODE CHAPTER 20 ARTICLE 3

WV Legislature

§20-3-1.

Repealed.

Acts, 1994 Reg. Sess., Ch. 119.

WV Legislature

PART I. FORESTS AND WILDLIFE AREAS.

§20-3-2. Acquisition of suitable lands by director; maintenance thereof as state forests or wildlife areas; relinquishment of construction and maintenance of roads to the commissioner of highways.

The director may with the consent of the Governor purchase, in the name of the state, out of funds set aside for the purpose, or out of any unused funds in his hands, lands suitable for forest culture, state forests or wildlife refuges, public hunting areas, public fishing areas, public hunting and fishing areas, public access sites and other lands for the purposes set forth in this article. Such funds may also be used for the construction of dams for fish refuges on lands so acquired. Purchase may be made on terms requiring not less than one third of the purchase price to be paid at the time of the conveyance with the residue to be paid in not less than one or two years after date. The director may also receive the gift, in the name of the state, of such lands by deed or bequest. In all cases of transfer to the state, the fee simple title shall pass to the state, except minerals and mining rights to remove such minerals may be excepted or reserved.

The director shall protect, preserve and maintain lands so acquired as forest culture areas, state forests, wildlife areas, public hunting areas, public fishing areas, public hunting and fishing areas, public access sites and other such lands for the propagation and distribution of forest trees and for the protection, management, propagation and distribution of the fish, wild animals and birds thereon. He may prescribe and enforce rules and regulations consistent with the laws of the state to carry out that objective. The director may prescribe and enforce rules prohibiting all hunting and fishing, pursuing, catching, trapping, capturing and killing of fish, wild animals and birds upon such areas and lands for such length of time as he may deem proper.

The director may provide special regulations and open seasons for the taking of any wild birds, wild animals or fish upon such areas and lands in the manner provided in this chapter.

Except for the authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks, state forests and public hunting and fishing areas, the director of the department of natural resources shall, upon the effective date of this section, relinquish to the commissioner of highways his authority over publicly owned roads in state parks, state forests and public hunting and fishing areas, and shall thereafter neither construct, reconstruct nor maintain any road or vehicular bridge for public usage in such areas except as is specifically authorized by this chapter. This relinquishment shall not be construed to alter the responsibilities assigned to the director of the department of natural resources in section eleven, article four, chapter twenty of the Code of West Virginia.

WV Legislature

§20-3-3. Establishment of wildlife areas; leasing lands therefor.

The director shall establish and maintain wildlife areas on lands purchased, leased or given for this purpose. Upon such state-owned or leased lands under its administration, or lands purchased from departmental funds for the establishment of wildlife areas, or upon lands purchased in cooperation with any agency of the federal government or leased therefrom or managed cooperatively therewith, the director shall regulate public hunting, chasing for sport, shooting, and limit the number of wildlife, which may be taken from such areas open to public shooting in any year. The director may establish special open seasons on any such lands, and may close any such areas, or parts thereof, to public shooting.

It shall be unlawful at any time to hunt, pursue or molest in any manner, any animals, birds or fowls on that section of any wildlife area designated as wildlife refuge, except that any legally constituted enforcement officer, or other person designated by the director, may hunt, pursue, catch and kill in any manner predatory animals and predatory birds thereon.

On the boundary of each state wildlife refuge, there shall be posted in conspicuous places, not more than one hundred and fifty yards apart, notices bearing the following words:"State wildlife refuge -- hunting is unlawful," and such other information or rules and regulations as the director may deem advisable. On the boundary line of any such wildlife area which has been established as a public shooting ground, the director shall have posted in conspicuous places, not more than one hundred and fifty yards apart, notices bearing the following words:"Public shooting grounds," together with information as to when hunting is legal on such tract.

The director shall also have the power to lease lands for this purpose for not less than ten-year periods, the rental price thereof not to be more than the amount of the annual property taxes on such land, and in no event to exceed 10¢ per acre per annum.

The director may, with the consent of the owner, set apart any tract of land in the state as a wildlife area. When such lands have been set apart, the director shall manage them in the same manner and for the same purpose as wildlife areas owned by the state. Such lands not owned by the state and now operated by the director as wildlife areas shall, at the expiration of the agreement, be reorganized as wildlife areas or be discontinued.

WV Legislature

§20-3-3a. Cabwaylingo State Forest Trail System.

(a) The director, in consultation with the forestry director, may permit all-terrain vehicles (ATVs), off-highway recreational vehicles (ORVs), and utility-terrain vehicles (UTVs) to drive on roads and trails in Cabwaylingo State Forest, as designated and approved by the director. The director may establish special seasons and designate certain campgrounds and tent sites in the forest.

(b) The director, in consultation with the forestry director, may establish a special permit for purchase by the ATV and ORV users for road and trail access, and may close any areas, or parts thereof, to public use. Should the director establish such a special permit, it shall be unlawful, at any time, to operate an ATV or ORV on any roads and trails in Cabwaylingo State Forest without the special permit.

(c) The provisions of §20-15-1 *et seq*. of this code apply to the division, participants, outfitters, and licensees of the Cabwaylingo State Forest Trail System, though ORVs may be permitted.

(d) The Parks and Recreation Section of the Division of Natural Resources is prohibited from establishing any additional ATV, ORV, or UTV trail systems within state parks and state forests: *Provided*, That the Director of the Division of Natural Resources shall have the authority to authorize the development and use of certain connector trails, roads, and parking areas from private systems, including, without limitation, the Hatfield-McCoy systems, solely for the purpose of providing access to state park and state forest recreational facilities and lodging by ATV, ORV, and UTV trail system users.

(e) The Director of the Division of Natural Resources shall have authority to promulgate emergency legislative rules and legislative rules necessary to effectuate the provisions of this section.

WV Legislature

§20-3-4. Authority and duties of director of the division of forestry and others as to forest fires; expenditures for forest fire control; limited liability of certain persons fighting forest fires.

Upon receiving notice of any fire which is injuring or endangering forest land within the state, the director of the Division of Forestry or his or her duly authorized representatives shall employ all necessary means to confine, extinguish or suppress the fire. For these purposes, any temporary or permanent employee of the Division of Forestry or any other agency of the state and any volunteer shall, under the general supervision of the director of the Division of Forestry, have the right and authority to enter upon public or private lands, to destroy fences thereon, to plow such lands, and in case of extreme emergency, to set backfires thereon. No person performing or reasonably attempting to perform any of the activities authorized by the preceding sentence under the general supervision of the director of the Division of Forestry, whether as a temporary or permanent employee of the Division of Forestry or any other agency of the state or as a volunteer, shall be liable in damages for the death of or injury to any person or for damage to any property as a result of his or her performance of such activities to an extent greater than the applicable limits of any liability insurance coverage available to such person under any liability insurance policy or policies issued to the Division of Forestry, any other agency of the state involved in suppressing the forest fire, any volunteer fire department of which such person was a member and which volunteer fire department was responding to the forest fire at the time of the incident alleged to have caused such death, personal injury or property damage, or any combination thereof. The limitation of liability established by the preceding sentence shall not apply if the death, personal injury or property damage alleged was caused by such person's willful or criminal misconduct, gross negligence or reckless misconduct, or by a conscious, flagrant indifference to the rights or safety of any person harmed by such conduct. The director of the Division of Forestry and any duly authorized representative may employ persons to detect fires which may injure or endanger forest land and may likewise summon or employ persons to assist in extinguishing such fires, who shall be paid for the actual time so employed, at a rate per hour to be determined by the director of the Division of Forestry: Provided, That the rate per hour shall not exceed the rate per hour paid for any comparable labor or skills by the Division of Forestry. Any person so summoned who shall fail or refuse to assist in extinguishing any such fire shall, unless such failure or refusal to assist is due to physical inability, be guilty of a misdemeanor.

Expenditures for detecting, confining, extinguishing or suppressing fires described in this section shall be charged against the state. The director of the Division of Forestry or his or her representative shall prepare, as soon as practicable, a sworn statement with the names of all persons who were summoned or employed to assist in fighting such fires, the time so spent by each, as well as the names of persons who furnished equipment, subsistence or supplies, or transportation therefor, and the amount of money due each for such services, subsistence, supplies or transportation. Requisitions shall be issued and payment of the sums due shall be made in the same manner as is provided for the making of other expenditures by the director of the Division of Forestry.

§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.

(a) Forest fire seasons. — March 1 through May 31, and October 1 through December 31 are designated as forest fire seasons. During any fire season, a person may set on fire or cause to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable materials only between 5 p.m. and 7 a.m., at which time the fire must be extinguished.

(b) Permissible fires during forest fire seasons. — The following attended fires are permitted during forest fire season as set forth in subsection (a) of this section without a burning permit unless there is a burning ban in effect:

(1) Small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of 10 feet from the fire; and

(2) Burning conducted at any time when the ground surrounding the burning site is covered by one inch or more of snow.

(c) Burning permits. — The director or his or her designee may issue burning permits authorizing fires during forest fire seasons as set forth in subsection (a) of this section that are otherwise prohibited by this section. The permits shall state the requisite conditions and time frame to prevent danger from the fire to life or property: Provided, That the director or his or her designee shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.

(1) Permit fees. — Entities required to pay a permit fee are those engaged in commercial, manufacturing, public utility, mining, and like activities. Agricultural activities are exempt from paying the permit fee. The permit fee is $125 per site and shall be deposited into the Division of Forestry Fund (3081) to be used to administer the provisions of this section. The permit fee covers the fire season during which it is issued.

(2) Noncompliance with any condition of the permit is a violation of this section. Any permit which was obtained through willful misrepresentation is invalid and violates this section.

(3) Permit holders shall take all necessary and adequate precautions to confine and control fires authorized by the permit. Failure to take action is a violation of this section and is justification for the director to revoke the permit.

(d) Fire control. —

(1) With approval of the Governor, the director may prohibit the starting of and require the extinguishment of fire in any designated area, including fires permitted by this section.

WV Legislature

(2) With approval of the Governor, the director may designate any forest area as a danger area, prohibit entry, and declare conditional uses and prohibited areas of the forest by proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio stations, and television stations that serve the designated area and becomes effective after 24 hours. The proclamation remains in effect until the director, with the approval of the Governor, terminates it. The order shall designate the time of termination, and notice of the order shall be furnished to each newspaper, radio station, and television station that received a copy of the proclamation.

(3) A person shall remove all flammable material from the area immediately surrounding the material to be burned for a distance which ensures the fire will at all times be contained; this safety strip shall in no event be less than 10 feet wide. Any person or his or her agent or employee who sets or causes to be set any fire which escapes the safety strip and causes damage to the lands of another is guilty of a misdemeanor.

(e) Criminal and civil penalties. — A person or entity that violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 and not more than $1,000 for each violation. In addition to fines and costs, a person or entity convicted of a violation of this section shall pay a $200 civil penalty to the division within 60 days. The civil penalty shall be collected by the court in which the person is convicted and forwarded to the division and deposited in the Division of Forestry Fund (3081) to be used to administer the provisions of this section.

WV Legislature

§20-3-5a. Prescribed Fire Program.

(a) As used in this section:

(1) "Certified prescribed fire manager" means an employee of the Division of Forestry, the Division of Natural Resources, any federal employee, or individual who has successfully completed a certification process established by the director.

(2) "Prescribed fire" means the controlled application of fire or wildland fuels in wildlife management areas, state forests or federal lands, or on private property in either the natural or modified state, under specified environmental conditions, which allows the fire to be confined to a predetermined area and produces the fire behavior and fire characteristics necessary to attain planned fire treatment and ecological, silvicultural, and wildlife management objectives.

(3) "Prescription" means a written statement defining the objectives to be attained by a prescribed fire and the conditions of temperature, humidity, wind direction and speed, fuel moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally expressed as an acceptable range of the prescription elements.

(b) Director certification process. — The director shall develop and administer a certification process and prescribed burn course for any individual who desires to become a certified prescribed fire manager. The prescribed fire course shall include the following subjects: The legal aspects of prescribed fire, fire behavior, prescribed fire tactics, smoke management, environmental effects, plan preparation, and safety. The director shall give a final examination on these subjects to all attendees. The director may charge a reasonable fee to cover the costs of the prescribed fire course and the examination.

(c) To be certified as a certified prescribed fire manager, a person shall:

(1) Successfully complete all components of the prescribed fire course developed by the director and pass the examination developed for the course;

(2) Successfully complete a prescribed fire course comparable to that developed by the director and pass the examination developed for the course; or

(3) Demonstrate relevant past experience, complete a review course, and pass the examination developed for the prescribed fire course.

(d) Prescribed burning shall be performed in the following manner:

(1) A certified prescribed fire manager shall prepare a prescription for the prescribed fire prior to the burn. The prescription shall include: (A) The landowner’s name, address, and telephone number, and the telephone number of the certified prescribed fire manager who prepared the plan; (B) a description of the area to be burned, a map of the area to be burned, the objectives of the prescribed fire, and the desired weather conditions or

WV Legislature

parameters; (C) a summary of the methods to be used to start, control, and extinguish the prescribed fire; and (D) a smoke management plan. The smoke management plan shall conform to the Department of Environmental Protection's rule, Control of Air Pollution from Combustion of Refuse, 45 CSR 6. A copy of the prescription shall be retained at the site throughout the period of the burning;

(2) A certified prescribed fire manager shall directly supervise a prescribed fire and ensure that the prescribed fire is in accordance with the prescription; and

(3) The certified prescribed fire manager shall notify the nearest regional office of the division 24 hours prior to the prescribed fire.

(e) A certified prescribed fire manager who conducts a prescribed burn in compliance with the requirements of this article, state air pollution control laws, any rules adopted by the Division of Forestry and the Department of Environmental Protection shall not be liable for damage or injury caused by smoke or fire. This shall not apply whenever a nuisance or damage results from the negligent or improper implementation of the prescribed burn or when the prescribed burn requirements of this section have not been met.

(f) If the actions of any certified prescribed fire manager or the prescriptions prepared by him or her violate any provision of this article, state air pollution control laws, the Division of Forestry rules, the Department of Environmental Protection rules or laws, or threaten public health and safety, the director may revoke his or her certification.

(g) The director shall propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code for establishing the procedures for the development of a certification program for prescribed fire managers and for prescribed fire control on private property.

WV Legislature

§20-3-6. Failure of person to extinguish fire started or used by him or her; throwing lighted material on forest land; enforcement by State Fire Marshal; penalties.

(a) Any person who, by himself or herself, or by his or her employees, agents or guides, or as an employee, agent or guide of any other person, shall at any time build or use any fire in any field, in any public or private road, or in any area adjacent to or in any forest land in this state, shall, before leaving the fire for any period of time, totally extinguish the same.

(b) A person shall not at any time throw or place any lighted match, cigar, cigarette, firecracker or lighted material on any forest land, private road, public highway or railroad right-of-way within this state.

(c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, the State Fire Marshal shall enforce this section as provided in §15A-10-1 et seq. of this code.

(d) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to one or more of the following penalties: (1) Fined not less than $100 nor more than $2,000; (2) confined in the county or regional jail not less than 10 days nor more than 200 days; or (3) sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than 32 hours nor more than 64 hours.

WV Legislature

§20-3-7. Starting fire on lands of another; penalties.

Any person who willfully sets or causes to be set on fire any forest land, grass, grain, stubble, brush, slash, debris, or any other inflammable substance upon the property of another without his consent, or in a place from which it is reasonable to expect that the fire may spread to the property of another without his consent, and as a result of either causes damage or destruction to any natural resources in or on the other person's property, shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, or be imprisoned for not less than one year nor more than five years, or both, in the discretion of the court.

WV Legislature

§20-3-8. Duty of railroad company to protect against fires.

Every railroad company or other company operating a steam, diesel or other type of locomotive shall clear, for a slope distance of twenty-five feet from the outside rail, or to the limits of the right-of-way if less than twenty-five feet, hazardous areas as designated by the state forester or his duly authorized representative, at least once a year, all grass, brush, and other inflammable materials. Any such company that fails to remove said materials from such road or right-of-way shall be assessed by the department of natural resources $500 for each mile of road or right-of-way which is not maintained in accordance with this section. Any revenue derived from this section shall be deposited in the State Treasury and credited to the department of natural resources and shall be used and paid out, upon order of the director, for forest fire prevention activities within the department of natural resources.

Each such company shall employ sufficient personnel to promptly put out fires on such road or right-of-way at times when such land is in a dry and dangerous fire condition. Each such company shall provide internal combustion engines of motive power other than steam used in road service, if not equipped with exhaust driven centrifugal turbocharger, shall have installed integral with the exhaust gas system, a spark- arresting device of a type certified according to the recommended practices of the association of American railroads and approved by the director so as to give the best practical protection against the escape of fire and sparks from the exhausts thereof.

No such company, or any employee thereof, shall deposit, cast, or discharge fire coals, or ashes or any other material capable of igniting fires on that part of its road or right-of-way which passes through forest land, or lands subject to fire from any cause, unless the fire therein is immediately extinguished. No such company, or employee thereof, shall place a lighted fusee along such roads or rights-of-way in such a manner as will cause the same to ignite inflammable substances which may cause fire to spread to forest land. In case of any uncontrolled or unguarded fire on such part of its road or right-of-way, the company shall use all practicable means to extinguish it even when the fire spreads to the property of another. Engineers, conductors, trainmen, or other persons who, while working for such companies, discover or know of any fire on, along or near such part of the road or right-of-way of their employer, shall report the same as soon as possible to the state forester or his duly authorized representative. Unless otherwise provided for by law, any such company, or any officer or employee thereof, violating any provision of this section, shall be guilty of a misdemeanor.

WV Legislature

§20-3-9. Right of railroad company to clear land adjacent to right-of-way.

For the purpose of providing increased protection to forest land from fire originating along railroads, any company which operates a railroad shall have the right, subject to the provisions of this section, without liability for trespass, to enter upon forest land for a distance of one hundred feet from its road or right-of-way and to clear from such a strip any inflammable material such as leaves, grass, dead trees, slash and brush, but shall not remove any valuable timber growth or other thing of value without consent of and recompense to the owner. Not less than fifteen days prior to clearing such lands, the railroad company shall give the owner thereof notice of its intention, together with a transcript of this section, by letter deposited in the United States mail to his last known address. If the owner shall not file an objection to such clearing with the director within ten days of the date of said notice, he shall be deemed to have given consent. Upon the filing by an owner of such objection showing cause why such clearing should not be done, the director shall review the case and may sustain the objection of the owner or permit the clearing in whole or in part.

WV Legislature

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires; underground coal fires.

No person, firm or corporation shall use or operate on land subject to fire by any cause, a sawmill, a power shovel, or an engine or machine capable of throwing sparks, unless the equipment is provided with an approved spark arrester. Escape of fire from such equipment shall be prima facie evidence that such appliance was not maintained properly in compliance with this section.

Any person, firm or corporation owning any land and knowing of inflammable waste disposal on said land, and any person, firm or corporation using any land for the purpose of inflammable waste disposal, shall remove annually all grass, brush, debris and other inflammable material adjacent to such disposal areas to provide adequate protection to prevent the escape of fire to adjacent lands. Escape of fire from any such disposal area shall be prima facie evidence that this section had not been complied with.

Any person, firm or corporation owning or leasing any mineral interests and knowing of underground coal being on fire under that land shall between the first of November and the thirty-first of December of each year clear away all inflammable material within forty feet of any mine break or other opening through which the fire could escape to the surface. Any person, firm or corporation owning any underground mineral interests shall use all practical means to confine, extinguish or suppress any such fire in such underground minerals.

Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor.

WV Legislature

§20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.

The Director of the Division of Forestry shall, in the name of the state, recover from the person or persons, firms or corporations whose negligence or whose violation of any provision of this article caused any fire at any time on grass or forest land, the amount expended by the state for the personal services of persons especially employed under the provisions of section four of this article to control, confine, extinguish or suppress such fire, and the costs associated therewith, including payment for the personal services rendered by full-time State Division of Forestry employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire. Such recovery shall not bar an action for damages by any other person.

Any such fire which was caused by a trespasser or by a person who was upon the property without the consent of the owner shall not be deemed caused by the negligence of the owner; but the owner shall use all practical means to confine, extinguish or suppress any such fire on his land even though it was caused by any such person. If he fails to do so, after becoming aware of such fire, the Director of the Division of Forestry shall, in the name of the state, recover from him amounts expended by the state for the personal services of persons especially employed under the provisions of section four of this article to control, confine, extinguish or suppress such fire and the costs associated therewith, including payment for the personal services rendered by full-time State Division of Forestry employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire.

Any time that a landowner, his or her agent or employee is aware of a fire on the landowner's property, the landowner shall use all practical means to confine, extinguish or suppress the fire.

WV Legislature

§20-3-12. Timberland and forest land defined.

For the purpose of this chapter, any land shall be considered timberland or forest land which has enough timber standing or down to constitute, in the judgment of the department, a fire menace to itself or adjoining lands: Provided, That nothing in this section contained shall be construed to include lands under cultivation or in grass, unless a fire thereon would imperil such lands or adjoining lands.

WV Legislature

§20-3-13. Director authorized to secure federal cooperation; annual appropriation.

The director may do all things required to meet the conditions and requirements of the federal government in securing federal cooperation under the provisions of the Weeks Law and the Cooperative Forestry Assistance Act of 1978, and any other law amendatory thereof or supplemental thereto, for the purpose of the prevention and control of forest fires and the advancement of forestry practices.

WV Legislature

§20-3-14. Financial assistance from owners of forest lands; expenditures by director.

The director may cooperate with the owners of forest lands and receive financial assistance from them for forestry purposes and do any and all things necessary therefor, including the establishment and maintenance of patrol and lookout stations: Provided, That the director shall expend for forestry purposes, and for no other purpose, such moneys as shall be appropriated therefor by the state, and such moneys as may be recovered from persons giving origin to grass or forest fires, and such moneys as may be received from the federal government by appropriation under the Weeks Law, the Cooperative Forestry Assistance Act of 1978 and any reference to the Clarke-McNary Law or otherwise.

WV Legislature

§20-3-15. Owner not relieved from civil liability for damage from fire.

Nothing in this chapter shall be construed to relieve the owner, lessee or user of any land from civil liability for damage resulting from any fire for which their agents or employees may be responsible.

WV Legislature

§20-3-16. Prima facie evidence of negligence in certain actions for injury due to fires.

In all criminal and civil actions for any injury occasioned by fire communicated by burning or clearing land, the fact that such fire was so communicated shall be prima facie evidence of negligence on the part of the person or agent or employee or any other person who shall at the time of such injury by fire be in the use and occupation of the land on which the burning was done and of those who shall at such time have care and management of such burning.

WV Legislature

§20-3-17. Disposition of proceeds of national forests.

Receipts from any national forest, paid to the state or its proper officers pursuant to directions of acts of Congress, are to be allocated by the Auditor to each county which has acreage located in such national forest, in the proportion which the acreage in the county bears to the total acreage of the national forest in this state. Interest or other earnings accrued upon investment of the receipts pending allocation thereof shall be allocated to the recipients of the allocations in proportion to each recipient's allocation of the receipts. Eighty percent of the funds so allocated to any county are to be paid to the Board of Education of the county to be expended by the board for the benefit of the public schools of the county. Twenty percent of the funds so allocated to any county are to be paid to the state road commission to be expended for feeder and state local service road purposes in that county.

Notwithstanding any contrary provisions of former law, any sheriff or county court of any county having charge or custody of any unexpended national forest proceeds, received under allocations made pursuant to former provisions of law, shall pay over eighty percent of the unexpended balance to the county board of education, and twenty percent thereof to the state road commission, for expenditure as provided herein.

WV Legislature

§20-3-17a. Same -- Counties embracing Spruce Knob-Seneca Rocks national recreation area.

Notwithstanding the provisions of section seventeen of this article, national forests receipts allocated by the Auditor as provided in section seventeen of this article to any county in which is located any part of the Spruce Knob-Seneca Rocks national recreation area as established by Public Law 89-207, 89th Congress, are to be paid by the Auditor to the county as follows: Sixty-three percent to the Board of Education of the county to be expended by the board for the benefit of the public schools of the county, and thirty-seven percent to the county commission of the county to be expended by the commission for general county purposes. Interest or other earnings accrued upon investment of the receipts pending allocation thereof shall be allocated to the recipients of the allocations in proportion to each recipient's allocation of the receipts.

WV Legislature

§20-3-18. Disposition of flood control, navigation and allied funds from the federal government.

Receipts from the treasurer of the United States, paid to the state or its proper officers pursuant to direction of an act of Congress relating to disposition of funds received on account of the leasing of lands for flood control, navigation and allied purposes, are to be allocated by the State Auditor to each county in accordance with the method of allocation specified by the federal government. Interest or other earnings accrued upon investment of the receipts pending allocation thereof shall be allocated to the recipients of the allocations in proportion to each recipient's allocation of the receipts. The State Auditor shall transfer to the road commission fifty percent of the funds so allocated to each county for the purpose of maintenance of feeder and state local service roads in the area or areas of the county in which the flooded lands are located. Fifty percent of the funds so allocated to any county in which the lands are located are to be paid by the State Auditor to the Board of Education of that county to be expended by the board for the benefit of the public schools of the county.

WV Legislature

§20-3-19. Protection of forests against destructive insects and diseases; purposes and intent of section.

In order to protect and preserve forest resources of the State of West Virginia from ravages of bark beetles, defoliators, rusts, blights, wilts and other destructive forest pests and diseases, and thereby enhance the growth and maintenance of forests; promote the stability of forest-using industries and employment associated therewith; reduce the fire risk created by dying and dead trees injured or killed by insects or diseases; conserve forest cover on watersheds and protect recreational and other forest values, it shall be the policy of the State of West Virginia independently and through cooperation with adjoining states, the federal government, and private timber owners and other private organizations, to prevent, retard, control, suppress, or eradicate incipient, potential or emergency outbreaks of destructive insects and diseases on, or threatening, all forest land irrespective of ownership.

(a) Authority. -- The director is authorized either directly or in cooperation with other agencies, subject to such conditions as he may deem necessary and using such funds as have been, or may hereafter be made available for those purposes, to conduct surveys on any forest land to detect and appraise infestations of forest insect pests and tree diseases, to determine the measures which should be applied on such lands, in order to prevent, retard, control, suppress or eradicate incipient, threatening, potential or emergency outbreaks of such insects or disease pests, and to plan, organize, direct and carry out such measures as he may deem necessary to accomplish the objectives and provisions of this section: Provided, That actual control measures shall be conducted with the cooperation and consent of the quarantine and regulatory official of the Department of Agriculture.

(b) Establishing control zone; notice to landowners. -- Where an insect infestation or disease infection is believed to exist on a forest land within this state, the director shall investigate the condition. Whenever he finds that an infestation or infection exists, he shall request the quarantine officials of the state Department of Agriculture to declare the same a public nuisance. When same has been declared a public nuisance he shall establish a control zone of the forest land wherein the same is found, and shall give notice thereof by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the area or areas are located in which the control zone is established. Such notice shall also be given by mail or otherwise to forest landowners within the control zone, advising them of the nature of the infestation or infection, recommending control measures and offering technical advice on methods of carrying out the control measures.

(c) Institution of control measures. -- If, after notification by the director, any landowner fails, neglects, or is unable to carry out the control measures recommended by the director as set forth in subdivision (b), the director may, through his agents, institute and carry out such control measures.

(d) Appeals. -- Any person damaged or aggrieved by any action of any officer or employee of the department under the provisions of this section shall have the right to appeal from such

WV Legislature

action to the director and then to the circuit court of the county in which such person resides in which he owns forest land affected by such action. The court, after hearing the evidence in the case, may make such orders as may be appropriate to protect the interests of the appellant, adjacent forest landowners, or the state.

(e) Cooperation with individuals and public agencies. -- The director is authorized to cooperate with landowners and appropriate authorities of town, city, county, adjoining state and the United States government, and other agencies having jurisdiction of state lands, concerning forest tree insect and disease investigation and control, and to accept money, gifts and donations, and to disburse the same for the purpose of carrying out the provisions of this section.

(f) Annual appropriation; forest pest control fund. -- There is hereby created in the State Treasury a special fund to be known as the forest pest control fund. Such fund shall consist of all moneys appropriated thereto by the Legislature and all moneys received and deposited with the State Treasurer under the provisions of this section. All such funds are hereby appropriated to the department of natural resources to be used to carry out the purposes of this section.

(g) Definitions. -- As used in this section, unless the context clearly requires otherwise:

(1) "Forest trees" means only those trees which are a part of and constitute a stand of potential, immature, or mature commercial timber trees: Provided, That the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways and within cities and towns if the same constitute an insect or disease menace to nearby timber trees or timber stands;

(2) "Forest land" means land on which forest trees occur;

(3) "Control zone" means an area of potential or actual infestation or infection, the boundaries of which are fixed and clearly described in a manner to definitely identify the zone;

(4) "Infestation" means infestation by means of any insect in any stage of growth which is determined to be dangerously injurious to forest trees; and

(5) "Infection" means infection by any disease affecting forest trees which is determined to be dangerously injurious thereto.

WV Legislature

§20-3-20. Governor's authority to execute

The Governor of West Virginia, on behalf of this state, is hereby authorized to execute a compact in substantially the following form, with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, and the Legislature hereby signifies in advance its approval and ratification of such compact:

Southeastern Interstate Forest Fire Protection Compact

Article I

The purpose of this compact is to promote effective prevention and control of forest fires in the southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest firefighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

Article II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the state of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, which are contiguous, have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact subject to approval by the Legislature of each of the member states.

Article III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states, and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives, which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Delegates who shall be designated by that state's commission on interstate cooperation, or if said commission cannot Constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the Governor of each member state shall appoint two representatives,

WV Legislature

one of whom shall be associated with forestry or forest products industries, to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put into effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith: Provided, That nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state

WV Legislature

without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact, the term "employee" shall include any volunteer or auxiliary legally included within the forest firefighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

Article VI

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest firefighting forces, equipment services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

Article VII

The compact administrators may request the United States forest service to act as a research and coordinating agency of the southeastern interstate forest fire protection compact in cooperation with the appropriate agencies in each state, and the United States forest service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

Article VIII

The provisions of articles four and five of this compact which relate to mutual aid in combatting, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, That the Legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

WV Legislature

Article IX

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the Governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

WV Legislature

§20-3-21. When and how compact becomes operative.

When the Governor shall have executed said compact on behalf of this state and shall have caused a verified copy thereof to be filed with the Secretary of State and when said compact shall have been ratified by one or more of the states named in section twenty of this article, then said compact shall become operative and effective as between this state and such other state or states. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying said compact.

WV Legislature

§20-3-22. Compact administration; advisory committee.

In pursuance of article three of said compact, the director of the department of natural resources of the State of West Virginia or his designated representative shall act as compact administrator for the State of West Virginia of the southeastern interstate forest fire protection compact during his term of office as director, and his successor as compact administrator shall be his successor as director. As compact administrator he shall be an ex officio member of the advisory committee of the southeastern interstate forest fire protection compact, and chairman ex officio of the West Virginia members of said advisory committee. There shall be four members of the southeastern interstate forest fire protection compact advisory committee from the State of West Virginia. Two of the members from the State of West Virginia shall be members of the Legislature of West Virginia, one from the Senate and one from the House of Delegates, designated by the state's commission on interstate cooperation, and the terms of any such members shall terminate at the time they cease to hold legislative office, and their successors as members shall be named in like manner. The Governor shall appoint the other two members from the State of West Virginia, one of whom shall be associated with forestry or forest products industries. Such members shall hold office until their respective successors shall be appointed and qualified. Vacancies occurring in the office of such members for any reason or cause shall be filled by appointment by the Governor for the unexpired term. The director as compact administrator may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the compact administrators or of the advisory committee. The terms of each of the initial four memberships of the advisory committee, whether appointed at said time or not, shall begin upon the date upon which said compact shall become effective in accordance with article two of said compact. Any member of said advisory committee may be removed from office by the Governor upon charges and after a hearing.

WV Legislature

§20-3-23. Compact committee powers and duties; cooperation therewith.

There is hereby granted to the director, as compact administrator and chairman ex officio of the West Virginia members of said advisory committee, and to the members from West Virginia of said advisory committee, all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of West Virginia are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of the State of West Virginia to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of West Virginia are hereby authorized and directed at convenient times and upon request of said compact administrator, or of said advisory committee, to furnish information and data relating to the purposes of said compact possessed by them or any of them to said compact administrator or said advisory committee. They are further authorized to aid said compact administrator or said advisory committee by loan of personnel, equipment or other means in carrying out the purposes of said compact.

WV Legislature

§20-3-24. Other powers of state forester supplementary.

Any powers herein granted to the state forester shall be regarded as in aid of and supplemental to, and in no case a limitation upon, any of the powers vested in said director by other laws of the State of West Virginia or by the laws of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, or by the Congress or the terms of said compact.

WV Legislature

PART III. MIDDLE ATLANTIC INTERSTATE FOREST FIRE

PROTECTION COMPACT.

§20-3-25. Governor's authority to execute.

The Governor of West Virginia, on behalf of this state, is hereby authorized to execute a compact in substantially the following form, with any one or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania and Virginia, and the Legislature hereby signifies in advance its approval and ratification of such compact:

MIDDLE ATLANTIC INTERSTATE FOREST FIRE

PROTECTION COMPACT

ARTICLE I.

The purpose of this compact is to promote effective prevention and control of forest fires in the middle Atlantic region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest firefighting services by the member states, and by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements.

ARTICLE II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia which are contiguous have ratified it and Congress has given consent thereto.

ARTICLE III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for

WV Legislature

that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: Provided, That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other costs or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state: Provided, That nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

WV Legislature

For the purposes of this compact the term "employee" shall include any volunteer or auxiliary legally included within the forest firefighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI.

Nothing in this compact shall be construed to authorize or permit any member state to curtail or diminish its forest firefighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest firefighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

ARTICLE VII.

The compact administrators may request the United States forest service to act as the primary research and coordinating agency of the middle Atlantic interstate forest fire protection compact in cooperation with the appropriate agencies in each state, and the United States forest service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States forest service may attend meetings of the compact administrators.

ARTICLE VIII.

The provisions of articles four and five of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, That the Legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

ARTICLE IX.

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the Governor of such state takes action to withdraw therefrom. Such action

WVLegislature

shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executive of all states then parties to the compact.

WV Legislature

§20-3-26. When and how compact becomes operative.

When the Governor shall have executed said compact on behalf of this state and shall have caused a verified copy thereof to be filed with the Secretary of State and when said compact shall have been ratified by one or more of the states named in section twenty-five of this article, then said compact shall become operative and effective as between this state and such other state or states. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state or any other state ratifying said compact.

WV Legislature

§20-3-27. Compact administration.

In pursuance of article two of said compact, the director of the department of natural resources of the State of West Virginia may appoint the state forester and the assistant state forester in charge of forest fire control to represent the State of West Virginia on the compact committee.

WV Legislature

§20-3-28. Compact committee powers and duties; cooperation therewith.

There is hereby granted to the members of the compact committee appointed by the director and under the general supervision of the director, all the powers provided for in the said compact. All officers of the State of West Virginia are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to the carrying out of said compact. All officers, bureaus, departments and persons of and in the state government or administration of the State of West Virginia are hereby authorized and directed at convenient times and upon request of the duly appointed members of the compact committee, to furnish information and data relating to the purpose of said compact possessed by them or any of them to said members of the compact committee. They are further authorized to aid said compact committee members by loan of personnel, equipment, or other means in carrying out the purposes of said compact.

WV Legislature

§20-3-29. Other powers supplementary.

Any powers herein granted to the state forester shall be regarded as in aid of and supplemental to, and in no case a limitation upon, any of the powers vested in said director by other laws of the State of West Virginia or by the laws of the state of Delaware, Maryland, New Jersey, Ohio, Pennsylvania and Virginia, or by the Congress or the terms of said compact.

WV Legislature