

100-201

REGULAR SESSION, 1982

SENATE BILL NO. 387

Colombo

March 13,

ninety days from



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 387

(BY MR. COLOMBO, *original sponsor*)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend and reenact sections four, five, eight, ten, eleven, twelve, thirteen and fourteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining the maximum rate of pay for persons employed to assist in detecting or extinguishing certain fires; removing the requirement for a specific annual appropriation for certain types of forest fire control; revising the hours for restricted burning; reducing the restrictions upon the director for effecting woods closure or a ban on burning; requiring railroad companies to perform certain fire prevention duties and imposing an assessment for noncompliance thereof; authorizing the recovery of certain costs incurred by the state in fighting fires from persons negligently causing fires; redefining forestlands; and renaming certain federal financial assistance legislation.

Be it enacted by the Legislature of West Virginia:

That sections four, five, eight, ten, eleven, twelve, thirteen and fourteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-4. Authority and duties of director and others as to forest fires; expenditures for forest fire control.

1 Upon receiving notice of any fire which is injuring or
2 endangering forestland within the state, the director, the state
3 forester, or their duly authorized representative, shall employ
4 all necessary means to confine, extinguish or suppress the
5 fire. For these purposes such persons and their employees
6 shall, under the general supervision of the director, have the
7 right and authority to enter upon public or private lands, to
8 destroy fences thereon, to plow such lands, and in case of
9 extreme emergency, to set backfires thereon. The state
10 forester and any duly authorized representative may, under
11 the general supervision of the director, employ persons to
12 detect fires which may injure or endanger forestland, and
13 may likewise summon or employ persons to assist in
14 extinguishing such fires, who shall be paid for the actual time
15 so employed, at a rate per hour to be determined by the
16 director: *Provided, however,* That the rate per hour shall not
17 exceed the rate per hour paid for any comparable labor or
18 skills by the department of natural resources. Any person so
19 summoned who shall fail or refuse to assist in extinguishing
20 any such fire shall, unless such failure or refusal to assist is
21 due to physical inability, be guilty of a misdemeanor.

22 Expenditures for detecting, confining, extinguishing or
23 suppressing fires described in this section shall be charged
24 against the state. The state forester or his agent shall render to
25 the director, as soon as practicable, a sworn statement with
26 the names of all persons who were summoned or employed to
27 assist in fighting such fires, the time so spent by each, as well
28 as the names of persons who furnished equipment,
29 subsistence or supplies, or transportation therefor, and the
30 amount of money due each for such services, subsistence,
31 supplies or transportation. Requisitions shall be issued and
32 payment of the sums due shall be made in the same manner
33 as is provided for the making of other expenditures by the
34 director.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

1 The periods of each year between March first and May
2 thirty-first, inclusive, and October first and December

3 thirty-first, inclusive, are hereby designated as forest fire
4 seasons. No person shall during any such fire season, except
5 between the hours of five o'clock p.m. and ten o'clock a.m.
6 prevailing time, set on fire or cause to be set on fire any
7 forestland, or any grass, grain, stubble, slash, debris, or other
8 inflammable materials. Any fire set during this time shall be
9 extinguished prior to 10:00 a.m. prevailing time. Such
10 prohibition of fires between ten o'clock a.m. and five o'clock
11 p.m. prevailing time shall not be construed to include (1)
12 small fires set for the purpose of food preparation, or
13 providing light or warmth around which all grass, brush,
14 stubble, or other debris has been removed for a distance of
15 ten feet from the fire, and (2) burning which may be
16 conducted at any time when the ground surrounding the
17 burning site is covered by one inch or more of snow. Any
18 person who sets or causes to be set any fire permitted by this
19 section shall not leave such fire unattended for any period of
20 time.

21 The director or his designated appointees or employees
22 may issue permits authorizing fires prohibited by the
23 preceding paragraph. Such permits may be granted on such
24 conditions and for such periods of time as the director deems
25 necessary to prevent danger from fire to life or property, and
26 noncompliance with any term of the permit shall be a
27 violation of this section. Any permit which was obtained
28 through willful misrepresentation shall be invalid. All permit
29 holders shall take all necessary and adequate precautions to
30 confine and control any fire permitted by the authorization;
31 failure to take such action shall be a violation of this section
32 and shall be justification for the director or his duly
33 authorized representative to cancel the permit.

34 When the director considers it necessary to prevent danger
35 from fire to life or property, he may, with the prior approval of
36 the governor, prohibit the starting of and require the
37 extinguishment of any fire in any area designated by the
38 director, and such action may include any fire for which a
39 permit has been issued under the preceding paragraph. In
40 addition, if so deemed necessary, the director may, with the
41 prior approval of the governor, designate any forest area as a
42 danger area and prohibit entry thereon or use thereof except
43 for the purposes and on the conditions he designates. The
44 director by proclamation shall establish such areas and
45 designate which fires are prohibited therein; and if a danger

46 area is established, he shall announce the purposes for which
47 and conditions under which entry thereon or use thereof may
48 be made. Action hereunder may be taken by the director at
49 any time during the year. Notice of any proclamation
50 hereunder shall be furnished to newspapers, radio stations
51 and television stations which serve the area designated. The
52 proclamation shall not be effective until twenty-four hours
53 after it is proclaimed. Any proclamation hereunder shall
54 remain in force until the director, with the approval of the
55 governor, by order terminates it. The order shall designate the
56 time of termination, and notice of any such order shall be
57 furnished to each newspaper, radio station and television
58 station which received a copy of the proclamation. Any
59 person who starts or fails to extinguish a fire so prohibited or
60 enters or uses a danger area otherwise than permitted shall be
61 guilty of a violation of this section.

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

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

17 Each such company shall employ sufficient personnel to
18 promptly put out fires on such road or right-of-way at times
19 when such land is in a dry and dangerous fire condition. Each
20 such company shall provide internal combustion engines of
21 motive power other than steam used in road service, if not
22 equipped with exhaust driven centrifugal turbocharger, shall
23 have installed integral with the exhaust gas system, a
24 spark-arresting device of a type certified according to the
25 recommended practices of the association of American

26 railroads and approved by the director so as to give the best
27 practical protection against the escape of fire and sparks from
28 the exhausts thereof.

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

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

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

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

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

§20-3-11. Recovery of costs incurred in fighting fires.

1 The director shall, in the name of the state, recover from the
2 person or persons, firms or corporations whose negligence or
3 whose violations of any provision of this article caused any
4 fire at any time on grass or forestland, the amount expended
5 by the state for the personal services of persons especially
6 employed under the provisions of section four of this article
7 to control, confine, extinguish or suppress such fire, and the
8 costs associated therewith, including payment for the
9 personal services rendered by full-time state department of
10 natural resources employees, operating costs of state
11 equipment used and costs related thereto in controlling,
12 confining, extinguishing or suppressing such fire. Such
13 recovery shall not bar an action for damages by any other
14 person.

15 Any such fire which was caused by a trespasser or by a
16 person who was upon the property without the consent of the
17 owner shall not be deemed caused by the negligence of the
18 owner; but the owner shall use all practical means to confine,
19 extinguish or suppress any such fire on his land even though
20 it was caused by any such person. If he fails to do so, after
21 becoming aware of such fire, the director shall, in the name of
22 the state, recover from him amounts expended by the state
23 for the personal services of persons especially employed
24 under the provisions of section four of this article to control,
25 confine, extinguish or suppress such fire and the costs
26 associated therewith, including payment for the personal
27 services rendered by full-time state department of natural
28 resources employees, operating costs of state equipment used
29 and costs related thereto in controlling, confining,
30 extinguishing or suppressing such fire.

§20-3-12. Timberland and forestland defined.

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

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

1 The director may do all things required to meet the
2 conditions and requirements of the federal government in
3 securing federal cooperation under the provisions of the
4 Weeks Law and the Cooperative Forestry Assistance Act of
5 1978, and any other law amendatory thereof or supplemental
6 thereto, for the purpose of the prevention and control of
7 forest fires and the advancement of forestry practices.

**§20-3-14. Financial assistance from owners of forestlands;
expenditures by director.**

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayler
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wicks
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Warren R. McInnis
President of the Senate

Walter H. Steele, Jr.
Speaker House of Delegates

The within *is approved* this the *30*

day of *March*, 1982.

John R. Ragsdale
Governor

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SECY. OF STATE