WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

ENROLLED

Committee Substitute for

SENATE BILL NO. 387

(By Mr. [Signature])

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 endangering forestland within the state, the director, the state forester, or their duly authorized representative, shall employ all necessary means to confine, extinguish or suppress the fire. For these purposes such persons and their employees shall, under the general supervision of the director, 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. The state forester and any duly authorized representative may, under the general supervision of the director, employ persons to detect fires which may injure or endanger forestland, 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: Provided, however, That the rate per hour shall not exceed the rate per hour paid for any comparable labor or skills by the department of natural resources. 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 state forester or his agent shall render to the director, 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.

§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 thirty-first, inclusive, and October first and December
thirty-first, inclusive, are hereby designated as forest fire
seasons. No person shall during any such fire season, except
between the hours of five o’clock p.m. and ten o’clock a.m.
prevailing time, set on fire or cause to be set on fire any
forestland, or any grass, grain, stubble, slash, debris, or other
inflammable materials. Any fire set during this time shall be
extinguished prior to 10:00 a.m. prevailing time. Such
prohibition of fires between ten o’clock a.m. and five o’clock
p.m. prevailing time shall not be construed to include (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
ten feet from the fire, and (2) burning which may be
conducted at any time when the ground surrounding the
burning site is covered by one inch or more of snow. Any
person who sets or causes to be set any fire permitted by this
section shall not leave such fire unattended for any period of
time.

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

When the director considers it necessary to prevent danger
from fire to life or property, he may, with the prior approval of
the governor, prohibit the starting of and require the
extinguishment of any fire in any area designated by the
director, and such action may include any fire for which a
permit has been issued under the preceding paragraph. In
addition, if so deemed necessary, the director may, with the
prior approval of the governor, designate any forest area as a
danger area and prohibit entry thereon or use thereof except
for the purposes and on the conditions he designates. The
director by proclamation shall establish such areas and
designate which fires are prohibited therein; and if a danger
area is established, he shall announce the purposes for which and conditions under which entry thereon or use thereof may be made. Action hereunder may be taken by the director at any time during the year. Notice of any proclamation hereunder shall be furnished to newspapers, radio stations and television stations which serve the area designated. The proclamation shall not be effective until twenty-four hours after it is proclaimed. Any proclamation hereunder shall remain in force until the director, with the approval of the governor, by order terminates it. The order shall designate the time of termination, and notice of any such order shall be furnished to each newspaper, radio station and television station which received a copy of the proclamation. Any person who starts or fails to extinguish a fire so prohibited or enters or uses a danger area otherwise than permitted shall be guilty of a violation of this section.

§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, of 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 five hundred dollars 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 to 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 forestland, 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 forestland. 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.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard
reduction to protect against 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 violating any provision of 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 person or persons, firms or corporations whose negligence or whose violations of any provision of this article caused any fire at any time on grass or forestland, 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 department of natural resources 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 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 department of natural resources employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire.

§20-3-12. Timberland and forestland defined.
1 For the purpose of this chapter, any land shall be considered timberland or forestland which has enough timber standing or down to constitute, in the judgment of the department, a fire menace to itself or adjoining lands: Provided, however, 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.
§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.

§20-3-14. Financial assistance from owners of forestlands; expenditures by director.
The director may cooperate with the owners of forestlands 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, however, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within __________ day of ______________, 1982, __________

Governor