

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986




ENROLLED

SENATE BILL NO. 202

(By Senator.....Whitacre, et al.....)



PASSEDMarch 8,..... 1986

In Effect.....July 1, 1986..... 

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Senate Bill No. 202

(By SENATORS WHITACRE, PARKER AND TUCKER)

[Passed March 8, 1986; to take effect July 1, 1986.]

AN ACT to amend and reenact section three, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article one, chapter twenty of said code, all relating to abolition of the division of forestry in the department of natural resources and the creation and transfer of powers to the division of forestry in the department of agriculture; jurisdiction, powers and duties of said division; management of state forests and nurseries; transfer of regulation of ginseng; creation of state forests, powers and duties; maintenance of civil service coverage for transferred employees; certain powers, duties and services of the director of natural resources.

Be it enacted by the Legislature of West Virginia:

That section three, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article one, chapter twenty of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1A-3. Division of forestry; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.

1 The division of forestry which existed within the

2 department of natural resources pursuant to article three,
3 chapter twenty of this code is hereby abolished. And, except
4 as otherwise provided in this article, all powers and duties
5 previously exercised by the director of natural resources
6 under subsection thirteen, section seven, article one and
7 article three, chapter twenty of this code, except those
8 powers and duties relating solely to wildlife areas as
9 described in section three, article three, chapter twenty of
10 this code are hereby transferred to the division of forestry
11 herein created in the department of agriculture. All books,
12 papers, maps, charts, plans, literature and other records,
13 equipment, personnel, buildings, structures, other tangible
14 properties and assets and appropriations used by or
15 assigned to the division shall be transferred with the
16 program. However, nothing in this article shall be
17 construed as to transfer the legal title to any real property
18 possessed by the department of natural resources prior to
19 the thirtieth day of June, one thousand nine hundred
20 eighty-five. The division of forestry of the department of
21 agriculture shall have within its jurisdiction and
22 supervision the state forests, other forests and woodland
23 areas, the protection of forest areas from injury and damage
24 by fire, disease, insects and other pestilences and forces the
25 management of forest areas for natural resources,
26 conservation and undeveloped recreational activities,
27 administration of the southeastern interstate forest fire
28 protection compact and other compacts and agreements
29 relating to forest management and husbandry, and the
30 administration and enforcement of laws relating to the
31 conservation, development, protection, use and enjoyment
32 of all forest land areas of the state consistent with the
33 provisions of this chapter. All moneys collected from the
34 sale of timber realized through management of the state-
35 owned forests and the sale of seedlings from the tree
36 nurseries shall be paid into the state treasury and into a
37 special account therein to be subsequently appropriated to
38 the department of agriculture for the administration of this
39 article.

40 The division of forestry of the department of agriculture
41 shall have jurisdiction to regulate the digging, possession
42 and sale of native, wild or cultivated ginseng: *Provided,*
43 That the digging season for wild, native or cultivated

44 ginseng shall begin on the fifteenth day of August and end
45 on the thirtieth day of November of each year unless
46 otherwise authorized by the director. Ginseng dealers shall:
47 (a) Obtain a ginseng dealer's permit from the director; (b)
48 keep on forms provided by the director accurate records for
49 all ginseng acquired showing the year harvested, the date
50 acquired by the dealer, county of origin, weight and
51 whether wild or cultivated; and (c) have all records and all
52 acquired ginseng inspected by the director at official
53 ginseng inspection stations for the purpose of certifying the
54 dealer's records and issuing a certificate documenting the
55 inspection and the weight of the ginseng. All ginseng dug in
56 West Virginia must be certified by the director before being
57 transported or shipped out of the state. No person shall have
58 in his possession uncertified green ginseng from the first
59 day of April through the fourteenth day of August.

60 The chief of the division shall be designated state forester
61 and shall be responsible for the execution and
62 administration of the provisions of this article as an integral
63 part of the natural resources program of the state. In
64 addition to meeting merit system or civil service
65 qualifications and requirements, the state forester shall be
66 a graduate of an accredited school of forestry with practical
67 experience and training in forestry field organization and
68 programs. All other personnel shall be transferred with the
69 current merit or civil service ratings they now hold under
70 the civil service system.

71 The state forester shall study means and methods of
72 implementing the provisions of section fifty-three, article
73 six of the Constitution of West Virginia, relating to forest
74 lands, and shall prepare and recommend to the
75 commissioner legislation thereon.

76 The commissioner of the department of agriculture shall
77 meet with the state forester and the director of the
78 department of natural resources prior to the first day of
79 June, one thousand nine hundred eighty-five, to facilitate
80 the orderly transfer of the forestry division, books, papers,
81 maps, charts, plans, literature, records, equipment,
82 buildings, structures and other tangible properties and
83 assets. The director of the department of natural resources
84 shall cooperate fully to ensure that present forestry
85 operations and programs are not discontinued prior to the

86 transfer which shall be the first day of July, one thousand
87 nine hundred eighty-five. The director of the department of
88 natural resources and the commissioner shall work out a
89 pro-rata agreement for continuation of the present
90 occupancy of any buildings transferred that are occupied
91 by the department of natural resources personnel, other
92 than personnel of the forestry division and for any buildings
93 that are not transferred, but which are partially occupied
94 by personnel of the forestry division.

95 The state forester shall immediately after the transfer of
96 the division of forestry establish a system to divide the
97 forests being transferred to the department of agriculture
98 for management from the cabins, lodges and improved
99 recreational facilities which shall remain with the parks
100 division of the department of commerce.

101 In establishing the division lines, the commissioner and
102 the state forester shall cooperate fully to ensure that
103 management of improved property essential to the parks
104 division is not transferred.

105 In the event of disagreement over the placement of a
106 division line or dual occupancy of a building, the
107 disposition shall be decided by the Legislature's joint
108 committee on government and finance at a regularly
109 scheduled meeting. The transfer of management shall
110 include a transfer of all appurtenances, equipment,
111 products, inventories and forest facilities.

112 All personnel employed in the division of forestry within
113 the department of natural resources and whose
114 employment is being transferred to the department of
115 agriculture shall retain their coverage under the civil
116 service commission and civil service system, and all matters
117 relating to job classification, job tenure, salary and
118 conditions of employment shall remain in force and effect
119 from and after the first day of July, one thousand nine
120 hundred eighty-five.

121 The chief of the division of forestry in the department of
122 natural resources on the effective date of transfer to the
123 department of agriculture shall continue as, and thereafter
124 be designated as, the state forester and retain civil service
125 system coverage with such duties and responsibilities as
126 may be assigned by the director.

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.****§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which best
9 effectuates the purposes of this chapter and which makes
10 adequate provisions for the natural resources laws of the
11 state;

12 (2) Sign and execute in the name of the state by the
13 "department of natural resources" any contract or
14 agreement with the federal government or its departments
15 or agencies, subdivisions of the state, corporations,
16 associations, partnerships or individuals;

17 (3) Conduct research in improved conservation methods
18 and disseminate information matters to the residents of the
19 state;

20 (4) Conduct a continuous study and investigation of the
21 habits of wildlife, and for purposes of control and
22 protection, to classify by regulation the various species into
23 such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this chapter;

27 (6) Hold at least six meetings each year at such time and
28 at such points within the state, as in the discretion of the
29 natural resources commission may appear to be necessary
30 and proper for the purpose of giving interested persons in
31 the various sections of the state an opportunity to be heard
32 concerning open season for their respective areas, and
33 report the results of the meetings to the natural resources
34 commission before such season and bag limits are fixed by
35 it;

36 (7) Suspend open hunting season upon any or all
37 wildlife in any or all counties of the state with the prior
38 approval of the governor in case of an emergency such as a

39 drought, forest fire hazard or epizootic disease among
40 wildlife. The suspension shall continue during the existence
41 of the emergency and until rescinded by the director.
42 Suspension, or reopening after such suspension, of open
43 seasons may be made upon twenty-four hours' notice by
44 delivery of a copy of the order of suspension or reopening to
45 the wire press agencies at the state capitol;

46 (8) Supervise the fiscal affairs and responsibilities of
47 the department;

48 (9) Designate such localities as he shall determine to be
49 necessary and desirable for the perpetuation of any species
50 of wildlife;

51 (10) Enter private lands to make surveys or inspections
52 for conservation purposes, to investigate for violations of
53 provisions of this chapter, to serve and execute warrants
54 and processes, to make arrests and to otherwise effectively
55 enforce the provisions of this chapter;

56 (11) Acquire for the state in the name of the
57 "department of natural resources" by purchase,
58 condemnation, lease or agreement, or accept or reject for
59 the state, in the name of the department of natural
60 resources, gifts, donations, contributions, bequests or
61 devises of money, security or property, both real and
62 personal, and any interest in such property, including lands
63 and waters, which he deems suitable for the following
64 purposes:

65 (a) For state forests for the purpose of growing timber,
66 demonstrating forestry, furnishing or protecting
67 watersheds or providing public recreation;

68 (b) For state parks or recreation areas for the purpose of
69 preserving scenic, aesthetic, scientific, cultural,
70 archaeological or historical values or natural wonders, or
71 providing public recreation;

72 (c) For public hunting, trapping or fishing grounds or
73 waters for the purpose of providing areas in which the
74 public may hunt, trap or fish, as permitted by the provisions
75 of this chapter, and the rules and regulations issued
76 hereunder;

77 (d) For fish hatcheries, game farms, wildlife research
78 areas and feeding stations;

79 (e) For the extension and consolidation of lands or

80 waters suitable for the above purposes by exchange of other
81 lands or waters under his supervision;

82 (f) For such other purposes as may be necessary to carry
83 out the provisions of this chapter;

84 (12) Capture, propagate, transport, sell or exchange any
85 species of wildlife as may be necessary to carry out the
86 provisions of this chapter;

87 (13) Sell, with the approval in writing of the governor,
88 timber for not less than the value thereof, as appraised by a
89 qualified appraiser appointed by the director, from all
90 lands under the jurisdiction and control of the director,
91 except those lands that are designated as state parks and
92 those in the Kanawha state forest. The appraisal shall be
93 made within a reasonable time prior to any sale, reduced to
94 writing, filed in the office of the director and shall be
95 available for public inspection. When the appraised value
96 of the timber to be sold is more than five hundred dollars,
97 the director, before making sale thereof, shall receive sealed
98 bids therefor, after notice by publication as a Class II legal
99 advertisement in compliance with the provisions of article
100 three, chapter fifty-nine of this code, and the publication
101 area for such publication shall be each county in which the
102 timber is located. The timber so advertised shall be sold at
103 not less than the appraised value to the highest responsible
104 bidder, who shall give bond for the proper performance of
105 the sales contract as the director shall designate; but the
106 director shall have the right to reject any and all bids and to
107 readvertise for bids. If the foregoing provisions of this
108 section have been complied with, and no bid equal to or in
109 excess of the appraised value of the timber is received, the
110 director may, at any time, during a period of six months
111 after the opening of the bids, sell the timber in such manner
112 as he deems appropriate, but the sale price shall not be less
113 than the appraised value of the timber advertised. No
114 contract for sale of timber made pursuant to this section
115 shall extend for a period of more than ten years. And all
116 contracts heretofore entered into by the state for the sale of
117 timber shall not be validated by this section if the same be
118 otherwise invalid. The proceeds arising from the sale of the
119 timber so sold, shall be paid to the treasurer of the state of
120 West Virginia, and shall be credited to the department and
121 used exclusively for the purposes of this chapter: *Provided,*

122 That nothing contained herein shall prohibit the sale of
123 timber which otherwise would be removed from rights-of-
124 way necessary for and strictly incidental to the extraction
125 of minerals;

126 (14) Sell or lease, with the approval in writing of the
127 governor, coal, oil, gas, sand, gravel and any other minerals
128 that may be found in the lands under the jurisdiction and
129 control of the director, except those lands that are
130 designated as state parks. The director, before making sale
131 or lease thereof, shall receive sealed bids therefor, after
132 notice by publication as a Class II legal advertisement in
133 compliance with the provisions of article three, chapter
134 fifty-nine of this code, and the publication area for such
135 publication shall be each county in which such lands are
136 located. The minerals so advertised shall be sold or leased to
137 the highest responsible bidder, who shall give bond for the
138 proper performance of the sales contract or lease as the
139 director shall designate; but the director shall have the
140 right to reject any and all bids and to readvertise for bids.
141 The proceeds arising from any such sale or lease shall be
142 paid to the treasurer of the state of West Virginia and shall
143 be credited to the department and used exclusively for the
144 purposes of this chapter;

145 (15) Exercise the powers granted by this chapter for the
146 protection of forests, and regulate fires and smoking in the
147 woods or in their proximity at such times and in such
148 localities as may be necessary to reduce the danger of forest
149 fires;

150 (16) Cooperate with departments and agencies of state,
151 local and federal governments in the conservation of
152 natural resources and the beautification of the state;

153 (17) Report to the governor each year all information
154 relative to the operation and functions of his department
155 and he shall make such other reports and recommendations
156 as may be required by the governor, including an annual
157 financial report covering all receipts and disbursements of
158 the department for each fiscal year, and he shall deliver
159 such report to the governor on or before the first day of
160 December next after the end of the fiscal year so covered. A
161 copy of such report shall be delivered to each house of the
162 Legislature when convened in January next following;

163 (18) Keep a complete and accurate record of all

164 proceedings, record and file all bonds and contracts taken
165 or entered into, and assume responsibility for the custody
166 and preservation of all papers and documents pertaining to
167 his office, except as otherwise provided by law;

168 (19) Offer and pay, in his discretion, rewards for
169 information respecting the violation, or for the
170 apprehension and conviction of any violators, of any of the
171 provisions of this chapter;

172 (20) Require such reports as he may deem to be
173 necessary from any person issued a license or permit under
174 the provisions of this chapter, but no person shall be
175 required to disclose secret processes or confidential data of
176 competitive significance;

177 (21) Purchase as provided by law all equipment
178 necessary for the conduct of his department;

179 (22) Conduct and encourage research designed to
180 further new and more extensive uses of the natural
181 resources of this state and to publicize the findings of such
182 research;

183 (23) Encourage and cooperate with other public and
184 private organizations or groups in their efforts to publicize
185 the attractions of the state;

186 (24) Accept and expend, without the necessity of
187 appropriation by the Legislature, any gift or grant of money
188 made to the department for any and all purposes specified
189 in this chapter, and he shall account for and report on all
190 such receipts and expenditures to the governor;

191 (25) Cooperate with the state historian and other
192 appropriate state agencies in conducting research with
193 reference to the establishment of state parks and
194 monuments of historic, scenic and recreational value, and
195 to take such steps as may be necessary in establishing such
196 monuments or parks as he deems advisable;

197 (26) Maintain in his office at all times, properly indexed
198 by subject matter, and also, in chronological sequence, all
199 rules and regulations made or issued under the authority of
200 this chapter. Such records shall be available for public
201 inspection on all business days during the business hours of
202 working days;

203 (27) Delegate the powers and duties of his office, except
204 the power to execute contracts, to appointees and
205 employees of the department, who shall act under the

206 direction and supervision of the director and for whose acts
207 he shall be responsible;

208 (28) Conduct schools, institutions and other
209 educational programs, apart from or in cooperation with
210 other governmental agencies, for instruction and training
211 in all phases of the natural resources programs of the state;

212 (29) Authorize the payment of all or any part of the
213 reasonable expenses incurred by an employee of the
214 department in moving his household furniture and effects
215 as a result of a reassignment of the employee: *Provided,*
216 That no part of the moving expenses of any one such
217 employee shall be paid more frequently than once in twelve
218 months; and

219 (30) Promulgate rules and regulations, in accordance
220 with the provisions of chapter twenty-nine-a of this code, to
221 implement and make effective the powers and duties vested
222 in him by the provisions of this chapter and take such other
223 steps as may be necessary in his discretion for the proper
224 and effective enforcement of the provisions of this chapter:
225 *Provided,* That all rules and regulations relating to articles
226 five and five-a of this chapter shall be promulgated by the
227 water resources board.

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

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Fred C. Guthrie
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Sam Tomlinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *25th*
March
day of , 1986.

Arthur S. Shores, Jr.
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/20/86

Time 3:57 p.m.

RECEIVED

1986 MAR 28 PM 4:30

OFFICE OF THE CLERK
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86