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SUPPORT OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. 4402

(By Delegate Mr. Speaker, Mr. Chambers,
and Delegates Martin, Mezzatista,
Kiss, Rowe, Douglas and Burk)

Passed March 12, 1994

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4402

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATES MARTIN,
MEZZATESTA, KISS, ROWE, DOUGLAS AND BURK)

[Passed March 12, 1994; in effect from passage.]

AN ACT to repeal section six, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one, article three, chapter twenty of said code; to amend and reenact section twenty-a, article thirteen-a, chapter eleven of said code; to amend and reenact section three, article one-a, chapter nineteen of said code; and to amend and reenact sections three and six, article one-b of said chapter, all relating to forest and wildlife protection and funding; repealing provisions relating to an annual fee to benefit the division of forestry assessed owners of woodlots, woodlands and timberland; creating a special revenue account to be appropriated by the Legislature; designating certain proceeds from the timber severance tax to benefit the division of forestry; continuing the division of forestry; jurisdiction of division; moneys from sale of timber; appointment of director; defining terms; notification of timbering operations; and exempting certain noncommercial timber harvesting from specified regulatory control.

Be it enacted by the Legislature of West Virginia:

That section six, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be repealed; that section one, article three, chapter twenty of said code be repealed; that section twenty-a, article thirteen-a, chapter eleven of said code be amended and reenacted; that section three, article one-a, chapter nineteen of said code be amended and reenacted; and that sections three and six, article one-b of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.

§11-13A-20a. Dedication of tax.

1 (a) The amount of taxes collected under this article
2 from providers of health care items or services, includ-
3 ing any interest, additions to tax and penalties collected
4 under article ten of this chapter, less the amount of
5 allowable refunds and any interest payable with respect
6 to such refunds, shall be deposited into the special
7 revenue fund created in the state treasurer's office and
8 known as the medicaid state share fund. Said fund shall
9 have separate accounting for those health care providers
10 as set forth in articles four-b and four-c, chapter nine
11 of this code.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section, for the remainder of fiscal year one
14 thousand nine hundred ninety-three and for each
15 succeeding fiscal year, no expenditures from taxes
16 collected from providers of health care items or services
17 are authorized except in accordance with appropriations
18 by the Legislature.

19 (c) The amount of taxes on the privilege of severing
20 timber collected under section three-b of this article,
21 including any interest, additions to tax and penalties
22 collected under article ten of this chapter, less the
23 amount of allowable refunds and any interest payable
24 with respect to such refunds, shall be paid into a special
25 revenue account in the state treasury to be appropriated
26 by the Legislature for purposes of the division of
27 forestry.

28 (d) The amount of taxes collected under this article
29 from all other persons, including any interest, additions

30 to tax and penalties collected under article ten of this
31 chapter, less the amount of allowable refunds and any
32 interest payable with respect to such refunds, shall be
33 deposited into the general revenue fund.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of forestry; division director; duties, powers, dedication of certain moneys; creation of a special revenue account.

1 The division of forestry heretofore created is hereby
2 continued. And, except as otherwise provided in this
3 article, all powers and duties previously exercised by the
4 director of natural resources under subsection thirteen,
5 section seven, article one and article three, chapter
6 twenty of this code, except those powers and duties
7 relating solely to wildlife areas as described in section
8 three, article three, chapter twenty of this code,
9 heretofore transferred to the division of forestry, are
10 hereby continued in the division of forestry. The division
11 of forestry has within its jurisdiction and supervision the
12 state forests, other forests and woodland areas, the
13 protection of forest areas from injury and damage by
14 fire, disease, insects and other pestilences and forces, the
15 management of forest areas for natural resources,
16 conservation and undeveloped recreational activities,
17 administration of the southeastern interstate forest fire
18 protection compact and other compacts and agreements
19 relating to forest management and husbandry, and the
20 administration and enforcement of laws relating to the
21 conservation, development, protection, use and enjoy-
22 ment of all forest land areas of the state consistent with
23 the provisions of sections one and two of this article. All
24 moneys collected from the sale of timber realized
25 through management of the state-owned forests and the
26 sale of seedlings from the tree nurseries shall be paid
27 into the state treasury and shall be credited to a special
28 account within the division of forestry and used
29 exclusively for the purposes of this article and article
30 three, chapter twenty of this code.

31 The division of forestry has jurisdiction to regulate the

32 digging, possession and sale of native, wild or cultivated
33 ginseng as provided in section three-a, article one-a,
34 chapter nineteen of this code.

35 The chief of the division is the director of the division
36 of forestry who shall be appointed and qualified as
37 provided in section five of this article.

38 The director of the division of forestry shall study
39 means and methods of implementing the provisions of
40 section fifty-three, article VI of the constitution of West
41 Virginia, relating to forest lands, and shall prepare and
42 recommend legislation thereon.

43 The division lines within the state forests between
44 improved recreation areas under the management of the
45 division of tourism and parks and the demonstration
46 forests under the management of the division of forestry,
47 heretofore established by agreement, are hereby
48 continued.

49 In the event of disagreement over the placement of a
50 division line or dual occupancy of a building, the
51 disposition shall be decided by the Legislature's joint
52 committee on government and finance at a regularly
53 scheduled meeting.

**ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL
TIMBER HARVESTING OPERATIONS.**

§19-1B-3. Definitions.

1 (a) "Best management practices" means sediment
2 control measures, structural or nonstructural, used
3 singly or in combination, to reduce soil runoff from land
4 disturbances associated with commercial timber
5 harvesting.

6 (b) "Chief" means the chief of the section of water
7 resources of the division of natural resources, or his or
8 her designee.

9 (c) "Director" means the director of the division of
10 forestry of the department of commerce, labor and
11 environmental resources, or his or her authorized
12 designee.

13 (d) "Operator" means any person who conducts

14 timbering operations.

15 (e) "Timbering operations" means activities directly
16 related to the severing or removal of standing trees from
17 the forest as a raw material for commercial processes
18 or purposes. For the purpose of this article, timbering
19 operations shall not include the severing of evergreens
20 grown for and severed for the traditional Christmas
21 holiday season, nor the severing of trees incidental to
22 ground-disturbing construction activities, including well
23 sites, access roads and gathering lines for oil and
24 natural gas operations, nor the severing of trees for
25 maintaining existing, or during construction of, rights-
26 of-way for public highways or public utilities or any
27 company subject to the jurisdiction of the federal energy
28 regulatory commission unless the trees severed are
29 being sold or provided as raw material for commercial
30 wood product purposes, nor the severing of trees by an
31 individual on the individual's own property for his or
32 her individual use provided that the individual does not
33 have the severing done by a person whose business is
34 the severing or removal of trees. Individuals severing or
35 removing standing trees for sale occasionally, whether
36 on their own property or the property of another, where
37 the aggregate gross income realized for all sales within
38 any calendar year of the logs, props, posts, firewood,
39 rails or other products does not exceed fifteen thousand
40 five hundred twenty-eight dollars, are to be considered
41 engaged in the harvesting of timber and not engaged in
42 severing timber for commercial purposes. Harvesting of
43 timber is specifically excluded from the definition of
44 timbering operations.

45 (f) "Sediment" means solid particulate matter, usually
46 soil or minute rock fragments, moved by wind, rainfall
47 or snowmelt into the streams of the state.

§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

1 (a) In addition to any other requirement of this article,
2 no person may conduct timbering operations and no
3 person may sever trees for sale unless the person notifies

4 the director of the specific location on which the
5 timbering operations or harvesting of timber are to be
6 conducted. The notification shall be made in a manner
7 designated by the director.

8 (1) The notification of harvesting of timber shall
9 include:

10 (A) The name and address of the harvester of timber;

11 (B) The name and addresses of the owner or owners
12 of the property upon which the timber is located;

13 (C) The business tax number or social security
14 number of the harvester of timber; and

15 (D) An acknowledgment that the harvester of timber
16 will conduct the harvest according to best management
17 practices.

18 (2) The notification of timbering operations shall
19 include, at a minimum, the following:

20 (A) The specific topographic location where the
21 timbering operations are to be conducted;

22 (B) The approximate dates that the timbering oper-
23 ation will begin and end;

24 (C) The approximate acreage over which timbering
25 operations are contemplated;

26 (D) The names and addresses of the owner or owners
27 of the timber to be harvested and, if different, the names
28 and addresses of the owner or owners of the property
29 upon which the timber is located;

30 (E) A sketch map of the proposed logging operation,
31 including haul roads, landings and stream crossings;

32 (F) A description of the sediment control practices to
33 be used by the logger during the timber harvesting
34 operation;

35 (G) An acknowledgement that the operator will
36 conduct the operations in compliance with the provisions
37 of this article and any applicable rules promulgated
38 pursuant to this article;

39 (H) A certification satisfactory to the director that all
40 permits required under state law have been obtained or
41 applied for and that all pertinent requirements for
42 obtaining any permit applied for, but not yet obtained,
43 have been complied with; and

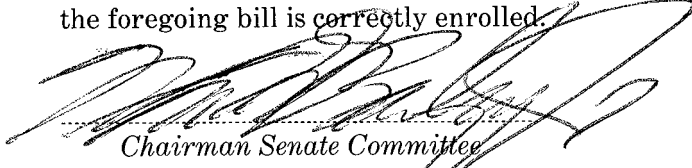
44 (I) The name or names of the person or persons who
45 will be supervising the timbering operations at the site
46 of the operations and his or her logger certification
47 numbers:

48 (b) The notification shall be made within at least three
49 days of the beginning of the operation.

50 (c) Further notice shall be given if the operation is to
51 be, for any reason, closed more than seven days before
52 the estimated date for closing provided under para-
53 graph (B), subdivision (2), subsection (a) of this section.

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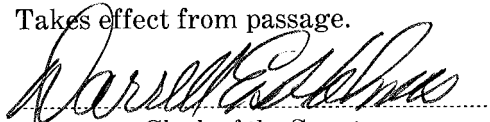
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

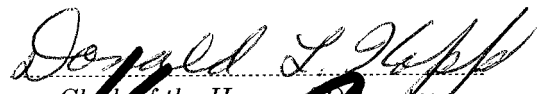

Chairman Senate Committee

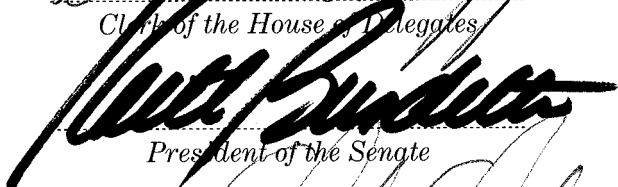

Ernest C. Moore
Chairman House Committee


Originating in the House.

Takes effect from passage.

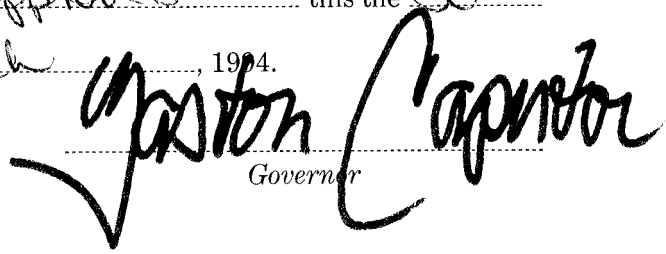

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved _____ this the 30th
day of March, 194.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/94

Time 4:14 pm