WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

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ENROLLED

Com. Sub. For

HOUSE BILL No. H402

(By Delegate Speaker, Treasurer, Chambers, and Delegates Martin, Mezzalusta, 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 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
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amended, be repealed; that section one, article three, chapter twenty of said code be repealed; that section twenty-a, article thirteen-a, chapter eleven of said code be amended and reenacted; that section three, article one-a, chapter nineteen of said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.

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

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

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

(d) The amount of taxes collected under this article from all other persons, including any interest, additions
to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be 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.

The division of forestry heretofore created is hereby continued. And, except as otherwise provided in this article, all powers and duties previously exercised by the director of natural resources under subsection thirteen, section seven, article one and article three, chapter twenty of this code, except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code, heretofore transferred to the division of forestry, are hereby continued in the division of forestry. The division of forestry has within its jurisdiction and supervision the state forests, other forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces, the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of sections one and two of this article. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state treasury and shall be credited to a special account within the division of forestry and used exclusively for the purposes of this article and article three, chapter twenty of this code.

The division of forestry has jurisdiction to regulate the
digging, possession and sale of native, wild or cultivated
ginseng as provided in section three-a, article one-a,
chapter nineteen of this code.

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

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

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

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

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

§19-1B-3. Definitions.

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

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

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

(d) "Operator" means any person who conducts
timbering operations.

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

(f) "Sediment" means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall 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.

(a) In addition to any other requirement of this article, no person may conduct timbering operations and no person may sever trees for sale unless the person notifies
the director of the specific location on which the
timbering operations or harvesting of timber are to be
conducted. The notification shall be made in a manner
designated by the director.

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

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

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

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

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

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

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

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

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

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

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

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

(G) An acknowledgement that the operator will
conduct the operations in compliance with the provisions
of this article and any applicable rules promulgated
pursuant to this article;
(H) A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained, have been complied with; and

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

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

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

Debold L. Kepp
Clerk of the House of Delegates

Walter Burdette
President of the Senate

Speaker of the House of Delegates

The within _______  was approved this the ______ day of _________, 1944.

Governor

Yoston Capron
PRESENTED TO THE
GOVERNOR
Date 3/28/94
Time 4:14 pm