

SB 458 (veto)

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2011**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 458**

(SENATORS LAIRD, FANNING, D. FACEMIRE, WILLIAMS,  
McCABE AND PLYMALE, ORIGINAL SPONSORS)

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COMMITTEE SUBSTITUTE

FOR

# Senate Bill No. 458

(SENATORS LAIRD, FANNING, D. FACEMIRE, WILLIAMS,  
MCCABE AND PLYMALE, *original sponsors*)

[Passed March 2, 2011; in effect ninety days from passage.]

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AN ACT to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating to updating the Logging Sediment Control Act; increasing licensure and certification fees; requiring the Division of Forestry to report certain information to the Tax Commissioner on a monthly basis; requiring the Director of the Division of Forestry to notify the Director of the Division of Water and Waste Management of the Department of Environmental Protection of licensure suspension or revocation within thirty days; establishing renewal of licensure and certification on a biennial basis; permitting the director the discretion to immediately suspend a timbering operator or operation, or any part of a timbering operation, in any part of the state; and requiring the Director of the Division of Forestry to convene a committee to review best management practices at least every five years.

*Be it enacted by the Legislature of West Virginia:*

That §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§19-1B-3. Definitions.**

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

5 (b) "Chief" means the Director of the Division of Water  
6 and Waste Management of the Department of Environmental  
7 Protection, or his or her designee.

8 (c) "Director" means the Director of the Division of  
9 Forestry of the Department of Commerce or his or her  
10 designee.

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

13 (e) "Timbering operation," or the plural, means activities  
14 directly related to the severing or removal of standing trees  
15 from the forest as a raw material for commercial processes or  
16 purposes. For the purpose of this article, timbering opera-  
17 tions do not include the severing of evergreens grown for and  
18 severed for the traditional Christmas holiday season; the  
19 severing of trees incidental to ground-disturbing construc-  
20 tion activities, including well sites, access roads and gather-  
21 ing lines for oil and natural gas operations; the severing of  
22 trees for maintaining existing, or during construction of,  
23 rights-of-way for public highways or public utilities or any  
24 company subject to the jurisdiction of the Federal Energy  
25 Regulatory Commission unless the trees so severed are being  
26 sold or provided as raw material for commercial wood  
27 product purposes; or the severing of trees by an individual on

28 the individual's own property for his or her individual use  
29 provided that the individual does not have the severing done  
30 by a person whose business is the severing or removal of  
31 trees.

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

**§19-1B-4. Timbering license required; requirement for license;  
exemption; annual fee; rules:**

1 (a) A person may not conduct timbering operations,  
2 purchase timber or buy logs for resale until he or she has  
3 obtained a license and met the requirements of this article.

4 (b) *Exemptions.*— A person who severs or removes, or hires  
5 or contracts with another to sever or remove, standing trees  
6 from his or her own land is exempted from the timbering  
7 operations licensure requirement of this section during any  
8 calendar year in which all trees severed or removed by or for  
9 this owner have an aggregate stumpage value that does not  
10 exceed \$15,528. A person hired or contracted to sever or  
11 remove standing trees from the land of another is exempted  
12 from the timbering operations licensure requirement of this  
13 section during any calendar year in which all trees severed  
14 or removed by the hired or contracted person have an  
15 aggregate stumpage value that does not exceed \$15,528.

16 (c) An applicant for a timbering operation license shall  
17 submit an application and the fee of \$150 for each biennial  
18 renewal of the license. The application shall contain the  
19 following information:

20 (1) Name, address and telephone number of the applicant  
21 and if the applicant is a business entity other than a sole  
22 proprietor, the names and addresses of the principals,  
23 officers and resident agent of the business entity;

24 (2) The applicant's West Virginia business registration  
25 number or a copy of the current West Virginia business  
26 registration certificate. The Division of Forestry shall submit  
27 this information and a list of all applicants to the Tax  
28 Commissioner each month of the calendar year to ensure  
29 compliance with payment of severance, income withholding  
30 and all other applicable state taxes; and

31 (3) Any other information as required by the director.

32 (d) The director shall propose rules for legislative approval  
33 pursuant to the provisions of article three, chapter twenty-  
34 nine-a of this code, regarding the acquisition, suspension and  
35 revocation a license under this article. The rules are the  
36 proper subject of emergency legislative rules that may be  
37 promulgated in accordance with the provision of section  
38 fifteen, article three, section twenty-nine-a of this code.

39 (e) The director shall prescribe a form providing the  
40 contents and manner of posting notice at the timbering  
41 operation. The notice shall include, at a minimum, the  
42 operator's name and license number.

**§19-1B-5. Compliance orders; suspension of timbering operation  
license.**

1 (a) Upon a finding by the chief that failure to use a particu-  
2 lar best management practice is causing or contributing, or  
3 has the potential to cause or contribute, to soil erosion or  
4 water pollution, the chief shall notify the director of the  
5 location of the site, the problem associated with the site, and  
6 any suggested corrective action. Upon the failure of the  
7 director to take appropriate action within three days of  
8 providing notice to the director, the chief may seek relief  
9 through the conference panel in accordance with section  
10 eleven of this article.

11 (b) Upon notification of the chief or upon a finding by the  
12 director that failure to use a particular best management  
13 practice is causing or contributing, or has the potential to

14 cause or contribute, to soil erosion or water pollution, the  
15 director shall issue a written compliance order requiring the  
16 person conducting the timbering operation to take corrective  
17 action. The order shall mandate compliance within a reason-  
18 able and practical time not to exceed ten days. The person  
19 subject to the order may appeal the order within forty-eight  
20 hours of its issuance to the conference panel in accordance  
21 with section eleven of this article.

22 (c) The director has the discretion to immediately suspend  
23 a timbering operator or operation, or any part of a timbering  
24 operation, in any part of the state if:

25 (1) The director believes that the observed damage or  
26 circumstances on a timbering operation are sufficient to  
27 endanger life or result in uncorrectable soil erosion or water  
28 pollution, or if the;

29 (2) The operator is not licensed pursuant to this article; or

30 (3) A certified logger is not supervising the timbering  
31 operation.

32 (d) The timbering operation, the operator, or both shall  
33 remain suspended until the corrective action mandated in  
34 the compliance order is instituted. The director shall not lift  
35 the suspension until compliance is satisfactory or until  
36 overruled on appeal. Failure to comply with any compliance  
37 order is a violation of this article. The timbering operator or  
38 operation subject to the compliance order may appeal to the  
39 conference panel in accordance with the provisions of  
40 section eleven of this article.

41 (e) For a second violation within any two-year period, the  
42 director may suspend the license of any operator conducting  
43 a timbering operation or the certification of any certified  
44 logger supervising a timbering operation for no less than  
45 thirty nor more than ninety days if the person is found in  
46 violation of this article or article eleven, chapter twenty-two

47 of this code. One or more violations for the same incident is  
48 only one violation for purposes of this subsection.

49 (f) For a third violation within any two-year period, the  
50 director may revoke the license of any operator conducting  
51 timbering operations or the certification of any certified  
52 logger if the person is found in violation of this article or  
53 article eleven, chapter twenty-two of this code. One or more  
54 violations for the same incident is only one violation for  
55 purposes of this subsection. A revoked license is not subject  
56 to reissue during the current licensing period.

57 (g) The director shall notify the chief of any order issued or  
58 any suspension or revocation of a license pursuant to this  
59 section within thirty days of the director's action.

**§19-1B-7. Certification of persons supervising timbering operations; timbering operations to be supervised; promulgation of rules.**

1 (a) Any individual supervising any licensed timbering  
2 operation, or any individual supervising any timbering  
3 operation that is not exempted from the licensing require-  
4 ments set forth in section four of this article, must be  
5 certified pursuant to this section.

6 (b) The director is responsible for the development of  
7 standards and criteria for education, training and examina-  
8 tion that must be successfully completed for persons to be  
9 certified to supervise any timbering operation. The program  
10 for certified loggers shall provide for education and training  
11 in the safe conduct of timbering operations, in first aid  
12 procedures and in the use of best management practices to  
13 prevent soil erosion on timbering operations. The goals of  
14 this program will be to assure that timbering operations are  
15 conducted in accordance with applicable state and federal  
16 safety regulations in a manner that is environmentally sound  
17 and safe.

18 (c) The director shall provide programs using the resources  
19 of the division, other appropriate state agencies, educational  
20 entities and other qualified persons. Each inspector under  
21 the jurisdiction of the chief shall attend a certification  
22 program free of charge and complete the certification  
23 requirements of this section.

24 (d) The director shall propose rules for legislative approval  
25 in accordance with article three, chapter twenty-nine-a of  
26 this code, to effectuate the purposes of this article.

27 (e) Upon a person's successful completion of the certifica-  
28 tion requirements, the director shall provide proof of the  
29 completion by issuing a numbered certificate and a wallet-  
30 sized card to that person. The division shall maintain a  
31 record of each certificate issued and the person to whom it  
32 was issued.

33 (f) A certification granted pursuant to this section is  
34 renewable only for four succeeding years. For the second  
35 renewal and every other renewal thereafter, the licensee  
36 shall first attend a program designed by the director to  
37 update the training.

38 (g) Every timbering operation that is required to be  
39 licensed under section four of this article must have at least  
40 one person certified pursuant to this section supervising the  
41 operation at any time the timbering operation is being  
42 conducted. All timbering operators shall be guided by the  
43 West Virginia forest practice standards and the West  
44 Virginia silvicultural best management practices to reduce  
45 sediment movement during a timber operation.

46 (h) The director shall, at no more than five-year intervals,  
47 convene a committee to review the best management prac-  
48 tices to ensure that they reflect and incorporate the most  
49 current technologies. The committee shall, at a minimum,  
50 include a person researching silvicultural best management  
51 practices, a person in the field of silviculture, two loggers



52 certified under this article, a representative of the Division  
53 of Water and Waste Management of the Department of  
54 Environmental Protection and a representative of an envi-  
55 ronmental organization. The director shall chair the commit-  
56 tee and may amend the best management practices according  
57 to the suggestions of the committee for the next certification  
58 cycle.

**§19-1B-11. Creation of conference panels; authority.**

1 (a) Each forestry region in this state shall contain an  
2 informal conference panel composed of three persons to  
3 decide appeals of the director's orders. One member of the  
4 panel shall be selected by the director, one member shall be  
5 selected by the chief and one member shall be selected by  
6 agreement between the chief and the director. If a vacancy  
7 exists on the panel, the vacancy shall be filled by whomever  
8 made the initial selection. The members of the panel shall  
9 serve without compensation.

10 (b) Upon appeal of a decision under this section or upon  
11 petition by the chief, pursuant to the provisions of subsection  
12 (a), section five of this article, the panel shall hold an  
13 informal conference affirming, modifying or vacating an  
14 order of the director, or issuing an order in the name of the  
15 director. The panel shall forthwith notify the parties of its  
16 decision and as soon as practicable send written notice of its  
17 decision to the parties. The decision of the panel is final.

18 (c) A party aggrieved by a decision of a panel may appeal  
19 to the circuit court of the county wherein the cause for the  
20 order arose. The appeal must be filed with the circuit court  
21 within twenty days of the date of decision of the panel and  
22 shall be heard de novo by the court. The court may reverse,  
23 vacate or modify the decision of the panel. The decision of  
24 the circuit court is final unless reversed, vacated or modified  
25 on appeal to the Supreme Court of Appeals in the manner  
26 provided by law.

**§19-1B-12a. Criminal penalties.**

1 (a) A person who knowingly or willingly commits one of  
2 the following violations is guilty of a misdemeanor and, upon  
3 conviction thereof, shall be fined not less than \$250 and not  
4 more than \$500 for each violation:

5 (1) Conducts timbering operations or purchases timber or  
6 buys logs for resale in this state without holding a valid  
7 license from the Director of the Division of Forestry, as  
8 required by section four of this article;

9 (2) Conducts timbering operations or severs trees for sale  
10 at a location in this state, without providing the Director of  
11 the Division of Forestry with notice of the location where the  
12 timbering or harvesting operations are to be conducted, as  
13 required by section six of this article;

14 (3) Conducts a timbering operation in this state that is not  
15 supervised by a certified logger who holds a valid certificate  
16 from the Director of the Division of Forestry, as required by  
17 section seven of this article; or

18 (4) Continues to conduct timbering operations in violation  
19 of an existing suspension or revocation order that has been  
20 issued by the Director of the Division of Forestry or a  
21 conference panel under sections five, ten or eleven of this  
22 article.

23 (b) For the purposes of this section, each day that a person  
24 conducts timbering operations in this state without a license  
25 as required by this article, without the supervision of a  
26 certified logger as required by this article, without providing  
27 notice of the location to the director as required by this  
28 article, or in violation of an outstanding suspension or  
29 revocation order shall constitute a separate offense.

30 (c) In addition to any other law-enforcement agencies that  
31 have jurisdiction over criminal violations, any forester or  
32 forest technician employed by the Division of Forestry, who,

33 as a part of his or her official duties is authorized by the  
34 Director of the Division of Forestry to inspect timbering  
35 operations, is authorized to issue citations for any of the  
36 listed violations in this article that he or she has witnessed.  
37 The limited authority granted to employees of the Division  
38 of Forestry to issue citations to enforce the provisions of this  
39 section does not include the power to place any individual or  
40 person under arrest.

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

*Carl F. Albert*

.....  
Chairman Senate Committee

*James H. Hester*

.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll Holmes*

.....  
Clerk of the Senate

*Gregory M. Smith*

.....  
Clerk of the House of Delegates

*Jeffrey H. Jones*

.....  
Acting President of the Senate

*Robert P. Taylor*

.....  
Speaker of the House of Delegates

The within *is disapproved* ..... this the *8th*  
Day of *March* ....., 2011.

*Carl R. Tompkins*

.....  
Governor



PRESENTED TO THE GOVERNOR

MAR 08 2011

Time

9:45 pm