

Forestry Draft 4

H. B./ S. B.

(By Delegates/ Senators)

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[February, 2009]

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10 A BILL to amend and reenact §30-19-1, §30-19-2, §30-19-3,
11 §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9,
12 §30-19-10 and §30-19-11 of the Code of West Virginia, 1931,
13 as amended; and to amend said code by adding thereto seven
14 new sections, designated §30-19-12, §30-19-13, §30-19-14,
15 §30-19-15, §30-19-16, §30-19-17 and §30-19-18, all relating
16 to updating the regulation of the practice of forestry;
17 definitions; board composition; powers and duties of the
18 board; clarifying rulemaking authority; license, permit and
19 registration requirements; hearing and notice requirements;
20 providing a civil cause of action; criminal penalties and
21 regulatory board review.

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

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1 That §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-
2 19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10 and §30-19-11 of
3 the Code of West Virginia, 1931, as amended, be amended and
4 reenacted; and that said code be amended by adding thereto seven
5 new sections, designated §30-19-12, §30-19-13, §30-19-14,
6 §30-19-15, §30-19-16, §30-19-17 and §30-19-18 all to read as
7 follows:

8 **ARTICLE 19. FORESTERS.**

9 **§30-19-1. Unlawful acts.**

10 (a) It is unlawful for any person to practice or offer to
11 practice forestry in this state, advertise, use any title or
12 description tending to convey the impression that the person is a
13 licensed forester, permitted forester-in-training, registered
14 forestry technician or a permitted forestry technician-in-
15 training unless he or she is licensed, permitted or registered
16 under the provisions of this article, and his or her license,
17 permit or registration has not expired, been suspended or
18 revoked.

19 (b) No business or governmental entity, except through a
20 licensee or registrant may render any service or engage in any
21 activity which if rendered or engaged in by an individual, would
22 constitute the practice of forestry.

23 **§30-19-2. Applicable law.**

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1 The practice of forestry and the State Board of Forestry are
2 subject to the provisions of article one of this chapter and the
3 provisions of this article and any rules promulgated thereunder.

4 **§30-19-3. Definitions.**

5 As used in this article, the following words and terms have
6 the following meanings, unless the context clearly indicates
7 otherwise:

8 (a) "Board" means the State Board of Foresters.

9 (b) "Business entity" means any firm, partnership,
10 association, company, corporation, limited partnership, limited
11 liability company or other entity.

12 (c) "Forester" means a person who, by reason of his or her
13 knowledge of the natural sciences, mathematics, silviculture,
14 forest protection, forest management, forest economics and forest
15 utilization, acquired by professional forestry education and
16 practical experience.

17 (d) "Forester-in-training" or "Forestry technician-in-
18 training" means a person who possesses the necessary educational
19 qualifications as prescribed in this article for a license or
20 registration, but who has not completed the experience
21 requirements in the field of forestry as required for licensure
22 or registration.

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1 (e) "Forestry" means the professional practice embracing the
2 science, business, and the art of creating, conserving, and
3 managing forests and forestlands for the sustained use and
4 enjoyment of their resources, material, or other forest produce.

5 (f) "License" means a forestry license issued under the
6 provisions of this article.

7 (g) "Licensee" means a person holding a license issued under
8 the provisions of this article.

9 (h) "Practice of forestry" means professional forestry
10 services, including the consultation, investigation, evaluation,
11 planning or responsible supervision of any forestry activities
12 when such professional service requires the application of
13 forestry principles and techniques.

14 (i) "Permit" means a document issued as evidence of
15 qualification to practice as a forester-in-training or forestry
16 technician-in-training under this article.

17 (j) "Registered forestry technician" means a person who has
18 been registered pursuant to this article.

19 (k) "Registrant" means a person who is a registered forestry
20 technician pursuant to this article.

21 **§30-19-4. State Board of Foresters.**

22 (a) The State Board of Registration for Foresters is
23 continued and commencing the first day of July, two thousand

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1 nine, shall be known as the State Board of Foresters. The
2 members of the board in office on the first day of July, two
3 thousand nine, shall, unless sooner removed, continue to serve
4 until their respective terms expire and until their successors
5 have been appointed and qualified.

6 (b) The board shall consist of:

7 (1) Three persons licensed under the provisions of this
8 article;

9 (2) Two persons either licensed or registered under the
10 provisions of this article.

11 (c) Each member shall be appointed by the Governor, from
12 among five nominees recommended by the West Virginia Division,
13 Society of American Foresters, by and with the consent of the
14 Senate.

15 (d) If the Governor fails to make an appointment in ninety
16 days after expiration of any term, the board may make the
17 necessary appointment.

18 (e) Members will be appointed for five year terms which are
19 staggered in accordance with the initial appointments under prior
20 enactments of this article. No member may serve more than two
21 consecutive full terms. A member having served two consecutive
22 full terms may not be appointed for one year after completion of

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1 his or her second full term. A member may continue to serve
2 until a successor has been appointed and has qualified.

3 (f) Each member of the board shall be a resident of West
4 Virginia during the appointment term.

5 (g) Each member shall have been engaged in the practice of
6 forestry for at least ten years.

7 (h) Each member shall maintain an active license or
8 registration with the board. A member immediately and
9 automatically forfeits membership to the board if his or her
10 license or registration to practice has been suspended or
11 revoked.

12 (i) The Governor may remove any member from the board for
13 neglect of duty, incompetency or official misconduct.

14 (j) A member of the board immediately and automatically
15 forfeits membership to the board if he or she is convicted of a
16 felony under the laws of any jurisdiction, or becomes a
17 nonresident of this state.

18 (k) The board shall designate one of its members as
19 Chairperson and one member as Secretary who shall serve at the
20 will of the board.

21 (l) Each member of the board is entitled to compensation and
22 expense reimbursement in accordance with article one of this
23 chapter.

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1 (m) A majority of the members serving on the board
2 constitutes a quorum.

3 (n) The board shall hold at least two annual meetings.
4 Other meetings shall be held at the call of the Chairperson or
5 upon the written request of two members, at such time and place
6 as designated in the call or request.

7 (o) Prior to commencing his or her duties as a member of the
8 board, each member shall take and subscribe to the oath required
9 by section five, article four of the Constitution of this state.

10 **§30-19-5. Powers and duties of the board.**

11 (a) The board has all the powers and duties set forth in
12 this article, by rule, in article one of this chapter and
13 elsewhere in law.

14 (b) The board's duties include:

15 (1) Holding meetings, conducting hearings and
16 administering examinations;

17 (2) Establishing the requirements for a license,
18 registration or permit;

19 (3) Establishing procedures for submitting, approving
20 and rejecting applications for a license, registration or
21 permit;

22 (4) Determining the qualifications of any applicant for
23 a license, registration or permit;

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1 (5) Providing for the preparation and administration of
2 an examination for a license, registration or permit;

3 (6) Determining the passing grade for the examinations;

4 (7) Maintaining records of the examinations the board
5 or a third party administers, including the number of persons
6 taking the examination and the pass and fail rate;

7 (8) Maintaining an office, and hiring, discharging,
8 establishing the job requirements and fixing the compensation of
9 employees and contracted employees necessary to enforce the
10 provisions of this article;

11 (9) Maintaining an accurate registry of names and
12 addresses of all persons regulated by the board;

13 (10) Investigating alleged violations of the provisions
14 of this article, the rules promulgated hereunder, orders and
15 final decisions of the board;

16 (11) Conducting or providing for disciplinary hearings
17 of persons regulated by the board;

18 (12) Determining disciplinary action and issuing
19 orders;

20 (13) Instituting appropriate legal action for the
21 enforcement of the provisions of this article;

22 (14) Keeping accurate and complete records of its
23 proceedings, and certifying the same as may be appropriate;

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1 (15) Proposing rules in accordance with the provisions
2 of article three, chapter twenty-nine-a of this code to implement
3 the provisions of this article; and,

4 (16) Performing all other duties which are by law
5 nondelegable.

6 (c) The board's powers include:

7 (1) Contracting with third parties to administer the
8 examinations required under the provisions of this article;

9 (2) Defining, by legislative rule, the fees charged
10 under the provisions of this article;

11 (3) Issuing, renewing, denying, suspending, revoking or
12 reinstating licenses, registration or permits;

13 (4) Establishing, by legislative rule, the continuing
14 education requirements for a license, registration or permit;

15 (5) Suing and being sued in its official name as an
16 agency of this state;

17 (6) Conferring with the Attorney General or his or her
18 assistant in connection with legal matters and questions; and

19 (7) Taking all other actions necessary and proper to
20 effectuate the purposes of this article.

21 **§30-19-6. Rule making.**

22 (a) The board shall propose rules for legislative approval,
23 in accordance with the provisions of article three, chapter

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1 twenty-nine-a of this code, to implement the provisions of this
2 article, including:

3 (1) Standards and requirements for a license,
4 registration and permit;

5 (2) Procedures for examinations and reexaminations;

6 (3) Requirements for third parties to prepare and/or
7 administer examinations and reexaminations;

8 (4) Educational and experience requirements, and the
9 passing grade on the examination;

10 (5) Standards for ethical conduct;

11 (6) Procedures for the issuance and renewal of a
12 license, registration and permit;

13 (7) A fee schedule;

14 (8) Continuing education requirements for licensees,
15 registrants and permittees;

16 (9) The procedures for denying, suspending, revoking,
17 reinstating or limiting the practice of a licensee, registrant or
18 permittee;

19 (10) Requirements for inactive or revoked licenses,
20 registrations and permits; and,

21 (11) Any other rules necessary to effectuate the
22 provisions of this article.

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1 (b) All rules in effect on the effective date of this
2 article shall remain in effect until they are amended or
3 repealed, and references to provisions of former enactments of
4 this act are interpreted to mean provisions of this article.

5 **§30-19-7. Fees; special revenue account; administrative fines.**

6 (a) All fees and other moneys, except administrative fines,
7 received by the board shall be deposited in a separate special
8 revenue fund in the State Treasury designated the "Board of
9 Foresters Fund", which fund is continued. The fund shall be used
10 by the board for the administration of this article. Except as
11 may be provided in article one of this chapter, the board shall
12 retain the amounts in the special revenue account from year to
13 year. No compensation or expense incurred under this article is
14 a charge against the general revenue fund.

15 (b) Any amounts received as administrative fines imposed
16 pursuant to this article shall be deposited into the general
17 revenue fund of the State Treasury.

18 **§30-19-8. General requirements for a license to practice** 19 **forestry as a licensed forester.**

20 To be eligible for a license to practice forestry, the
21 applicant must:

- 22 (1) Be of good moral character;
- 23 (2) Have a high school diploma or its equivalent;

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1 (3) Have obtained either:

2 (A) Completion of a four-year degree program or masters
3 degree program in professional forestry, accredited by the
4 Society of American Foresters and have two years related
5 experience in the field of forestry; or

6 (B) Completion of a two-year technical forestry program
7 in a program accredited or recognized by the Society of American
8 Foresters, completion of a bachelor's degree in a degree used in
9 the practice of forestry as approved by the board and four years
10 related experience in the field of forestry;

11 (4) Successfully pass an examination prescribed or
12 approved by the board.

13 (b) Those persons registered as a forester as of the
14 effective date of this section are not required to take the
15 examination.

16 **§30-19-9. General requirements to be registered forestry**
17 **technician.**

18 (a) To be eligible for a registration to practice forestry,
19 as forestry technician, the applicant must:

20 (1) Be of good moral character;

21 (2) Have a high school diploma or its equivalent;

22 (3) Graduate from a two-year technical forestry program
23 accredited or recognized by the Society of American Foresters;

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1 (4) Complete four years of related experience in the field
2 of forestry.

3 **§30-19-10. Qualifications for permit as a forester-in-training**
4 **or a forestry technician-in-training.**

5 (a) The board may issue a permit to practice as a forester-
6 in-training or a forestry technician-in-training to an applicant
7 who meets all the requirements for a license or registration,
8 except the experience requirements of paragraph (A) or (B),
9 subdivision three, subsection (a), section eight or subdivision
10 four, section nine.

11 (b) A permit to practice as a forester-in-training or
12 forestry technician-in-training may be renewed annually for a
13 period not to exceed five years. The board may extend the five
14 year limitation if the board finds the applicant experienced an
15 undue hardship which prevented attaining the required experience.

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17 **§30-19-11. License from another state; license to practice in**
18 **this state.**

19 (a) The board may issue a license to practice forestry in
20 this state, without requiring an examination, to an applicant
21 from another jurisdiction who:

22 (1) Is not a resident of this state;

23 (2) Is of good moral character:

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1 (3) (A) Holds a valid forestry license, certificate or other
2 authorization to practice forestry in another jurisdiction which
3 meets requirements that are substantially equivalent to the
4 forestry license requirements set forth in this article;

5 (4) Is not currently being investigated by a disciplinary
6 authority of this state or another jurisdiction, does not have
7 charges pending against his or her license or other authorization
8 to practice forestry, and has never had a license or other
9 authorization to practice forestry revoked;

10 (5) Has not previously failed an examination for licensure
11 in this state;

12 (6) Has paid all the applicable fees; and

13 (7) Has completed such other action as required by the
14 board.

15 **§30-19-12. Causes for denial, probation, limitation, discipline,**
16 **suspension or revocation of licenses and permits.**

17 (a) The board may refuse to issue, refuse to renew, suspend,
18 revoke, limit a license, registration or permit, or take other
19 disciplinary action as provided in subsection (b), against a
20 person regulated by this article for any of the following
21 reasons:

22 (1) Fraud, misrepresentation or deceit in obtaining or
23 maintaining a license, registration or permit.

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1 (2) Failure to maintain compliance with the requirements for
2 the issuance or renewal of a license, registration or permit.

3 (3) Dishonesty, fraud, professional negligence in the
4 practice of forestry, or a willful departure from the accepted
5 standards of practice and professional conduct;

6 (4) Violation of any provision of this article or rule
7 promulgated hereunder;

8 (5) Failure to comply with an order or final decision of the
9 board;

10 (6) Failure to respond to a request or action of the board;

11 (7) Conviction of a felony or a crime involving dishonesty
12 or fraud or any similar crime under the laws any jurisdiction, if
13 the underlying act or omission involved would have constituted a
14 crime under the laws of this state;

15 (8) Knowingly using any false, misleading or deceptive
16 statements in advertising;

17 (9) Conduct adversely affecting any person regulated under
18 this article to practice his or her profession; or

19 (10) Obtaining, renewing or attempting to obtain or renew a
20 license, registration or permit for himself, herself or another,
21 through the submission of any application or other writing that
22 contains false, fraudulent or misleading information.

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1 (b) For the purposes of subsection (a), other disciplinary
2 action means one or more of the following:

3 (1) Reprimand;

4 (2) Administrative fine not to exceed one thousand dollars
5 per day per violation;

6 (3) Probation;

7 (4) Mandatory attendance at continuing education seminars or
8 other training.

9 **§30-19-13. Due process procedure.**

10 (a) The board may upon its own motion and shall upon the
11 filing of a complaint by any person, determine whether the
12 allegations against any person regulated under this article, if
13 taken as true, would constitute a violation of the provisions of
14 this article or rules promulgated pursuant to this article.

15 (b) Upon initiation or receipt of the complaint, the board
16 shall provide a copy of the complaint to the licensee, registrant
17 or permittee.

18 (c) The board may cause an investigation to be made into
19 the facts and circumstances giving rise to the complaint and any
20 person regulated by this article has an affirmative duty to
21 assist the board, or its authorized representative, in the
22 conduct of its investigation.

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1 (d) After reviewing any information obtained through an
2 investigation, the board shall determine if probable cause exists
3 that the licensee, registrant or permittee has violated any
4 provision of this article or rules promulgated pursuant to this
5 article.

6 (e) Upon a finding that probable cause exists that the
7 licensee, registrant or permittee has violated any provision of
8 this article or rules promulgated pursuant to this article, the
9 board may enter into a consent decree or hold a hearing for the
10 suspension or revocation of the licensee, registrant or permittee
11 or the imposition of sanctions against that person. The hearing
12 shall be held in accordance with the provisions of section
13 thirteen of this article.

14 (f) Any member of the board or the executive director of the
15 board may issue subpoenas and subpoenas duces tecum to obtain
16 testimony and documents to aid in the investigation of
17 allegations against any person regulated by the article.

18 **§30-19-14. Hearing and judicial review.**

19 (a) Hearings shall be conducted in accordance with the
20 provisions of article five, chapter twenty-nine-a of this code
21 and the board's rules.

22 (b) The board may elect to have an administrative law judge
23 or hearing examiner conduct the hearing.

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1 (c) At the conclusion of a hearing, a proposed written order
2 shall be prepared containing findings of fact and conclusions of
3 law. The board may request that disciplinary actions imposed be a
4 part of the proposed order, or may reserve this obligation for
5 its consideration. The board may accept, reject or modify the
6 decision of the administrative law judge or hearing examiner.

7 (d) Any member or the executive director of the board has
8 the authority to administer oaths, to examine any person under
9 oath, and issue subpoenas.

10 (e) If, after a hearing, the board determines the licensee,
11 registrant or permittee has violated any provision of this
12 article or the board's rules, a formal written decision shall be
13 prepared which contains findings of fact, conclusions of law and
14 specifically lists the disciplinary actions imposed.

15 (f) Any licensee, registrant or permittee adversely affected
16 by a decision of the board entered after a hearing, may obtain
17 judicial review of the decision in accordance with section four,
18 article five, chapter twenty-nine-a of this code.

19 **§30-19-15. Criminal proceedings; penalties.**

20 (a) When, as a result of an investigation under this article
21 or otherwise, the board has reason to believe that a person has
22 knowingly violated the provisions of this article or rules
23 promulgated pursuant to this article, the board may bring its

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1 information to the attention of an appropriate law-enforcement
2 official who may cause criminal proceedings to be brought.

3 (b) Any person violating a provision of this article or rule
4 promulgated pursuant to this article, is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than five
6 hundred dollars nor more than one thousand dollars or confined in
7 jail not more than six months, or both fined and confined.

8 **§30-19-16. Single act evidence of practice.**

9 In any action brought or in any proceeding initiated under
10 this article, evidence of the commission of a single act
11 prohibited by this article is sufficient to justify a penalty,
12 injunction, restraining order or conviction without evidence of a
13 general course of conduct.

14 **§30-19-17. Required regulatory board review.**

15 The State Board of Foresters is subject to a regulatory
16 board review, as required in the provisions of article ten,
17 chapter four of this code.

18 **§30-19-18. Fees and Continuing Education.**

19 A licensee, registrant and permittee shall pay a fee of
20 thirty-five dollars and complete ten hours of continuing
21 education each year. This section will remain in effect until
22 the Legislature approves the board's legislative rule placing
23 these requirements in its legislative rule.