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Senate Bill No. 494

(By Senators Beach and Klempa)

[Introduced February 11, 2011; referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §19-1A-2 and §19-1A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-1B-3 of said code, all relating to providing additional protections for state forests and other public lands where timbering operations are conducted.

Be it enacted by the Legislature of West Virginia:

That §19-1A-2 and §19-1A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §19-1B-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-2. Legislative purposes.

The purposes of this article are to provide for promoting West Virginia products; promoting new forest products industries; developing existing forest products industries; promoting coordination of all state forests resources; advising the Governor and Legislature on all aspects of forestry, the management of state forests for conservation, protection and preservation of wildlife, fish, forest species, natural areas, aesthetic and scenic values

1 and to provide developed and undeveloped outdoor recreational
2 opportunities, and hunting and fishing for the citizens of this
3 state and its visitors.

4 **§19-1A-3. Division of Forestry; Division Director; duties, powers,**
5 **dedication of certain moneys; creation of a special**
6 **revenue account.**

7 The Division of Forestry heretofore created is hereby
8 continued. And, except as otherwise provided in this article, all
9 powers and duties previously exercised by the Director of Natural
10 Resources under subsection (13), section seven, article one and
11 article three, chapter twenty of this code, except those powers and
12 duties relating solely to wildlife areas as described in section
13 three, article three, chapter twenty of this code, heretofore
14 transferred to the Division of Forestry, are hereby continued in
15 the Division of Forestry, except Kanawha State Forest as
16 hereinafter provided. The Division of Forestry has within its
17 jurisdiction and supervision the state forests, other forests and
18 woodland areas, the protection of forest areas from injury and
19 damage by fire, disease, insects and other pestilences and forces,
20 the management of forest areas for natural resources, conservation
21 and undeveloped recreational activities, administration of the
22 southeastern interstate forest fire protection compact and other
23 compacts and agreements relating to forest management and
24 husbandry, and the administration and enforcement of laws relating
25 to the conservation, development, protection, use and enjoyment of
26 all forest land areas of the state consistent with the provisions
27 of sections one and two of this article: Provided, That the

1 Division of Forestry may not change the designation of any stream
2 classified by the U.S. Geological Survey. All moneys collected
3 from the sale of timber realized through management of the
4 state-owned forests and the sale of seedlings from the tree
5 nurseries shall be paid into the State Treasury and shall be
6 credited to a special account within the Division of Forestry and
7 used exclusively for the purposes of this article and article
8 three, chapter twenty of this code.

9 When the Division of Forestry is harvesting timber in state
10 forests and other public lands as permitted pursuant to the
11 provisions of this article and subsection (13), section seven,
12 articles one and three, chapter twenty of this code, it shall
13 maintain a minimum "no cut buffer" of three hundred feet adjacent
14 to all trails, campgrounds, public facilities, forest roads, scenic
15 points of interest, playgrounds, riparian zones, known endangered
16 species habitats and historical value areas. All trails which are
17 used for timbering roads or otherwise damaged during the timbering
18 operation must be returned to a prior condition that makes them
19 viable recreation trails for hiking or other prior recreational use
20 as soon as practicable.

21 The Division of Forestry has jurisdiction to regulate the
22 growing, digging, collecting, gathering, possession and sale of
23 ginseng as provided in section three-a, of this article.

24 The chief of the division is the Director of the Division of
25 Forestry who shall be appointed and qualified as provided in
26 section five of this article.

27 The Director of the Division of Forestry shall study means and

1 methods of implementing the provisions of section fifty-three,
2 Article VI of the Constitution of West Virginia, relating to forest
3 lands, and shall prepare and recommend legislation thereon.

4 The division lines within the state forests between improved
5 recreation areas under the management of the Division of Natural
6 Resources and the demonstration forests under the management of the
7 Division of Forestry, heretofore established by agreement, are
8 hereby continued with the exception of Kanawha State Forest where
9 the entire forest will be managed by and under the jurisdiction of
10 the Division of Natural Resources for multiple uses and the
11 Division of Natural Resources shall continue to provide
12 recreational opportunities, including, but not limited to,
13 mountain-biking trails, hiking trails, horseback-riding trails and
14 hunting, fishing and trapping lands. The forest may not be
15 designated as a state park or state recreation area; however, any
16 sale of timber from Kanawha State Forest shall continue to be
17 prohibited.

18 In the event of disagreement over the placement of a division
19 line or dual occupancy of a building, the disposition shall be
20 decided by the Legislature's Joint Committee on Government and
21 Finance at a regularly scheduled meeting.

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

24 **§19-1B-3. Definitions.**

25 (a) "Best management practices" means sediment control
26 measures, structural or nonstructural, used singly or in
27 combination, to reduce soil runoff from land disturbances

1 associated with commercial timber harvesting. When timbering
2 operations are conducted on state forests or public lands pursuant
3 to the Division of Forestry's authority to harvest timber under the
4 provisions of article one-a of this chapter and subsection (13),
5 section seven, article one and three, chapter twenty of this code,
6 "best management practices" means structural or nonstructural
7 sediment control measures, watershed protection measures and
8 endangered species protection measures to reduce or eliminate
9 disturbances associated with commercial timber harvesting.

10 (b) "Chief" means the chief of the office of water resources
11 of the Department of Environmental Protection, or his or her
12 designee.

13 (c) "Director" means the Director of the Division of Forestry
14 of the Department of Commerce, labor and environmental resources,
15 or his or her authorized designee.

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

18 (e) "Timbering operations" means activities directly related
19 to the severing or removal of standing trees from the forest as a
20 raw material for commercial processes or purposes. For the purpose
21 of this article, timbering operations do not include the severing
22 of evergreens grown for and severed for the traditional Christmas
23 holiday season, or the severing of trees incidental to
24 ground-disturbing construction activities, including well sites,
25 access roads and gathering lines for oil and natural gas
26 operations, or the severing of trees for maintaining existing, or
27 during construction of, rights-of-way for public highways or public

1 utilities or any company subject to the jurisdiction of the federal
2 energy regulatory commission unless the trees so severed are being
3 sold or provided as raw material for commercial wood product
4 purposes, or the severing of trees by an individual on the
5 individual's own property for his or her individual use provided
6 that the individual does not have the severing done by a person
7 whose business is the severing or removal of trees.

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

NOTE: The purpose of this bill is to provide additional
protections for state forests and other public lands where
timbering operations are conducted.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.