

By: Holland

To: Agriculture

HOUSE BILL NO. 559
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 73-36-1 THROUGH 73-36-35,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE A BOARD OF REGISTRATION FOR
3 FORESTERS AND PRESCRIBE ITS DUTIES AND POWERS; TO AMEND REENACTED
4 SECTION 73-36-5, MISSISSIPPI CODE OF 1972, TO CLARIFY EXEMPTIONS
5 FROM REGISTRATION WITH THE STATE BOARD OF REGISTRATION FOR
6 FORESTERS; TO AMEND REENACTED SECTION 73-36-9, MISSISSIPPI CODE OF
7 1972, TO REVISE THE MEMBERSHIP OF THE STATE BOARD OF REGISTRATION
8 FOR FORESTERS; TO AMEND REENACTED SECTIONS 73-36-11, 73-36-13,
9 73-36-15, 73-36-17, 73-36-19, 73-36-21, 73-36-23, 73-36-27 AND
10 73-36-31, MISSISSIPPI CODE OF 1972, TO CLARIFY TERMINOLOGY; TO
11 AMEND REENACTED SECTION 73-36-29, MISSISSIPPI CODE OF 1972, TO
12 REVISE THE TIME FOR RENEWAL OF THE LICENSE FOR FORESTERS; TO AMEND
13 REENACTED SECTION 73-36-35, MISSISSIPPI CODE OF 1972, TO REVISE
14 PENALTIES FOR VIOLATIONS; TO PROVIDE FOR AN ADMINISTRATIVE FINE;
15 TO AMEND SECTION 73-36-37, MISSISSIPPI CODE OF 1972, TO EXTEND THE
16 REPEALER ON THE SECTIONS OF LAW CREATING A BOARD OF REGISTRATION
17 FOR FORESTERS; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 SECTION 1. Section 73-36-1, Mississippi Code of 1972, is
20 reenacted as follows:

21 This chapter may be cited as the "Foresters Registration Law
22 of 1977."

23 SECTION 2. Section 73-36-3, Mississippi Code of 1972, is
24 reenacted as follows:

25 73-36-3. As used in this chapter the following words and
26 phrases shall include the meanings ascribed in this section unless
27 the context clearly requires a different meaning:

- 28 (a) The term "person" means a natural person.
- 29 (b) The term "forester" means a person who, by reason
30 of his knowledge of the natural sciences, mathematics, economics
31 and the principles of forestry, and by his demonstrated skills
32 acquired through professional forestry education as set forth in
33 Section 73-36-21, is qualified to engage in the practice of

34 forestry and who also has been duly registered and holds a current
35 valid license issued by the board.

36 (c) The term "registered forester" means a person who
37 has been registered and licensed pursuant to this chapter.

38 (d) The term "practice of forestry" means any
39 professional forestry service, including but not limited to
40 consultation, investigation, evaluation, valuation, planning,
41 recommending silvicultural or harvesting practices or responsible
42 supervision of any forestry activities in connection with any
43 public or private lands wherein the public welfare and property
44 are concerned or involved when such professional services require
45 the application of forestry principles, knowledge and data.

46 (e) The term "board" means the State Board of
47 Registration for Foresters.

48 SECTION 3. Section 73-36-5, Mississippi Code of 1972, is
49 reenacted and amended as follows:

50 73-36-5. In order to benefit and protect the public and the
51 forest resources, no person in either public or private capacity
52 shall practice or offer to practice forestry, unless he shall
53 first have submitted evidence that he is qualified so to practice
54 and shall be registered by the board * * * or unless he is * * *
55 exempted from registration under the provisions of this chapter.
56 It is unlawful for any person to practice or offer to practice
57 forestry in this state * * *, as defined by this chapter, or to
58 use in connection with his name or otherwise assume, use or
59 advertise any title or description tending to convey the
60 impression that he is a forester, unless the person has been duly
61 registered or unless he is exempted from registration under the
62 provisions of this chapter.

63 This chapter shall not be construed to prevent or to affect:

64 (a) The conduct of business and support services
65 including: tree planting, timber stand improvement, pesticide
66 application, pest control, site preparation, heavy equipment
67 operation, prescribed fire application, timber buying, logging
68 contracting, timber cruising, timber marking and the application
69 of best management practices.

70 (b) The application of forestry principles and

71 procedures on any timberlands, woodlands or forest in which the
72 person, firm, partnership or corporation owns the timberlands,
73 woodlands or forest; or persons, firms, partnerships and
74 corporations having the right to manage and administer forestlands
75 in any legal manner.

76 (c) The work of an employee or a subordinate of any
77 forester holding a license under this chapter; if that * * * work
78 is done under the direction, supervision and responsibility of a
79 person holding a license under this chapter.

80 (d) The practice of forestry by officers and employees
81 of the United States government on federally owned lands.

82 (e) The practice of forestry by officers and employees
83 of the State of Mississippi on state-owned lands.

84 (f) Employees of the federal government, state
85 government and educational institutions of the State of
86 Mississippi who, in the exercise of their assigned duties, conduct
87 forestry education programs.

88 (g) Persons who hold valid licenses prior to July 1,
89 1989.

90 SECTION 4. Section 73-36-7, Mississippi Code of 1972, is
91 reenacted as follows:

92 73-36-7. Nothing contained in this chapter shall be
93 construed as preventing any person, firm, partnership or
94 corporation from practicing forestry or managing woodlands,
95 forests or trees on any land, provided such acts are not performed
96 or offered to the public for compensation as the services of a
97 registered forester.

98 SECTION 5. Section 73-36-9, Mississippi Code of 1972, is
99 reenacted and amended as follows:

100 73-36-9. There is hereby created the State Board of
101 Registration for Foresters of the State of Mississippi for the
102 purposes of safeguarding forests by regulating the practice of
103 forestry and requiring that persons practicing or offering to

104 practice forestry * * * be registered. The board shall be
105 composed of seven (7) members appointed by the Governor with the
106 advice and consent of the Senate. One (1) member shall be
107 appointed from each of the six (6) forestry commission districts
108 as * * * constituted on January 1, 1999, and one (1) member shall
109 be appointed at large. The State Forester of Mississippi shall
110 serve as an ex officio member of the board. Each of the members
111 shall be a forester within the meaning of this chapter with at
112 least three (3) years' experience in such field, and a resident
113 and citizen of the State of Mississippi at the time of his
114 appointment. Within thirty (30) days after the passage of this
115 chapter, the Governor shall appoint the members, designating a
116 term of office of one (1), two (2), three (3), four (4) or five
117 (5) years for each of the members as appointed; provided, however,
118 two (2) members shall serve a term of one (1) year and two (2)
119 shall serve a term of four (4) years. As the terms of office of
120 the members so appointed expire, successors shall be appointed for
121 terms of five (5) years * * *. Any vacancy occurring in the
122 membership of the board shall be filled by the Governor for the
123 unexpired term * * *. The Governor shall have the right, upon the
124 approval of a majority of the board, to remove any members of the
125 board for inefficiency, neglect of duty or dishonorable conduct.

126 SECTION 6. Section 73-36-11, Mississippi Code of 1972, is
127 reenacted and amended as follows:

128 73-36-11. * * * No person shall * * * be appointed a member
129 of the board unless the person at the time appointed has held a
130 license as a registered forester for at least five (5) years.

131 SECTION 7. Section 73-36-13, Mississippi Code of 1972, is
132 reenacted and amended as follows:

133 73-36-13. Each year the board shall elect one (1) of its
134 members as chairman, one (1) as vice chairman, and one (1) as
135 secretary, and each shall perform the usual duties of such
136 offices. The board may adopt an official seal. Four (4) members

137 of the board shall constitute a quorum, and a majority vote of
138 those present at any meeting shall be necessary for the adoption
139 of any order proposed or the disposition of other business coming
140 before the board.

141 SECTION 8. Section 73-36-15, Mississippi Code of 1972, is
142 reenacted and amended as follows:

143 73-36-15. * * * The board shall hold at least two (2)
144 regular meetings during each year and such other meetings as the
145 chairman may find necessary. Notice of the time and place of the
146 meetings of the board shall be mailed to each of the members of
147 the board at least five (5) days before the meeting and, in
148 addition, shall be posted as provided by the rules and regulations
149 of the board at least five (5) days prior to the meeting.

150 SECTION 9. Section 73-36-17, Mississippi Code of 1972, is
151 reenacted and amended as follows:

152 73-36-17. Each member of the board shall receive per diem
153 compensation as authorized by Section 25-3-69, and shall be
154 reimbursed for such other expenses at the same rate and under the
155 same conditions as provided for public officers and employees in
156 Section 25-3-41. The board shall pay for all expenses incurred by
157 the board, including * * * clerical help as may be needed, if
158 itemized statements of the expenses are first approved by order of
159 the board entered on its minutes. The board shall not expend in
160 any fiscal year more monies than the amount of fees
161 collected * * *. All fees * * * shall be paid to the secretary of
162 the board and the secretary shall deposit all monies received
163 under this chapter in the State Treasury. All such monies shall
164 be kept in a special fund in the State Treasury known as the
165 "State Board of Registered Foresters Fund" and shall be used for
166 the administration of this chapter. The funds shall not lapse at
167 the end of each year. All expenditures from the fund shall be by
168 requisition to the Executive Director of the Department of Finance
169 and Administration and signed by the board chairman * * *. The

170 secretary of the board shall be under a surety bond in the penal
171 sum of Five Thousand Dollars (\$5,000.00) with a surety company
172 authorized to do business in this state, the bond to be
173 conditioned for the faithful performance of his duties, and the
174 fee shall be paid by the board.

175 SECTION 10. Section 73-36-19, Mississippi Code of 1972, is
176 reenacted and amended as follows:

177 73-36-19. (1) The State Board of Registration for Foresters
178 shall have the following powers and duties:

179 (a) To adopt rules and regulations governing the
180 holding of its meetings, hearings, applications for licenses and
181 any and all other duties provided by this chapter.

182 (b) To establish and promulgate standards of practice
183 and a code of ethics for registered foresters and provide for the
184 enforcement thereof.

185 (c) To establish minimum requirements for professional
186 continuing education.

187 (d) To prepare a biennial roster showing the names,
188 business addresses and such other information as the board may
189 deem necessary of all * * * foresters registered under * * * this
190 chapter, and to provide copies * * * to the registered foresters
191 and the public. A copy of the roster shall be filed with the
192 Secretary of State of the State of Mississippi on or before April
193 1 in the year such roster is prepared.

194 (e) To issue, suspend or revoke licenses * * * and to
195 take all actions necessary * * *.

196 (2) At any hearing before the board, any member may
197 administer oaths to witnesses appearing before the board. If any
198 person shall refuse to testify or to produce any books, papers or
199 documents, the board may present its petition to any court of
200 competent jurisdiction within the state setting forth the facts,
201 and then the court, in a proper case, may issue its subpoena to
202 the person requiring his attendance before the court and * * * to

203 testify or to produce such books, papers and documents as may be
204 deemed necessary and pertinent thereto. Any person failing or
205 refusing to obey the subpoena of the court may be proceeded
206 against in the same manner as for refusal to obey any other
207 subpoena of the court.

208 (3) The board shall keep a record of its proceedings and a
209 register of all applications for registration. The register shall
210 show the name, age and residence of each applicant, the date of
211 the application and the board's action on the application and any
212 other information as may be deemed necessary by the board. The
213 board shall submit an annual report to the Governor * * * and a
214 report to the regular session of the Legislature. The report to
215 the Legislature shall include a financial statement of the
216 transactions of the board during the year.

217 SECTION 11. Section 73-36-21, Mississippi Code of 1972, is
218 reenacted and amended as follows:

219 73-36-21. Any person who has graduated with a bachelor's
220 degree or higher degree from a university or college of forestry
221 in a curriculum in forestry acceptable to the board and found by
222 the board to be substantially equivalent to curricula in schools
223 of forestry accredited by the Society of American Foresters shall
224 be eligible for registration as a * * * forester, and a license
225 shall be issued upon application and payment of the required fee,
226 if the person files an application for registration with the board
227 and successfully passes a written and/or oral examination.

228 SECTION 12. Section 73-36-23, Mississippi Code of 1972, is
229 reenacted and amended as follows:

230 73-36-23. Applications for registration shall be made on
231 forms prescribed and furnished by the board. The initial
232 registration fee for a license as a registered forester shall be
233 fixed by the board, but shall not exceed Fifty Dollars (\$50.00).
234 If the board denies the issuance of a license to any applicant,
235 the fee deposited shall be retained by the board as an application

236 fee.

237 Each application or filing made under this section shall
238 include the social security number(s) of the applicant in
239 accordance with Section 93-11-64, Mississippi Code of 1972.

240 SECTION 13. Section 73-36-25, Mississippi Code of 1972, is
241 reenacted as follows:

242 73-36-25. When written examinations are required, they shall
243 be held at such time and place as the board shall determine. The
244 methods of procedure shall be prescribed by the board. A
245 candidate failing an examination may apply for reexamination at
246 the expiration of six (6) months and shall be entitled to one (1)
247 reexamination without payment of an additional fee. Subsequent
248 examinations may be granted upon payment of a fee to be determined
249 by the board, but not in excess of Fifty Dollars (\$50.00).

250 SECTION 14. Section 73-36-27, Mississippi Code of 1972, is
251 reenacted and amended as follows:

252 73-36-27. The board shall issue a properly authenticated,
253 serially numbered license upon payment of the registration
254 fee * * * to any applicant who in the opinion of the board has
255 satisfactorily met all the requirements of this chapter and the
256 rules and regulations of the board duly adopted under * * * this
257 chapter. The issuance of a license by the board shall be evidence
258 that the person named therein is entitled to all the rights and
259 privileges of a * * * forester while the * * * license remains
260 unrevoked or unexpired.

261 SECTION 15. Section 73-36-29, Mississippi Code of 1972, is
262 reenacted and amended as follows:

263 73-36-29. All licenses issued under the provisions of this
264 chapter shall expire after December 31 of odd numbered years and
265 shall become invalid after that date unless renewed. * * * The
266 secretary of the board shall mail a notice to every person
267 registered under this chapter notifying the person of the date of
268 the expiration of his license and the amount of fee required for

269 its renewal for two (2) years. The notice shall be mailed to the
270 latest known address, according to the board's records, at least
271 one (1) month in advance of the date of the expiration of the
272 license. The board shall from time to time fix the fee for
273 renewal of licenses, provided the fee shall not exceed the amount
274 of One Hundred Dollars (\$100.00) for two (2) years' renewal. Any
275 registrant failing to renew his license * * * and applying for a
276 license shall be required to pay a fee as set by the board not to
277 exceed twice the total amount of the license fees * * * had his
278 license been continued in effect, and also to comply with such
279 other reasonable requirements as may be established by rules and
280 regulations of the board * * *.

281 SECTION 16. Section 73-36-31, Mississippi Code of 1972, is
282 reenacted and amended as follows:

283 73-36-31. A person not a resident of and having no
284 established place of business in Mississippi, or who has recently
285 become a resident * * *, may use the title of registered forester
286 in Mississippi, provided: (a) such person is legally licensed as
287 a * * * forester in his own state or county and has submitted
288 evidence to the board that he is so licensed and that the
289 requirements for registration * * * are at least substantially
290 equivalent to the requirements of this chapter; and (b) the state
291 or county in which he is so licensed observes these same rules of
292 reciprocity in regard to persons * * * licensed under * * * this
293 chapter. Each person seeking the privileges of reciprocity
294 granted under this chapter shall submit his application * * * to
295 the board and must receive a card or certificate from the board
296 before exercising such privileges. The fee for obtaining * * * a
297 license through reciprocity shall be the same as charged a
298 Mississippi licensee.

299 SECTION 17. Section 73-36-33, Mississippi Code of 1972, is
300 reenacted as follows:

301 73-36-33. (1) The board shall have the power, after notice

302 and hearing, to suspend or revoke the license of any registrant
303 who (a) is found guilty by the board of fraud or gross negligence
304 in the practice of professional forestry; (b) fails to comply with
305 board rules and regulations; (c) is found guilty by the board of
306 unprofessional or unethical conduct; or (d) has had his license
307 suspended or revoked for cause in another jurisdiction.

308 (2) Any person may prefer charges of fraud or gross
309 negligence in connection with any forestry practice against any
310 registrant. Such charges shall be in writing, shall be sworn to
311 by the person making them, and shall be filed with the secretary
312 of the board. All charges shall be heard by the board pursuant to
313 its rules and regulations without undue delay.

314 (3) Any applicant whose license is suspended or revoked by
315 the board may apply for a review of the proceedings with reference
316 to such suspension or revocation by appealing to the Chancery
317 Court of the First Judicial District of Hinds County, Mississippi,
318 provided a notice of appeal is filed by such applicant with the
319 clerk of said court within sixty (60) days from entry of an order
320 by the board suspending or revoking his license, provided said
321 applicant files with said notice of appeal a bond to be approved
322 by the court assuring the prompt payment of any and all costs of
323 said appeal, said amount to be fixed by the court. Upon the
324 filing of such notice of appeal and posting of such bond, the
325 clerk of the said court shall notify the secretary of the board
326 thereof and the record of the proceedings involved shall be
327 prepared by the secretary and forwarded to the court within a
328 period of sixty (60) days from such notice by the clerk. The
329 court shall thereupon review the proceedings on the record
330 presented and may hear such additional testimony as to the court
331 may appear material and dispose of the appeal in termtime or in
332 vacation, and the court may sustain or dismiss the appeal, or
333 modify or vacate the order complained of, but in case the order is
334 modified or vacated, the court may also, in its discretion, remand

335 the matter to the board for such further proceedings not
336 inconsistent with the court's order as, in the opinion of the
337 court, justice may require. The decision of the chancery court
338 may be appealed as other cases to the Supreme Court.

339 (4) The board is authorized to secure, by contract, the
340 services of an investigator when deemed necessary by the board to
341 properly consider any charge then before it. The board may, at
342 its discretion, establish a program of routine inspections.

343 (5) In addition to the reasons specified in subsection (1)
344 of this section, the board shall be authorized to suspend the
345 license of any licensee for being out of compliance with an order
346 for support, as defined in Section 93-11-153. The procedure for
347 suspension of a license for being out of compliance with an order
348 for support, and the procedure for the reissuance or reinstatement
349 of a license suspended for that purpose, and the payment of any
350 fees for the reissuance or reinstatement of a license suspended
351 for that purpose, shall be governed by Section 93-11-157 or
352 93-11-163, as the case may be. Actions taken by the board in
353 suspending a license when required by Section 93-11-157 or
354 93-11-163 are not actions from which an appeal may be taken under
355 this section. Any appeal of a license suspension that is required
356 by Section 93-11-157 or 93-11-163 shall be taken in accordance
357 with the appeal procedure specified in Section 93-11-157 or
358 93-11-163, as the case may be, rather than the procedure specified
359 in this section. If there is any conflict between any provision
360 of Section 93-11-157 or 93-11-163 and any provision of this
361 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
362 case may be, shall control.

363 SECTION 18. Section 73-36-35, Mississippi Code of 1972, is
364 reenacted and amended as follows:

365 73-36-35. Any person who shall practice or offer to practice
366 the profession of forestry in this state * * * without being
367 registered in accordance with * * * this chapter, or any person

368 who shall use in connection with his name, or otherwise assume,
369 use or advertise any title or description tending to convey the
370 impression that he is a * * * forester without being registered in
371 accordance with * * * this chapter, or any person who shall
372 present or attempt to use as his own the license of another, or
373 any person who shall give any false or forged evidence of any kind
374 to the board or any member * * * in obtaining a license, or any
375 person who shall attempt to use an expired or revoked license, or
376 any person, firm, partnership or corporation who shall violate any
377 of the provisions of this chapter shall be subject to an
378 administrative fine issued by the board not to exceed One Thousand
379 Dollars (\$1,000.00) for each violation but only after the person,
380 firm, partnership or corporation has been given the opportunity to
381 be heard by the board and has received written notice of the
382 alleged violation at least ten (10) days before the hearing.
383 Unless the fines are paid within ninety (90) days after the
384 board's order, the order shall become a judgment and may be filed
385 and executed. However, the person, firm, partnership or
386 corporation, within thirty (30) days of the board's order being
387 issued, may appeal the order to the Circuit Court of Hinds County
388 to be reviewed on the record. Any person, firm, partnership or
389 corporation that violates any of the provisions of this chapter
390 and has not been issued an administrative fine by the board for
391 the violation is guilty of a misdemeanor and, upon
392 conviction, * * * shall be fined not more than Five Thousand
393 Dollars (\$5,000.00) for each * * * violation. The board, or any
394 person or persons as may be designated by the board to act in its
395 stead, is empowered to prefer charges for any violations of this
396 chapter in any court of competent jurisdiction. It shall be the
397 duty of all duly constituted officers of the law of this state to
398 enforce the provisions of this chapter and to prosecute any
399 persons, firms, partnerships or corporations violating same. The
400 Attorney General of the state or his designated assistant shall

401 act as legal advisor of the board and render such assistance as
402 may be necessary in carrying out the provisions of this chapter.

403 SECTION 19. Section 73-36-37, Mississippi Code of 1972, is
404 amended as follows:

405 73-36-37. Sections 73-36-1 through 73-36-35, which create a
406 board of registration for foresters and prescribe its duties and
407 powers, shall stand repealed as of December 31, 2010.

408 SECTION 20. Each section of the Mississippi Code of 1972
409 that is reenacted but not amended by this act, and that appears in
410 the main volume of the Code, shall not be reprinted in the
411 supplement. Instead, an editor's note shall be placed in the
412 supplement following the section to explain that the section was
413 reenacted, and that it has not been reprinted in the supplement
414 because the language of the section in the main volume was
415 unaffected by the legislation.

416 SECTION 21. This act shall take effect and be in force from
417 and after July 1, 2000.