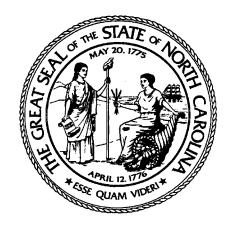


# LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report for

## **Foresters**

**House Bill 577** 



#### LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

### May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of foresters. This report constitutes both the preliminary and final assessment report.

Representative Frank Mitchell, Chairman

Prepared by:

Linwood Jones, Cornsel

#### **LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS**

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#### PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

- (1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.
- (2) Whether the profession possesses qualities that distinguish it from ordinary labor.
- (3) Whether practice of the profession requires specialized skill or training.
- (4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.
  - (5) Whether the public can effectively be protected by other means.
- (6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

#### **FORESTERS**

The practice of forestry in North Carolina currently requires no license. However, foresters may voluntarily become registered by the State Board of Registration for Foresters by meeting the standards for registration. By becoming registered, a forester may call himself a "registered forester." This gives the forester an opportunity to distinguish himself as having special training, education, and/or experience in forestry. It is unlawful for anyone other than a registered forester to claim to be "registered."

The registration process gives the public an opportunity to choose a forester with training and experience that indicate a certain level of competence. However, a person can still call himself a "forester" without being registered and without meeting this minimum level of competence. There are concerns that the public is not fully aware of this distinction and is being misled into believing that anyone using the title "forester" is in fact qualified to engage in the practice of forestry. This is particularly true of private landowners who do not use foresters' services enough to understand the distinction. However, the times they do use foresters often involve very large tracts of timber, where the services provided by the forester are critical. The sponsor notes that few timber owners understand volumes, weights and conversions, pricing, seasonal variations, timber markets, regeneration, chemical usage, and wildlife considerations. The owner therefore is not in a position to protect himself from an unqualified practitioner who is advising him concerning timber.

House Bill 577 would require anyone using the title "forester" or similar descriptive terms to be licensed. An exception is made for certain qualified "urban foresters." An urban forester is one who practice forestry in an urban setting. All foresters currently registered would be grandfathered in under the bill. Others would have to meet the educational and/or experience requirements set out in the bill. The bill also allows the Board to require continuing education of up to 12 hours per year.

The Legislative Committee on New Licensing Boards finds that the sponsors have met the six statutory criteria by which the Committee judges licensure proposals, as follows:

- (1) The unregulated practice of the profession can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote nor dependent upon tenuous argument.
- (2) The practice of the profession possesses qualities that distinguish it from ordinary labor.
- (3) The practice of the profession requires specialized skill and training.
- (4) A substantial majority of the public does not have the knowledge or experience to evaluate the practitioner's competence.
- (5) The public cannot be effectively protected by other means.

(6) Licensure would not have a substantial adverse economic impact upon consumers.

The Legislative Committee on New Licensing Boards recommends the licensing of foresters. This assessment report constitutes both the preliminary and the final assessment report for the licensing of foresters. The report is based on the proposed licensing of foresters as set out in House Bill 577, the response to the Committee's questionnaire (attached), and testimony before the Committee on May 12, 1997.

## **FORESTERS**

LEGISLATIVE COMMITTEE ON NEW LICENSING BUARDS OR 12 1097

Re: Amendments to Chapter 89B Forester Registration House Bill #577: Short Title "Forester Registration"

Entitled "AN ACT TO STRENGTHEN THE REGISTRATION REQUIREMENT FOR FORESTERS

The primary focus of this bill requires mandatory registration of all foresters practicing in North Carolina. The current Chapter 89B provides for voluntary registration only; of those who would hold the title of "registered forester". Current statute does not prohibit anyone, qualified or not, from using the title of "forester" or any derivatives thereof, thus providing opportunity for unscrupulous individuals to demean the profession and deceive the public for personal gain. Other amendments in the bill are for purposes of assuring that applicants for registration as foresters meet the qualifications, have the education and experience, and can indeed serve the public as professional foresters. The public should expect no less.

#### 1. In what ways has the marketplace failed to regulate adequately the profession or occupation?

The current Chapter provides for the registration of foresters on a <u>voluntary basis</u>; requiring only that one be registered before using the title or implying one is a registered forester or a consulting forester. The amendment seeks to make it mandatory that one be registered to use the title of forester or to otherwise imply one is a forester; thus, lessening the confusion in the marketplace as to qualifications of foresters, registered foresters, consulting foresters and/or any other forester identifications. A forester is a forester.

Knowledgeable employers within the forest industry, related industries, certain government entities and some within the private landowner (NIPF) segment are aware of the professional capabilities one should expect in a forester. This group has a pretty good appreciation of the economic, environmental and esthetic gains that can accrue through reliance upon the skills, foresight and guidance of a professional forester. They also have an appreciation of the losses one can suffer through reliance upon those less qualified to practice forestry or upon their own limited knowledge.

Conversely, there are even more uninformed and/or mis-informed employers (private landowners) and potential employers who don't have an awareness of the specific skills and expertise one should expect in a forester and therefore susceptible to the wiles and opportunism of any one who might represent themselves to be foresters. These employers or prospective employers are in-frequently (maybe once or twice in their lifetime) directly involved in decisions related to forestry and generally have an un-realistic overall concept of forestry as it might relate to their situation and well-being. Such persons may seek advice and/or assistance from any one representing themselves as foresters but have no assurance that the one they select is in fact professionally educated, experienced, qualified and ethical. And more often than not, such persons never realize they have made a less than desirable choice and/or decision.

The market place is driven by demand for timber products regardless of source or consequences. Primary processors have traditionally been protected from direct consequences through a network of middlemen suppliers - dealers, pin hookers, commission buyers and the like. Current demand for forest products is the greatest in history and the opportunities for abuse are increasing. Current pressure (demand) by some environmentalists to regulate forestry (forest practice) reflect consequences the market has not addressed. The numerous environmental regulations now in place requires identified professionals for proper implementation. The current Chapter does not protect the term "forester" and allows unscrupulous individuals to use the title to gain trust.

In short, it is felt that the marketplace by and large is not sufficiently informed and or experienced in forestry matters and therefore unable to adequately regulate the profession or occupation. The amendment seeks to assure the public that anyone bearing the title forester is indeed professionally qualified and that over time the marketplace will learn and can rely upon that assumption.

#### OCCUPATIONAL REGISTRATION/LICENSING COMMITTEE QUESTIONNAIRE

Re: Amendments to Chapter 89B Forester Registration

2. Have there been any complaints about the unregulated profession or occupation? Please give specific examples including complaint's names and addresses.

Numerous informal complaints are heard, some factual, some rumor and most involving situations where less than knowledgeable forest owners were moved to pre-mature actions involving significant future economic loss and usually receiving less than market value for their forest or forest product. Some of these situations involve un-scrupulous entities working outside the competitive marketing network afforded via reputable forestry professionals and markets. Frequently these entities operate under the guise of being foresters recommending acceptable forestry practice.

Specific complaints are few in that there seem to be few individuals who are willing to be exposed to the legal liability of putting them in writing; particularly considering the minimal penalties invoked by the current Chapter. Most "wronged" landowners "take their lumps" from botched jobs, site damage, stolen timber and inadequate pricing. Few forest owners are positioned to keep up with current product specifications, volumes, weights & conversions, pricing, seasonal variations, best markets, regeneration techniques, chemical usage, genetic gains and claims, wildlife considerations and the myriad of old and new laws and regulations.

Reference is made to Minutes of State Board of Registration for Foresters for the period 1/28/93 through 11/6/95 wherein names, circumstances, actions and other details on some twenty (20) complaints are recorded. It is deemed not prudent to list details here but is assumed that the Committee (Occupational Licensing) has privilege to said Minutes.

It is conceded that one cannot be denied the "privilege" of sacrificing or foolishly disposing of their assets, be it land and/or timber. The amendment to the Chapter seeks to improve the public's opportunity to confidently identify and employ professionals, while reducing the probability that professional foresters would be perceived as party to such deception as described above.

3. In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation?

Please give specific examples including names and addresses.

The public welfare is subject to economic and environmental harm, particularly on private lands, through misapplication or even total absence of professionally acceptable forestry practices. Stream sedimentation, water pollution, loss of wildlife habitat, erosion, misuse of herbicides, lack of regeneration following final harvest, loss of landowner confidence in long-term forestry investment, loss of value, ad-valorum tax base loss, all are areas of concern for harm from past mistreatment. The comments in the response to question 1. A. speak to the reasons.

The extent of such harm or danger is difficult if not impossible to accurately assess, but it does occur. Anywhere an owner's forest property is abused economically and/or environmentally through actions authorized by the owner based, upon recommendations and/or advice of one the owner believed to be a forester, (professionally qualified or not); could be considered harmful if not dangerous. Improper forest practice or the lack of acceptable forest practice may not reflect adverse effect immediately and in fact may be viewed by the owner favorably. The long term effects of forestry practice are not perceived by many, whereas the professional forester's focus is on the whole, be it single or multiple use, short or long rotation production, wildlife, recreation, esthetics; whatever the owner's needs and goals might be.

The current Chapter has done much to protect the public's interest but it should be all inclusive. The amendment to the Chapter seeks to reduce even further these harmful influences through improvement of the public confidence in who their foresters are

Specific names and addresses of individuals harmed are not readily available; however, minutes of the Board of Registration for Foresters reflect situations that do occur. The failure to inform an owner of present and future consequences of certain forest practices or failure to implement certain forestry practices can cause both short and long term problems. For example the failure to implement Best Management Practices with silvicultural, regeneration, and harvesting activities can impact wetlands silvicultural exemptions as well as site quality and productive capability.

Lack of regulation in forestry is not deemed a problem but pressure for more regulation under the guise of environmental crisis continues from Sierra Club, EDF, SEDF, NCDEM, NCDEHNR, Coastal Federation, CDF and other similar groups. Some of their efforts are worthy but often push an agenda instead of addressing a problem.

4. Is there potential for substantial harm or danger by the profession or occupation to the public health, safety or welfare?

How can this potential for substantial harm or danger be recognized?

Foresters work with North Carolina's most important renewable natural resource. Mistreatment of the resource results in loss of real value; for the owner, for the manufacturing base, for employees of that base and for the resource itself. The mandatory registration of foresters will serve to identify professional foresters who educated, experienced and ethical; with the capability of understanding essential resource and environmental concerns and the ability and desire to apply acceptable resource enhancement measures.

Potential for substantial harm or danger by the profession to the public health, safety or welfare is not considered to be the problem so much as the potential harm or danger by those falsely representing themselves as foresters, when in fact they are not qualified professional foresters. The current Chapter is voluntary, not mandatory and only requires that one be registered before calling themselves a registered forester or a consulting forester. It does not speak to those who may be identified simply as foresters or some other category of forester.

Potential for harm or danger <u>by the profession</u> is addressed through registration requirements of character, education, experience, and ethics upon application. Provision for maintaining standards of the profession are addressed through performance requirements, revocations, penalties and prosecution.

5. Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process?

Please list the other states and give the relative statutory citations.

The Society of American Foresters established in 1900 is the recognized national professional society for foresters. Members are required to hold a bachelors or higher degree in forestry from a school, college or university accredited by the SAF; abide by a code of ethics and otherwise meet professional standards. The SAF administers a stringent accreditation program to maintain high standards of professional education. SAF also provides numerous opportunities for education, communication, contact and information through its technical and general publications, its national, section, division and chapter organization and other membership programs and activities.

Several states have enacted mandatory forester registration/licensing statutes. South Carolina, Georgia, Alabama, Mississippi, and Maryland are currently reciprocal with NC; however, some elements of each are conditional. For example South Carolina requires examination of all in state applicants as of amendment to their statute in 1991. NC registrants prior to 1991 are granted reciprocal registration in SC but NC registrants subsequent to 1991 must pass the SC examination before reciprocity is granted. Proposed amendments to the NC Chapter would more closely align with the stronger requirements of these other states provide an unencumbered reciprocity

#### 6. What will be the economic advantage of registration to the public?

Economic advantage of mandatory registration of foresters to the public is derived through the public's increased confidence in readily identifying competent forestry professionals in the application of good forestry practice and through the elimination of incompetent, fraudulent, illegal claimants. Public and private gains in this respect are inestimable. Consider the gain one might enjoy as being the difference in value between 1) an estimate of value submitted by an independent professional forester representing the owner and 2) a purchase price offered by a buyer to an owner lacking in any real knowledge and/or expertise in current markets and marketing skills.

### 7. What will be the economic disadvantages of registration to the public?

Economic disadvantages of mandatory registration of foresters to the public do not appear. Expenses of the registration Chapter are borne by the nominal fees charged the registrants. The current Board operation is self-sustaining and is anticipated to remain so. No moneys from the State are provided or required.

#### 8. What will be the economic advantages of registration to the practitioners?

Economic advantages of registration to the practitioners appear to be minimal. Most are employees of industries, agencies and educational institutions. Some practitioners are private consultants to landowners, industry and agencies. Hopefully, those un-qualified, un-scrupulous individuals and entities currently deceiving the public as to said individual's credentials and professional qualifications as foresters will be exposed. Should that be the case, the public's growing confidence and reliance upon truly qualified, registered foresters over time would enhance the opportunities for employment and income of the practitioners

A more knowledgeable perception by the general public of a forester's professional capabilities and contributions to economic and environmental values should reflect in said forester's worth. Even so employers will continue to sustain their foresters at whatever level the market dictates. Foresters are hired by employers who think foresters can best help them identify and achieve their goals. The foresters worth to the employer is determined by the results obtained. To that extent the forester/practitioner will benefit economically.

Un-like some other professions, whether or not one hires a forester is not a life or death matter and one's forest land may survive at a less productive level without a forester's attention. Foresters do not and will never have a monopoly on the practice of forestry. Those who would employ a forester are not compelled to do so. They can hire anyone they so desire or rely upon any free advice, knowledge or experience they choose.

The proposed amendments to the Chapter will not change that. It will assure those employers who would hire a forester that they can identify such with a much greater degree of confidence. The amended Chapter will restrict the unqualified from claiming to be what they are not.

#### 9. What will be the economic disadvantages of registration to the practitioners?

There would appear to be minimal economic disadvantage of registration to the practitioners (foresters). It is not anticipated that the current fees schedule will require significant increase. The existing Board and it's function will remain much the same. There will be an increase in the examinations function in that all applicants subsequent to the proposed amendments to this Chapter will stand examination. Some increase in the number of registrants may occur; however, a significant number of practicing foresters who had not registered previously have recently applied and been registered in anticipation of the proposed amendments being enacted.

Some additional cost may accrue to all registrants in meeting the proposed continuing education requirements. These costs would be reflected in time away from their duties plus direct expenses of course attendance. Again such costs should not be significant and are already being met by most in retaining their certifications, memberships, etc. in other professional associations and reciprocal state forester registrations. Adequate course material and opportunity is already in place from several sources.

The enhancement of one's professional knowledge, expertise and contacts through a continuing education program should exceed by far the nominal expense which may accrue.

10. Please give other potential benefits to the public of registration that would outweighthe potential harmful effects of registration such as a decrease in the availability of practitioners and higher cost to the public.

There is little reason to think the proposed amendments to the Chapter would cause any decrease in the availability of practitioners or higher cost to the public. It may in fact serve to enhance the availability of practitioners to the public and provide competitive restraints on the cost. The current Chapter already includes over 800 registrants (some out of state reciprocals, mostly in state). With mandatory registration, only those fully qualified professionally will be registered. Unqualified, "would be" practitioners would be denied identification as foresters and that is one of the primary purposes of the amendment. The public benefit will be better served by the positive identification of professionally educated, experienced and ethical forester.

The quality of the forest resources of North Carolina will benefit. It's protection, better utilization, timely regeneration, economic returns and environmental quality through cleaner water, cleaner air, reduced soil erosion and better recreational opportunities. All provide for the sustainability of the state's resource. The real cost to the public comes from deficiencies in the Chapter which the amendments seek to correct.

## 12. Please detail the specific specialized skills or training that distinguish the occupationor profession from ordinary labor. How is each justified?

Professional forestry began in Europe hundreds of years ago. The first recognized professional forester employed in the United States was hired by George Vanderbilt in 1889 to manage the Biltmore property in western North Carolina. The initial efforts of this forester, Gifford Pinchot were profitable to the extent that Vanderbilt purchased an additional 100,000 acres which became the first large tract of managed forest land in America. This property later became the nucleus for the Pisgah National Forest. The first school of forestry in America was started at Biltmore in 1898 by Dr. Carl Schenck, Pinchot's 1895 successor forester on the Vanderbilt properties. Dr. Schenck operated the Biltmore School of Forestry until 1914, graduating 367 alumni who became practicing professional foresters throughout the United States. They were largely responsible for the recovery of our present forest resource from the "cut out and get out" philosophy of the timber industry of the day.

The national Society of American Foresters established in 1900 is the recognized professional society for foresters in the US and currently lists over 19,000 members. It is estimated an equal number for a variety of reasons are not members of the SAF.

Forestry is defined as the "science, art and practice of managing and using for human benefit the natural resources which occur on and in association with forest lands". Resources such as fish and wildlife, soils, water and esthetic values are included in this definition in addition to timber. The interrelations of all these components are challenging. Biology, chemistry and physics are needed to understand soil, water and plant communities: social sciences and economics help to define management objectives; statistical and computer applications are used to determine resource availability and develop schedules for managing them.

#### 12. What are other qualities of the profession or occupation that distinguish it from ordinary labor?

Professional forester members of SAF must complete intensive studies of ecology, forest economics, forest protection, silviculture, resource management and use, dendrology, mensuration, forest policy and administration; earning at least a bachelor's degree in forestry.

Personal success requires honesty, diligence, reliability and courage and a forester also needs intelligence, initiative, self-reliance and the ability to work well with people.

13. Will licensing requirements cover all practicing members of the occupation or profession?

If any practitioners of the profession or occupation will be exempt, what is the rationale for the exemption?

There are no exemptions for those who are or would be identified and/or employed as foresters in North Carolina.

- (a) No person shall use the designation 'forester', 'registered forester' or any other descriptive terms that directly convey that the person is a forester without first having been registered under this Chapter.
- (b) This Chapter benefits and protects the public by improving the standards for the practice of professional forestry in North Carolina.

Although this bill as written does not prohibit anyone from the 'practice of forestry', it does identify (set apart) those professionals qualified 'to practice' (foresters) from those who may not be qualified. Hopefully, over time, the public's confidence in securing professionally qualified forestry advice, assistance and services from a 'forester' will be assured, and those occurrences of less than professional services will diminish. At the least, less than professional practice would not be identified as the professional product of the 'forester'.



## 14. What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

Current voluntary registration of foresters roster under the current Chapter lists over **860** registrants. A considerable number are out of state reciprocal registrants, primarily with SC, GA, MS, AL, MD. The roster includes over **170** registrants with the defined CF (Consulting Forester) designation.

Those likely to utilize the services of the occupation or profession include all private, industrial and public owners of forestalled in the State. 60% of the land area in NC is forestland.

31,228,220 acres 18,710,381 acres	Total land area in NC Total timberland in NC		
		2,002,663 acres	Government Ownership
		2,420,378 acres	Industry Ownership
		14,287,340 acres	Private Ownership

The diversity of owners and timber types in the State reflect a distinct need for professional forest management. Foresters are professionally educated, experienced and qualified to assist each individual owner develop and administer a management plan that best serves their purposes within the parameters set by the potentials and or limitations of their particular properties. Forest Statistics for North Carolina, 1990 reflects the following

Acreage	Forest Types	Ownership Categories	Ownership Categories			
18.7 million	53 % hardwood 14 % oak-pine 33 % pine/conifer	10 % public 27% 13 % industry 40% 10% other corp.	farmer individual			

Note that 67% of the forest owners in the state are farmers (27%) and individuals (40%).

The 1978 Governor's Advisory Task Force on Small Woodlots in NC indicated the size distribution of ownerships in the State at the time to be as follows:

Ownership Class	Number of Owners	Percent of Owners	È	Percent of Acreage
1 > 20 acres	109,203 owners	43.9 %	6	%
21 > 100 acres	109,185 owners	43.9 %	30	%
101 > 500 acres	24,691 owners	9.9 %		33 %
501 > 5,000 acres	5,518 owners	2.2 %		24 %
5,001 + Acres	132 owners	0.1 %		7 %

Indications are that the forestland ownership pattern since 1978 has become even more fragmented. Forest industry ownership appears to be fairly stable while other corporate and investor entities seem to be increasing along with individuals. A recent informal survey indicates that as much as 25% of what is considered commercial forest land (economically feasible to grow timber thereon) is within a 25 mile radius of growing population centers, thus moving into an urban situation.

All of the above would seem to indicate an exploding need for the application of sound forestry practices on the forest lands still available to us, if we are to maintain; if not enhance the economic as well as environmental benefits we are privileged to enjoy in North Carolina. Professional foresters know best how this can be realized. Much of what we have in our forests today can be traced back to the efforts of foresters 25, 50, 75, even 100 years ago, when professional forestry in the United States had it's beginning in the mountains of North Carolina on the Biltmore Estate.

## 15. What kind of knowledge or experience does the public need to have to be able to evaluate the services offered by the practitioner

The public in general has little knowledge of what foresters do or what their education, experience and motives are. Frequently foresters seem to be identified only as forest fire fighters, fire tower lookouts, timber cruisers timber buyers and other roles involving some of the technical applications of forest practice. In areas of the State where forestry activity is a prominent or major economic factor involving numerous employees and affecting large areas, foresters are more accurately perceived. Foresters themselves often find it difficult to describe their professional qualifications and activity to those who have little or no comprehension of the forester's world.

Unfortunately, many have learned the value of the service offered by foresters "after the fact". As noted elsewhere in this questionnaire, most forest practices have long term effects, and some effects aren't even recognizable by the un-informed or in-experienced. Quite often forest owners have liquidated their forest assets without professional assistance in determining market value of the land or timber. Owners have pursued courses of action with good intent only to learn the hard way such actions were doomed from the start or there were more efficient ways to achieve the goal they sought. Such can be very costly in time as well as money.

Great strides have been made in recent years to educate the public and particularly the landowners of the value of good forestry practice and the value of professional help. It is felt the amendment to the Chapter requiring any and all foresters to be registered will improve the public's opportunity to identify foresters and to be assured of getting professional help when they do seek it. Over time those who would deceive the public as to their qualifications as foresters will diminish, the public will be better served and the practice of forestry in NC will benefit.

16. Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service? Please document.

The current Chapter includes an established code of ethics which closely adheres to the national professional Society of American Foresters Code of Ethics

17. Please cite and document the extent to which any other licensing board in North Carolinaregulates similar or parallel functions to the profession or occupation.

There would appear to be no other licensing board in North Carolina which regulates similar or parallel functions. Some technical applications in forestry require license, registration or certification, such as chemical herbicide and/or pesticide applicators but amendments to this Chapter would not affect such in any way. Foresters would still be required to obtain or retain those certifications, registrations or license should they be involved in such activity.

**END**