

Senate Bill No. 54

(By Senators Minard, D. Facemire and Williams)

[Introduced January 12, 2011; referred to the Committee on Natural Resources; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §20-5-16 of the Code of West Virginia, 1931, as amended, relating to allowing the Director of the Division of Natural Resources to enter into contracts granting long-term usage and related rights and privileges to third parties sufficient to attract private investment for the financing, construction and operation of additional lodging units at Stonewall Jackson Lake State Park; and directing the Director of the Division of Natural Resources to file emergency and legislative rules governing any such long-term usage contracts and related rights and privileges.

Be it enacted by the Legislature of West Virginia:

That §20-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-16. Authority to enter into contracts with third parties to

1 **construct recreational facilities and cabins; public**
2 **comment.**

3 (a) Notwithstanding any other provision of this code to the
4 contrary, in addition to all other powers and authority vested in
5 the director, he or she is hereby authorized and empowered to:

6 (1) Enter into contracts with third parties for the financing,
7 construction and operation of recreational, lodging and ancillary
8 facilities at Chief Logan State Park, Beech Fork State Park,
9 Tomlinson Run State Park, Stonewall Jackson Lake State Park, Lost
10 River State Park and Canaan Valley Resort State Park. The
11 contracts may allow and recognize both direct and subsidiary
12 investment arrangements. The term of the contracts may not exceed
13 a period of twenty-five years. ~~at which time the full title to the~~
14 ~~recreational facilities shall vest in the state; except as~~
15 ~~otherwise provided in this section;~~ With respect to the financing,
16 construction and operation of lodging at Stonewall Jackson Lake
17 State Park in addition to the lodging in existence as of July 1,
18 2011, such contracts may grant, convey or provide for commercially
19 reasonable lodging usage and related rights and privileges all on
20 such terms and conditions as the director may deem appropriate,
21 desirable or necessary to attract private investment for the
22 construction of such additional lodging units: Provided, That the
23 director shall propose emergency and legislative rules, in
24 accordance with the provisions of article three, chapter twenty-

1 nine-a of this code, governing the financing, construction and
2 operation of such additional lodging units at Stonewall Jackson
3 Lake State Park, which emergency and legislative rules shall
4 include at a minimum the following provisions:

5 (A) No more than one hundred additional lodging units may be
6 constructed, in addition to the lodging in existence as of July 1,
7 2010;

8 (B) Lodging unit contracts in respect of any and all such
9 additional lodging units that may be financed, constructed or
10 operated pursuant to the provision of this section shall generally
11 conform to the provisions of contracts entered into by federal
12 agencies or the National Park Service with private parties in
13 respect of privately financed property that is constructed,
14 developed or operated on public lands administered by federal
15 agencies or the National Park Service from time to time, subject to
16 modification and adaptation by the director as the director
17 considers appropriate, suitable and relevant to any such lodging
18 units to be constructed at Stonewall Jackson Lake State Park.

19 (C) A party granted rights and privileges under lodging unit
20 contracts awarded under the provisions of this section has the
21 right to renew his, her or its lodging unit contract for successive
22 terms not to exceed ninety-nine consecutive years. The party
23 extended such renewal rights must be in compliance with all
24 material rights, duties and obligations arising under his, her or

1 its contract and all relevant and applicable provisions of federal,
2 state and local laws, rules, regulations, contracts or agreements
3 at the time of any such renewal. Such renewals may be extended for
4 more than ninety-nine successive years if and in the event the
5 director makes an affirmative determination that such renewal or
6 renewals are in the best interest of the state and Stonewall
7 Jackson Lake State Park, giving due consideration to financial,
8 operational and other considerations considered relevant and
9 material by the director;

10 (D) All rights and privileges arising under any lodging unit
11 contract shall be transferred to the state or the state's designee
12 upon the expiration or termination of any such contract, all on
13 such terms and conditions as each such contract may provide or as
14 may otherwise be agreed to between the parties;

15 (E) At the time of transfer of any lodging unit contract from
16 a private party to the state or the state's designee, whether at
17 the end of a contract term or otherwise, the private party shall be
18 paid the fair value of the private party's residual rights and
19 privileges under such lodging unit contract, such residual rights
20 and privileges to be valued generally in accordance with the
21 valuation standards set forth in the National Park Service's
22 standard contract provisions, or such other relevant federal agency
23 standards applicable to similar or like contract rights and
24 provisions as may be in existence at the time of such transfer, all

1 as the same may be considered relevant and appropriate by the
2 director, and all in the exercise of the director's reasonable
3 discretion.

4 (2) Enter into contracts with third parties for the
5 construction, but not the operation, of cabins at any state park or
6 forest. Upon completion of the construction of the cabins, full
7 title to the cabins shall immediately vest in the state and the
8 cabins shall be operated by the parks and recreation section;

9 (3) Authorize the construction of at least five cabins by any
10 single third party in state parks and state forests which do not
11 offer such facilities on the effective date of this subsection; and

12 (4) Propose emergency and legislative rules, in accordance
13 with the provisions of article three, chapter twenty-nine-a of this
14 code, that set the conditions upon which the director may enter
15 into a contract with a single third party proposing to construct
16 cabins.

17 (b) All contracts shall be presented to the Joint Committee on
18 Government and Finance for review and comment prior to execution.

19 © A contract may provide for renewal for the purpose of
20 permitting continued operation of the facilities at the option of
21 the director for a term or terms not to exceed ten years.

22 (d) Except as otherwise authorized by this section, no
23 extension or renewal beyond the original twenty-five-year term may
24 be executed by the director absent the approval of the Joint

1 Committee on Government and Finance.

2 (e) *Stonewall Jackson Lake State Park.* --

3 (1) With respect to the financing, construction and operation
4 of lodging at Stonewall Jackson Lake State Park, in addition to the
5 lodging in existence as of July 1, 2008, contracts entered into
6 pursuant to this section may grant, convey or provide for
7 commercially reasonable lodging usage and related rights and
8 privileges all on terms and conditions as the director may deem
9 appropriate, desirable or necessary to attract private investment
10 for the construction of additional lodging units.

11 (2) No contracts may be entered into prior to the preparation
12 of lodging unit development plans and standard lodging unit
13 contract documents in a form and at a level of detail acceptable to
14 the United States Army Corps of Engineers and the director, and
15 subsequent to the presentation of the lodging unit development
16 plans and standard lodging unit contract documents to the Joint
17 Committee on Government and Finance for review and comment.

18 (3) At a minimum, the lodging unit development plans and
19 standard lodging unit contracts shall comply with the following
20 requirements:

21 (A) That no more than one hundred additional lodging units may
22 be constructed, in addition to the lodging in existence as of July
23 1, 2008;

24 (B) That lodging unit contracts, with respect to any

1 additional lodging units that may be financed, constructed or
2 operated pursuant to the provision of this section, shall generally
3 conform to the contracts entered into by federal agencies or the
4 National Park Service with private parties regarding privately
5 financed property that is constructed, developed or operated on
6 public lands administered by federal agencies or the National Park
7 Service, subject to modification and adaptation by the director as
8 the director deems appropriate, suitable and relevant to any
9 lodging units to be constructed at Stonewall Jackson Lake State
10 Park.

11 © That a party granted rights and privileges under lodging
12 unit contracts awarded under the provisions of this subsection
13 shall have the right to renew his, her or its lodging unit contract
14 for successive terms not to extend beyond the termination date of
15 the state's lease with the United States Army Corps of Engineers;
16 or, in the event that the state's lease with the United States Army
17 Corps of Engineers is extended beyond the termination date of the
18 lease as of July 1, 2007, not to exceed five ten-year extensions or
19 renewals beyond the termination date of the lease between the state
20 and the United States Army Corps of Engineers in effect as of July
21 1, 2007: *Provided*, That the party extended the renewal rights is
22 in compliance with all material rights, duties and obligations
23 arising under his or her or its contract and all relevant and
24 applicable provisions of federal, state and local laws, rules,

1 regulations, contracts or agreements at the time of renewal:
2 *Provided, however,* That if and in the event the director makes an
3 affirmative determination that further renewals beyond the time
4 periods set forth in this subsection are in the best interest of
5 the state and Stonewall Jackson Lake State Park, giving due
6 consideration to financial, operational and other considerations
7 deemed relevant and material by the director, that the director may
8 authorize further renewals;

9 (D) That all rights and privileges arising under a lodging
10 unit contract shall be transferred to the state or the state's
11 designee upon the expiration or termination of the contract, upon
12 the terms and conditions as each contract may provide or as may
13 otherwise be agreed upon between the parties;

14 (E) That the state is not, and cannot be, obligated for any
15 costs, expenses, fees or other charges associated with the
16 development of the additional lodging units under this subsection
17 or the operation and maintenance of the additional lodging units
18 over time, including, but not limited to, costs associated with
19 infrastructure improvements associated with development or
20 operation of the additional lodging units. In his or her
21 discretion, the director may engage professionals to assist the
22 state in connection with its review and oversight of development of
23 the additional lodging units;

24 (F) That at any time following the initial term and first

1 renewal period of any lodging unit contract entered into with a
2 private party with respect to an additional lodging unit that is
3 constructed under this section, the state shall have the right and
4 option, in its sole discretion, to purchase a lodging unit or
5 lodging units in accordance with the provisions of this subsection
6 and any and all contracts that may be entered into from time to
7 time under this section;

8 (G) That at its sole option and discretion, the state may
9 elect to purchase a lodging unit from a private party. In that
10 event, the private party shall be paid the fair value of the
11 private party's residual rights and privileges under the lodging
12 unit contract, the residual rights and privileges to be valued
13 generally in accordance with the valuation standards set forth in
14 the National Park Service's standard contract provisions, or other
15 relevant federal agency standards applicable to similar or like
16 contract rights and provisions as may be in existence at the time
17 of transfer, all as the same may be deemed relevant and appropriate
18 by the director, and all in the exercise of the director's
19 reasonable discretion. Nothing in this section is intended or
20 shall be construed to impose an obligation on the state to
21 purchase, buy, buy out or otherwise acquire or pay for any lodging
22 unit under this section, or to limit the right and ability of a
23 private party to donate or contribute his, her or its interest in
24 and to any lodging unit constructed under this section to the state

1 or any charitable foundation that may be established and operating
2 from time to time to support the continued operation and
3 development of Stonewall Jackson Lake State Park;

4 (H) That the state shall have no obligation whatsoever to
5 purchase, buy, buy out or otherwise acquire or pay for any lodging
6 unit that is developed or constructed under this section; and

7 (I) The director shall have the right to review and approve
8 the form and content of all contracts that may be entered into
9 pursuant to this subsection in connection with the development,
10 operation and maintenance of additional lodging units at Stonewall
11 Jackson Lake State Park.

NOTE: The purpose of this bill is to attract private investment for financing, construction and operation of additional public cottages at Stonewall Jackson Lake State Park. The bill authorizes and directs the Director of the Division of Natural Resources to promulgate rules regarding the granting of long-term lodging unit usage and related rights and privileges to private parties on commercially reasonable terms that are deemed appropriate, desirable or necessary by the director to attract additional private investment for such purposes.

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