

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 28

BY SENATOR KARNES

[Introduced February 8, 2017; referred
to the Committee on Natural Resources; and then to the
Committee on Government Organization]

1 A BILL to amend and reenact §20-7-1 of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto a new article, designated §20-14A-1, §20-14A-2, §20-14A-3,
3 §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9, §20-14A-10 and
4 §20-14A-11; and to amend and reenact §20-15-1, §20-15-2, §20-15-3, §20-15-4 and §20-
5 15-5 of said code, all relating to establishing regional recreation authorities and areas;
6 establishing trails for off-highway recreational vehicle use; providing for reimbursement by
7 authority for natural resources police officers or county sheriffs; authorizing creation of
8 regional recreation authority as joint development entity formed by three or more
9 contiguous counties; setting forth findings and definitions; establishing powers and
10 composition of governing board; providing for financial review and oversight of public
11 funds; prohibiting certain conduct in regional recreation area; establishing requirements
12 for bidding and purchasing; prohibiting conflicts of interest; limiting liability; clarifying duties
13 and responsibilities of participants to landowners and lessors in the regional recreation
14 area; and establishing criminal penalties and civil remedies.

Be it enacted by the Legislature of West Virginia:

1 That §20-7-1 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that said code be amended by adding thereto a new article, designated §20-14A-1,
3 §20-14A-2, §20-14A-3, §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9,
4 §20-14A-10 and §20-14A-11; and that §20-15-1, §20-15-2, §20-15-3, §20-15-4 and §20-15-5 of
5 said code be amended and reenacted, all to read as follows:

ARTICLE 7. LAW ENFORCEMENT; MOTORBOATING; LITTER.

**§20-7-1. Chief natural resources police officer; natural resources police officers; special
and emergency natural resources police officers; subsistence allowance;
expenses.**

1 (a) The division's law-enforcement policies, practices and programs are under the
2 immediate supervision and direction of the division law-enforcement officer selected by the

3 director and designated as chief natural resources police officer as provided in section thirteen,
4 article one of this chapter.

5 (b) Under the supervision of the director, the chief natural resources police officer shall
6 organize, develop and maintain law-enforcement practices, means and methods geared, timed
7 and adjustable to seasonal, emergency and other needs and requirements of the divisions
8 comprehensive natural resources program. All division personnel detailed and assigned to law-
9 enforcement duties and services under this section shall be known and designated as natural
10 resources police officers and are under the immediate supervision and direction of the chief
11 natural resources police officer except as otherwise provided. All natural resources police officers
12 shall be trained, equipped and conditioned for duty and services wherever and whenever required
13 by division law-enforcement needs. The chief natural resources police officer may also assign
14 natural resources police officers to perform law-enforcement duties on any trail, grounds,
15 appurtenant facility or other areas accessible to the public within the Hatfield-McCoy Recreation
16 Area or other regional recreation areas, under agreement that the Hatfield-McCoy Regional
17 Recreation Authority or other regional recreation authorities, created pursuant to ~~article~~ articles
18 fourteen and fourteen-a of this chapter, shall reimburse the division for salaries paid to the officers
19 and shall either pay directly or reimburse the division for all other expenses of the officers in
20 accordance with actual or estimated costs determined by the chief natural resources police officer.

21 (c) The chief natural resources police officer, acting under supervision of the director, is
22 authorized to select and appoint emergency natural resources police officers for a limited period
23 for effective enforcement of the provisions of this chapter when considered necessary because
24 of emergency or other unusual circumstances. The emergency natural resources police officers
25 shall be selected from qualified civil service personnel of the division, except in emergency
26 situations and circumstances when the director may designate officers, without regard to civil
27 service requirements and qualifications, to meet law-enforcement needs. Emergency natural
28 resources police officers shall exercise all powers and duties prescribed in section four of this

29 article for full-time salaried natural resources police officers except for the provisions of
30 subdivision (8), subsection (b) of said section.

31 (d) The chief natural resources police officer, acting under supervision of the director, is
32 also authorized to select and appoint as special natural resources police officers any full-time civil
33 service employee who is assigned to, and has direct responsibility for management of, an area
34 owned, leased or under the control of the division and who has satisfactorily completed a course
35 of training established and administered by the chief natural resources police officer, when the
36 action is considered necessary because of law-enforcement needs. The powers and duties of a
37 special natural resources police officer, appointed under this provision, is the same within his or
38 her assigned area as prescribed for full-time salaried natural resources police officers. The
39 jurisdiction of the person appointed as a special natural resources police officer, under this
40 provision, shall be limited to the division area or areas to which he or she is assigned and directly
41 manages.

42 (e) The Director of the Division of Forestry is authorized to appoint and revoke Division of
43 Forestry special natural resources police officers who are full-time civil service personnel who
44 have satisfactorily completed a course of training as required by the Director of the Division of
45 Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources
46 police officers are set forth by the Director of the Division of Forestry pursuant to article three of
47 this chapter and articles one-a and one-b, chapter nineteen of this code.

48 (f) The chief natural resources police officer, with the approval of the director, has the
49 power and authority to revoke any appointment of an emergency natural resources police officer
50 or of a special natural resources police officer at any time.

51 (g) Natural resources police officers are subject to seasonal or other assignment and detail
52 to duty whenever and wherever required by the functions, services and needs of the division.

53 (h) The chief natural resources police officer shall designate the area of primary residence
54 of each natural resources police officer, including himself or herself. Since the area of business

55 activity of the division is actually anywhere within the territorial confines of the State of West
56 Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the
57 area of primary assignment and still within the state.

58 (i) Natural resources police officers shall receive, in addition to their base pay salary, a
59 minimum monthly subsistence allowance for their required telephone service, dry cleaning or
60 required uniforms and meal expenses while performing their regular duties in their area of primary
61 assignment in the amount of \$130 each month. This subsistence allowance does not apply to
62 special or emergency natural resources police officers appointed under this section.

63 (j) After June 30, 2010, all those full-time law-enforcement officers employed by the
64 Division of Natural Resources as conservation officers shall be titled and known as natural
65 resources police officers. Wherever used in this code the term "conservation officer", or its plural,
66 means "natural resources police officer", or its plural, respectively.

67 Notwithstanding any provision of this code to the contrary, the provisions of subdivision
68 (6), subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable
69 to pensions of natural resources police officers paid through the Public Employees Retirement
70 System.

ARTICLE 14A. REGIONAL RECREATION AUTHORITY TRAIL ACT.

§20-14A-1. Legislative findings.

1 The West Virginia Legislature finds that there is interest within the state for additional well-
2 managed trails and facilities for off-highway recreational vehicle enthusiasts and other
3 recreational users. By empowering three or more contiguous counties to form regional recreation
4 authorities to work with private landowners, county officials, community leaders, state and federal
5 government agencies, recreational user groups and recreational entrepreneurs, counties may use
6 this act to establish new recreational trail systems and recreation management authorities tailored
7 to the needs of their communities to increase tourism, outdoor recreation and economic
8 development.

§20-14A-2. Definitions.

1 Unless the context clearly requires a different meaning, the terms used in this section have
2 the following meanings:

3 “Board” means the board of a regional recreation authority;

4 “Charge” means, for purposes of limiting liability for recreational purposes set forth in this
5 article, the amount of money asked in return for an invitation to enter or go upon the land, including
6 a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or
7 occasion as set by the authority. An authority may set charges in differing amounts for different
8 categories of participants, including, but not limited to, in-state and out-of-state participants, as
9 the authority sees fit. Regional recreation authorities may also set a charge for the joint use of
10 two or more regional recreation areas;

11 “Land” includes, but is not limited to, roads, water, watercourses, private ways and
12 buildings, structures and machinery or equipment thereon when attached to the realty;

13 “Off-highway recreational vehicle”, or the plural, means a vehicle intended for off-highway
14 use and includes all-terrain vehicles, utility-terrain vehicles and motorcycles as defined in article
15 fifteen of this chapter. It may also include full-size automotive vehicles designed for off-highway
16 use, such as a jeep, as determined by the authority;

17 “Owner” means those vested with title to real estate and those with the ability to exercise
18 control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a
19 dominant estate or other lawful occupant;

20 “Participant” means any person using the land, trails and facilities of a regional recreation
21 authority;

22 “Participating county”, “county”, or the plural, means one of the three or more contiguous
23 counties that have agreed to operate a regional recreation authority as a joint development entity
24 and to participate in its governance and support;

25 “Recreational purposes” or “recreation” includes, but is not limited to, any one or any

26 combination of the following noncommercial recreational activities: Off-highway recreational
27 vehicle driving and riding, hunting, fishing, swimming, boating, camping, picnicking, hiking,
28 pleasure driving, motorcycle or motor vehicle driving and riding, bicycling, horseback riding,
29 nature study, water skiing, winter sports and visiting, viewing or enjoying historical,
30 archaeological, scenic or scientific sites or otherwise using land for purposes of recreation;

31 “Regional recreation area” or “area” means a system of recreational trails and appurtenant
32 facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational
33 areas, historic or cultural interpretive sites and other facilities that are a part of the system
34 established by the regional recreation authority for recreational purposes; and

35 “Regional recreation authority” or “authority” means a regional recreational authority
36 established by three or more counties to create a regional recreation area for recreational
37 purposes.

§20-14A-3. Creation; appointment of board members; terms.

1 (a) A regional recreation authority may be created by three or more contiguous counties
2 and operate as a joint development entity for the purpose of enabling and facilitating the
3 development and operation of a trail system for use by off-highway recreational vehicle
4 enthusiasts, with significant portions of the area being located on private property made available
5 for use through lease, license, easement or other appropriate legal means by willing landowners.

6 (b) The county commission of each participating county in the authority shall appoint two
7 members of the board as follows:

8 (1) One member who is a county commissioner or his or her designee. This member shall
9 be appointed to a four-year term; and

10 (2) One member who is a landowner or who represents travel, tourism, economic
11 development, real estate, resource-extraction, a licensed land surveyor or licensed professional
12 engineer. The initial appointment shall be for a two-year term, but all subsequent appointments
13 shall be for a four-year term.

14 (c) Any appointed member whose term has expired shall serve until his or her successor
15 has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for
16 the unexpired term. Any appointed member is eligible for reappointment. Members of the board
17 are not entitled to compensation for services performed as members but are entitled to
18 reimbursement for all reasonable and necessary expenses actually incurred in the performance
19 of their duties.

20 (d) A regional recreation authority is a “public body” for purposes of the West Virginia
21 Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

§20-14A-4. Board; quorum; executive director; expenses.

1 (a) The board is the governing body of the regional recreation authority and the board shall
2 exercise all the powers given the authority in this article.

3 (b) The board shall meet quarterly, unless a special meeting is called by its chairman. At
4 the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as
5 feasible, the board shall elect a chairman, secretary and treasurer from among its own members.

6 (c) A majority of the members of the board constitutes a quorum and a quorum shall be
7 present for the board to conduct business.

8 (d) The board may prescribe, amend and repeal bylaws and rules governing the manner
9 in which the business of the authority is conducted, and rules governing the use of the trail system
10 and the safety of participants.

11 (e) The board shall review and approve an annual budget. The fiscal year for the authority
12 is July 1 to June 30 the following year.

13 (f) The board shall appoint a part-time or full-time executive director to act as its chief
14 executive officer, to serve at the will and pleasure of the board. The board, acting through its
15 executive director, may employ any other personnel considered necessary and may appoint
16 counsel and legal staff for the authority and retain temporary engineering, financial and other
17 consultants or technicians as may be required for any special study or survey consistent with the

18 provisions of this article. The executive director shall carry out plans to implement the provisions
19 of this article and exercise those powers enumerated in the bylaws. The executive director shall
20 prepare an annual budget to be submitted to the board for its review and approval prior to the
21 commencement of each fiscal year. The budget shall contain a detailed account of all planned
22 and proposed revenue and expenditures for the authority for the upcoming fiscal year, including
23 a detailed list of employees by title, salary, cost of projected benefits and total compensation.
24 Before August 15 of each year, the executive director shall provide to the board and the county
25 commission for each participating county a detailed list of actual expenditures and revenue by
26 account and recipient name for the previous fiscal year and a copy of the approved budget for the
27 current fiscal year.

28 (g) All costs incidental to the administration of the authority, including office expenses,
29 personal services expense and current expense, shall be paid in accordance with guidelines
30 issued by the board from funds accruing to the authority.

31 (h) All expenses incurred in carrying out the provisions of this article shall be payable
32 solely from funds provided under the authority of this article and no liability or obligation may be
33 incurred by the authority under this article beyond the extent to which moneys have been provided
34 under the authority of this article.

§20-14A-5. Financial review and oversight.

1 (a) The authority shall contract for and obtain an annual financial audit to be conducted by
2 a private accounting firm in compliance with generally accepted government auditing standards.
3 When complete, the audit shall be transmitted to the board and the president of the county
4 commission of each participating county. The cost of the audit shall be paid by the authority.

5 (b) If the authority receives funds from the Legislature by appropriation or grant, the
6 Legislative Auditor shall have the power and authority to examine the audits, revenues,
7 expenditures and performance of the regional recreation authority and for these purposes shall
8 have the power to inspect the properties, equipment, facilities of the authority, and to request,

9 inspect and obtain copies of any records of the authority. For each fiscal year in which the
10 authority receives funds from the Legislature by appropriation or grant, the executive director shall
11 provide to the Legislative Auditor and Secretary of Revenue a detailed list of expenditures and
12 revenue by account and recipient name for the previous fiscal year within forty-five days of the
13 close of that fiscal year.

§20-14A-6. Powers of authority.

1 The authority, as a public corporation and joint development entity, may exercise all
2 powers necessary or appropriate to carry out the purposes of this article, including, but not limited
3 to, the power:

4 (1) To acquire, own, hold and dispose of property, real and personal, tangible and
5 intangible;

6 (2) To lease property, whether as lessee or lessor, and to acquire or grant through
7 easement, license or other appropriate legal form, the right to develop property and open it to the
8 use of the public;

9 (3) To mortgage or otherwise grant security interests in its property;

10 (4) To procure insurance against any losses in connection with its property, licenses,
11 easements, contracts, including hold-harmless agreements, operations or assets in amounts and
12 from insurers as the authority considers desirable;

13 (5) To maintain sinking funds and reserves as the board determines appropriate for the
14 purposes of meeting future monetary obligations and needs of the authority;

15 (6) To sue and be sued, and pursue legal remedies and defenses in court;

16 (7) To contract for the provision of legal services by private counsel and, notwithstanding
17 the provisions of article three, chapter five of this code, counsel may represent the authority in
18 court, negotiate and prepare contracts and other agreements on behalf of the authority, render
19 advice to the authority on any matter relating to the authority and provide other legal services as
20 may be requested by the authority;

21 (8) To adopt, use and alter at will a corporate seal;

22 (9) To make, amend, repeal and adopt bylaws for the management and regulation of its
23 affairs;

24 (10) To appoint officers, agents and employees and to contract for and engage the
25 services of consultants;

26 (11) To make contracts of every kind and nature and to execute all instruments necessary
27 or convenient for carrying on its business, including contracts with any other governmental agency
28 of this state, the federal government or with any person, individual, partnership or corporation to
29 effect any or all of the purposes of this article;

30 (12) To accept grants and loans from, and enter into contracts and other transactions with,
31 any federal agency without in any way limiting any other provision of this section;

32 (13) To name the regional recreation authority and trail system, and to maintain an office;

33 (14) To borrow money, issue notes, provide payment of notes, provide rights to the holders
34 of notes, and purchase, hold and dispose of notes;

35 (15) To issue notes payable solely from the revenues or other funds available to the
36 authority, and the authority may issue its notes in such principal amounts as it considers
37 necessary to provide funds for any purpose under this article, including;

38 (A) The payment, funding or refunding of the principal of, interest on or redemption
39 premiums on notes issued by it, whether the notes or interest to be funded or refunded have or
40 have not become due;

41 (B) The establishment or increase of reserves to secure or pay notes or the interest on
42 the notes and all other costs or expenses of the authority incident to and necessary or convenient
43 to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge
44 of any revenues, funds, assets or moneys of the authority from any source whatsoever;

45 (16) To issue renewal notes, except that no renewal notes may be issued to mature more
46 than ten years from the date of issuance of the notes renewed;

47 (17) To apply the proceeds from the sale of renewal notes to the purchase, redemption or
48 payment of the notes to be refunded;

49 (18) To accept gifts or grants of property, funds, security interests, money, materials, labor,
50 supplies or services from the federal government, other governmental unit or any person, firm or
51 corporation, make agreements and fulfill the terms of any gifts or grants, and take all steps
52 necessary to procure, accept or dispose of gifts or grants;

53 (19) To consent to any modification of the rate of interest, time of payment of any
54 installment of principal or interest, security or any other term of any note, contract or agreement
55 of any kind to which the authority is a party to the extent permitted under its contracts with the
56 holders of notes of the authority;

57 (20) To construct, reconstruct, improve, maintain, repair, operate and manage the regional
58 recreation area at the locations within the participating counties as may be determined by the
59 authority;

60 (21) To enter into an agreement with the West Virginia Division of Natural Resources or
61 with the county sheriffs to provide law-enforcement services within the regional recreation area
62 and to reimburse the Division of Natural Resources or the county sheriffs for their costs;

63 (22) To exercise all power and authority provided in this article necessary and convenient
64 to plan, finance, construct, renovate, maintain and operate or oversee the operation of the
65 regional recreation area facilities within the participating counties;

66 (23) To exercise any additional powers as may be necessary or appropriate to fulfill the
67 purposes of this article;

68 (24) To exercise the powers that a corporation may lawfully exercise under the laws of this
69 state;

70 (25) To develop, maintain and operate, or to contract for the development, maintenance
71 and operation of the regional recreation area facilities;

72 (26) To enter into contracts with landowners and other persons holding an interest in the

73 land used for its recreational facilities to hold those landowners and other persons harmless with
74 respect to any claim in tort emanating from the use of the land for recreational purposes or
75 activities operated or managed by the authority, except for a claim for damages proximately
76 caused by the willful or malicious conduct of the landowner or other person, or any of his or her
77 agents or employees;

78 (27) To assess and collect a reasonable fee from those persons who use the trails, parking
79 facilities, visitor centers or other facilities that are part of the regional recreation area and to retain
80 and utilize that revenue for any purpose consistent with this article;

81 (28) To enter into contracts or other appropriate legal arrangements with landowners in
82 which their land is made available for use as part of the regional recreation area; and

83 (29) To directly operate and manage recreation activities and facilities within the regional
84 recreation area.

§20-14A-7. Prohibited acts; criminal penalty.

1 (a) A participant may not enter or remain upon the regional recreation area without a valid,
2 nontransferable user permit issued by the authority and properly displayed, except properly
3 identified landowners or leaseholders or their officers, employees or agents while on the land that
4 the person owns or leases for purposes related to the ownership or lease of the land and not for
5 recreational purposes.

6 (b) A participant may not consume or possess any alcoholic liquor or nonintoxicating beer
7 at any time or on any trail within the regional recreation area.

8 (c) Participants, operators and passengers of a motor vehicle within the regional recreation
9 area shall wear size-appropriate protective helmets at all times as required by article one, chapter
10 seventeen-f of this code or as otherwise required by the authority.

11 (d) A participant shall obey all traffic laws, authority rules, traffic-control devices and signs
12 within the regional recreation area, including those which restrict trails to certain types of off-
13 highway recreational vehicles, and drive on designated, marked trails in the area. A person may

14 not be on any trail in the area from one-half hour before sunset to one-half hour before sunrise
15 except in an emergency.

16 (e) A participant within the regional recreation area who is under sixteen years of age shall
17 at all times be under the immediate supervision of, and within sight of, a person who is at least
18 eighteen years of age and who either is a parent or guardian of the youth or has the express
19 permission of a parent or guardian to supervise the youth. No parent, guardian or supervising
20 adult may allow a child under the age of sixteen years to leave that person's sight and supervision
21 within the regional recreation area.

22 (f) A participant within the regional recreation area may not operate a motor vehicle in any
23 competition or exhibition of speed, acceleration, racing, test of physical endurance or climbing
24 ability unless the event is sanctioned by the authority.

25 (g) A participant operating a motor vehicle within the regional recreation area shall be
26 subject to all of the duties applicable to the driver of a motor vehicle by the provisions of chapter
27 seventeen-c of this code except where inconsistent with the provisions of this article and except
28 as to those provisions of chapter seventeen-c of this code which by their nature can have no
29 application and may not operate a motor vehicle in violation of those duties.

30 (h) A participant may not operate or ride in a utility-terrain vehicle, as defined in article
31 one, chapter seventeen-f of this code or any other motor vehicle with bench or bucket seating and
32 a steering wheel for control unless equipped with seat belts meeting, at a minimum, federal motor
33 vehicle safety standards and properly worn by the driver and all passengers.

34 (i) A participant may not ignite a flame or start a fire within the regional recreation area.

35 (j) A participant may not possess a glass container while riding on a motor vehicle within
36 the regional recreation area.

37 (k) A person who violates any provision of this section is guilty of a misdemeanor and,
38 upon conviction thereof, shall be fined not more than \$100. Prosecution or conviction for the
39 misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal

40 penalties or remedies for the conduct prohibited by this section.

§20-14A-8. Limiting liability.

1 (a) An owner of land used by, or for the stated purposes of, a regional recreation authority,
2 whether with or without charge, owes no duty of care to keep the premises safe for entry or use
3 by others for recreational purposes, or to give any warning of a dangerous or hazardous condition,
4 use, structure or activity on the premises to persons entering for recreational purposes.

5 (b) Unless otherwise agreed in writing, an owner who grants a lease, easement or license
6 of land to the authority for recreational purposes, whether with or without charge, owes no duty of
7 care to keep that land safe for entry or use by others or to give warning to persons entering or
8 going upon the land of any dangerous or hazardous conditions, uses, structures or activities
9 thereon. An owner who grants a lease, easement or license of land to the authority for recreational
10 purposes does not by giving a lease, easement or license: (1) Extend any assurance to any
11 person using the land that the premises are safe for any purpose; (2) confer upon those persons
12 the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume
13 responsibility for or incur liability for any injury to person or property caused by an act or omission
14 of a person who enters upon the leased land. The provisions of this section apply whether the
15 person entering upon the land is an invitee, licensee, trespasser or otherwise.

16 (c) Nothing herein limits in any way any liability that otherwise exists for deliberate, willful
17 or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any
18 way the obligation of a person entering upon or using the land of another for recreational purposes
19 to exercise due care in his or her use of the land and in his or her activities thereon, so as to
20 prevent the creation of hazards or the commission of waste by himself or herself.

§20-14A-9. Purchasing and bidding procedures.

1 (a) Whenever the authority proposes to purchase or contract for commodities or services
2 reasonably anticipated to equal or exceed \$2,500 in cost, the purchase or contract shall be based
3 on competitive bids. Where the purchase of particular commodities or services is reasonably

4 anticipated to be \$25,000 or less, the executive director may, on behalf of the authority, solicit
5 bids or price quotes in any manner that the executive director deems appropriate and the authority
6 shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for
7 commodities or services in this price range, the authority may purchase those commodities and
8 services pursuant to state master contracts as provided in section ten-e, article three, chapter
9 five-a of this code.

10 (b) Where the cost for the purchase of commodities or services is reasonably anticipated
11 to exceed \$25,000, the executive director shall solicit sealed bids for the commodities or services
12 to be provided: *Provided*, That the executive director may permit bids by electronic transmission
13 be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be
14 published as a Class II legal advertisement in all participating counties in compliance with the
15 provisions of article three, chapter fifty-nine of this code and by such other means as the executive
16 director deems appropriate. The notice shall state the general character of the work and general
17 character of the materials to be furnished, the place where plans and specifications therefor may
18 be examined and the time and place of receiving bids. After all bids are received, the authority
19 shall enter into a written contract with the lowest responsible bidder, however, the authority may
20 reject any or all bids that fail to meet the specifications required by the authority or that exceed
21 the authority's budget estimation for those commodities or services. If the executive director
22 determines in writing that there is only one responsive and responsible bidder, and that there has
23 been sufficient public notice to attract competitive bids, he or she may negotiate the price for a
24 noncompetitive award or the specifications for a noncompetitive award based solely on the
25 original purpose of the solicitation.

26 (c) For any contract that exceeds \$25,000 in total cost, the authority shall require the
27 vendors to post a bond, with form and surety to be approved by the authority, in an amount equal
28 to at least fifty percent of the contract price conditioned upon faithful performance and completion
29 of the contract.

30 (d) The bidding requirements specified in this section do not apply to any leases for real
31 property upon which the authority makes improvements for public access to the recreation area,
32 information distribution and welcome centers. This exemption does not apply to leases for offices,
33 vehicle and heavy equipment storage or administrative facilities.

34 (e) Any person who violates a provision of this section is guilty of a misdemeanor and,
35 upon conviction thereof, shall be confined in jail not less than ten days nor more than one year,
36 or fined not less than \$10 nor more than \$1,000, or both confined and fined.

§20-14A-10. Conflicts of interest prohibiting certain contracts.

1 (a) No contract, change order to a prior contract, or renewal of any contract may be
2 awarded or entered into by the authority when: (1) The vendor or prospective vendor is a member
3 of the board or an employee of the authority; (2) the vendor or prospective vendor is a spouse,
4 sibling, child or parent of a member of the board or an employee of the authority; or (3) a member
5 of the board or employee of the authority, or a spouse, sibling, child or parent of a member of the
6 board or an employee of the authority, has an ownership interest of greater than five percent in
7 the company of the vendor or prospective vendor.

8 (b) No contract, change order to a prior contract or renewal of any contract may be
9 awarded or entered by the authority when: (1) The vendor or prospective vendor is a member of
10 the West Virginia Legislature, or a spouse, sibling, child or parent of a member of the Legislature;
11 or (2) a member of the Legislature, or a spouse, sibling, child or parent of a member of the
12 Legislature, has an ownership interest of greater than five percent in the company of the vendor
13 or prospective vendor.

14 (c) All responses to bid solicitations, requests for quotation, requests for proposal,
15 contracts, change orders and contract renewals with the authority submitted or approved under
16 the provisions of this article shall include an affidavit that the vendor or prospective vendor is not
17 in violation of this section.

18 (d) Any person who violates a provision of this section is guilty of a misdemeanor and,

19 upon conviction thereof, shall be confined in jail not less than ten days nor more than one year,
20 or fined not less than \$10 nor more than \$1,000, or both confined and fined.

§20-14A-11. Civil remedies for unlawful purchasing and contracts.

1 The county commission of any participating county may challenge the validity of any
2 contract or purchase entered, solicited or proposed by the authority in violation of this article by
3 seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If
4 the court finds by a preponderance of evidence that the provisions of this article have been
5 violated, the court may declare the contract or purchase to be void and may grant any injunctive
6 relief necessary to correct the violations and protect the funds of the authority as a joint
7 development entity.

ARTICLE 15. ATV, UTV AND MOTORCYCLE RESPONSIBILITY ACT.

§20-15-1. Legislative findings.

1 The West Virginia Legislature finds that trail-oriented recreation for all-terrain and off-
2 highway recreational vehicle enthusiasts offered by the Hatfield-McCoy Regional Recreation
3 Authority and other regional recreation authorities formed pursuant to article fourteen-a of this
4 chapter, significantly contributes to the economy of West Virginia and is enjoyed by a large and
5 growing number of residents and nonresidents alike. Since it is recognized that there are inherent
6 risks in the operation of ~~such~~ off-highway recreational vehicles which should be understood by
7 each operator and which cannot be eliminated by ~~the Hatfield--McCoy Regional Recreation~~
8 ~~Authority~~ regional recreation authorities, ~~or its~~ and their authorized outfitters or licensees, it is the
9 purpose of this article to define the areas of responsibility and affirmative acts which authorized
10 outfitters must perform or risk being liable for loss, damage or injury suffered by participants and
11 to define the risk which the participants expressly assume and for which there can be no recovery.

§20-15-2. Definitions.

1 The terms in this article have the following meaning, unless the context clearly requires a
2 different meaning:

3 ~~(4)~~ “All-terrain vehicle” or “ATV” means any motor vehicle designed for off-highway use
4 and designed to travel on not less than three low-pressure tires, having a seat designed to be
5 straddled by the operator and handlebars for steering control and intended by the manufacturer
6 to be used by a single operator or by an operator and no more than one passenger;

7 ~~(2)~~ “Authorized outfitter” or “licensee” means a commercial outfitter, which is a person,
8 partnership, limited liability company (LLC), corporation, other organization, or any combination
9 thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, or other regional
10 recreation authorities, who operates from any temporary or permanent camp, private or public
11 lodge, or private home, who provides guided tours or the rental of all-terrain vehicles, utility-terrain
12 vehicles or motorcycles for use on assigned lands for monetary profit or gain;

13 ~~(3)~~ “Low-pressure tire” means every tire in which twenty pounds per square inch or less
14 of compressed air is designed to support the load;

15 ~~(4)~~ “Motorcycle” means any motor vehicle manufactured with no more than two wheels
16 and having a seat or saddle for the use of the operator;

17 ~~(5)~~ “Participant” means any person using the land, trails and facilities of the Hatfield-
18 McCoy Regional Recreation Authority and other regional recreation authorities;

19 “Regional recreational authority” means the Hatfield-McCoy Regional Recreation
20 Authority or any regional recreation authority established and organized pursuant to the provisions
21 of article fourteen-a of this chapter; and

22 ~~(6)~~ “Utility-terrain vehicle” or “UTV” means any motor vehicle with four or more low-
23 pressure tires designed for off-highway use, having bench or bucket seating for each occupant
24 and a steering wheel for control.

§20-15-3. Scope.

1 This article shall only apply to the Hatfield-McCoy Regional Recreation Authority, other
2 regional recreation authorities and their authorized outfitters or licensees and any participant as
3 defined in section two of this article.

§20-15-4. Duties of authorized outfitters or licensees.

1 (a) Every authorized outfitter or licensee shall:

2 (1) Mark for identification purposes all equipment and vehicles used in the business;

3 (2) Maintain all equipment and vehicles used in the business in such condition that the
4 equipment and vehicles are safe to operate or use as intended and recommended by the
5 manufacturer;

6 (3) Provide facilities, equipment and services conforming to safety and other requirements
7 established by the rules ~~promulgated~~ established by the ~~Hatfield-McCoy Regional Recreation~~
8 ~~Authority~~ regional recreation authorities;

9 (4) Provide facilities, equipment and services as advertised or as agreed to by the
10 authorized outfitter or licensee and the participant;

11 (5) Provide protective helmets which are size appropriate and which meet the current
12 performance specifications established by the American National Standards Institute standard, z
13 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No.
14 218 or Snell safety standards for protective headgear for vehicle users as defined by subdivision
15 (5), subsection (a), section one, article one, chapter seventeen-f of this code, to all persons using
16 all-terrain vehicles, utility-terrain vehicles or motorcycles;

17 (6) Provide all-terrain vehicles or motorcycles which are age and size appropriate as
18 recommended by the manufacturer;

19 (7) Make reasonable and prudent efforts to ensure that participants utilizing the facilities,
20 equipment or services of the authorized outfitter or licensee have received the safety training
21 required by the provisions of the ~~legislative rule~~ rules for the use of the ~~Hatfield-McCoy Regional~~
22 ~~Recreation Area~~ regional recreation areas;

23 (8) Make certain that every guide offered to participants by the authorized outfitter or
24 licensee has a current standard first aid training certificate and CPR certificate issued by the
25 American Red Cross or its equivalent, and ATV safety training by the ~~Hatfield-McCoy Recreation~~

26 ~~Authority~~ regional recreation authority or its designee;

27 (9) Make certain that employees carry first-aid kits when acting as guides; and

28 (10) Make known to any participant utilizing the facilities, equipment or services of the
29 authorized outfitter or licensee any dangerous condition as to trail lands, facilities or equipment to
30 be traversed or used which is known by the outfitter or licensee.

31 (b) An authorized outfitter or licensee may not rent or lease an all-terrain vehicle, utility-
32 terrain vehicle or motorcycle to a person under the age of eighteen years or allow any owner-
33 operated all-terrain vehicle, utility-terrain vehicle or motorcycle on any guided tour when operated
34 by any person under the age of eighteen years without first obtaining a written statement, signed
35 by the minor's parent or guardian certifying that:

36 (1) Any machine to be operated by the minor or his or her parent or guardian is of a model
37 that is recommended by the manufacturer as appropriate to the minor's age and size;

38 (2) All rules governing the use of the vehicle and the ~~Hatfield-McCoy Recreation Area~~
39 regional recreation area have been explained to the minor in sufficient detail to enable the minor
40 to abide by the rules; and

41 (3) Any minor under the age of sixteen will remain under the supervision of and the sight
42 of the parent or guardian at all times.

43 (c) An authorized outfitter or licensee may not rent or lease a utility-terrain vehicle to any
44 person who is not at least sixteen years of age and in possession of a valid driver's license.

45 (d) An authorized outfitter or licensee shall provide a participant utilizing the facilities,
46 equipment or services of the authorized outfitter or licensee with written notification of his or her
47 duties as prescribed in section five of this article. The participant shall sign the notification prior to
48 using the equipment. The signed notification, or an electronically stored copy thereof, shall be
49 kept on file by the outfitter or licensee for not less than five years.

§20-15-5. Duties of participants.

1 (a) All participants:

2 (1) Shall comply with any requirements established by law, including those in section one,
3 article one, chapter seventeen-f of this code, which defines those acts prohibited by operators of
4 all-terrain vehicles;

5 (2) Shall comply with the rules or regulations established for use of the ~~Hatfield-McCoy~~
6 ~~Recreation Area~~ regional recreation area;

7 (3) Shall, as to the Hatfield-McCoy Regional Recreation Authority or other regional
8 recreation authority, or to any recreation area landowner, lessor, authorized outfitter or licensee,
9 expressly assume the risk of and legal responsibility for any injury, loss or damage to person or
10 property which results from participation in operating an all-terrain vehicle, utility-terrain vehicle
11 or motorcycle, and caused by any of the following:

12 (A) Variations in terrain, slope or angle of terrain;

13 (B) Surface or subsurface conditions, including rocks, trees or other forms of forest growth
14 or debris;

15 (C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment,
16 vehicles or any other objects or fixtures used in trail management, maintenance, construction or
17 development;

18 (D) Collisions with signs, markers, pipes, equipment, vehicles or any component thereof
19 used in natural resource maintenance, development or extraction;

20 (E) Collisions with electrical transmission poles, towers, lines, guy wires or any component
21 thereof;

22 (4) Shall obey all rules or instructions announced by the ~~Hatfield-McCoy Regional~~
23 ~~Recreation Authority~~ regional recreation authority, authorized outfitter or licensee with regard to
24 the operation of the all-terrain vehicle or motorcycle he or she is operating; and

25 (5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or
26 which might otherwise be required by law.

27 (b) Each participant shall have the sole individual responsibility for:

- 28 (1) Knowing the range of his or her own ability to negotiate any slope or trail;
29 (2) Operating the ATV, UTV or motorcycle within the limits of the participant's own ability;
30 (3) Maintaining reasonable control of speed and course at all times;
31 (4) Heeding all posted warnings;
32 (5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation
33 Authority; and

34 (6) Refraining from acting in a manner which a reasonable person would believe to be
35 likely to cause or contribute to the injury of any person.

36 (c) If, while riding an ATV, UTV or motorcycle, any participant collides with any object or
37 person, the responsibility for the collision shall be solely that of the participant or participants
38 involved and not that of the Hatfield-McCoy Regional Recreation Authority, other regional
39 recreation authority, any recreation area landowner, lessor, authorized outfitter or licensee unless
40 the Hatfield-McCoy Regional Recreation Authority, other regional recreation authority, recreation
41 area landowner, lessor, authorized outfitter or licensee or their agent caused the collision in a
42 tortious manner.

43 (d) After an accident, a participant may not leave the area where the accident took place
44 without:

- 45 (1) Leaving personal identification, including his or her name and address;
46 (2) Notifying the proper authorities; and
47 (3) Obtaining assistance when he or she knows or reasonably should know that any other
48 person involved in the accident is in need of medical or other assistance.

49 (e) Where a participant is a lawful passenger, that participant may not distract or perform
50 any act which might interfere with the safe operation of the all-terrain vehicle, utility-terrain vehicle
51 or motorcycle of which he or she is a passenger.

52 (f) Any person under the age of sixteen years shall remain under the direct supervision
53 and within sight of a parent or guardian, both of whom must otherwise comply with state or federal

54 laws and any rules or regulations promulgated thereunder.

55 (g) A participant may not make any alterations or tamper with the all-terrain vehicle, utility-
56 terrain vehicle or motorcycle he or she is operating, or in which he or she is a passenger, in ~~any~~
57 a way which ~~that~~ would interfere with the continued safe operation of ~~that~~ the machine.

NOTE: The purpose of this bill is to create a new system for three or more contiguous counties to create a regional recreation authority for off-highway vehicle trail riding and for other recreational purposes.

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

NATURAL RESOURCES COMMITTEE AMENDMENTS

On page four, section one, line three, by striking out the word “three” and inserting in lieu thereof the word “two”;

On page five, section two, line twenty-two, by striking out the word “three” and inserting in lieu thereof the word “two”;

On page six, section two, line thirty-six, by striking out the word “three” and inserting in lieu thereof the word “two”;

On page six, section three, line one, by striking out the word “three” and inserting in lieu thereof the word “two”;

And,

Senate Bill 28—A Bill to amend and reenact §20-7-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §20-14A-1, §20-14A-2, §20-14A-3, §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9, §20-14A-10 and §20-14A-11; and to amend and reenact §20-15-1, §20-15-2, §20-15-3, §20-15-4 and §20-15-5 of said code, all relating to establishing regional recreation authorities and areas; establishing trails for off-highway recreational vehicle use; providing for reimbursement by authority for natural resources police officers or county sheriffs; authorizing

Introduced SB 28

creation of regional recreation authority as joint development entity formed by two or more contiguous counties; setting forth findings and definitions; establishing powers and composition of governing board; providing for financial review and oversight of public funds; prohibiting certain conduct in regional recreation area; establishing requirements for bidding and purchasing; prohibiting conflicts of interest; limiting liability; clarifying duties and responsibilities of participants to landowners and lessors in the regional recreation areas; and establishing criminal penalties and civil remedies.