

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4488

BY DELEGATES HANSHAW, BOGGS AND SHOTT

[Introduced February 12, 2018; Referred
to the Committee on Roads and Transportation then the
Judiciary.]

1 A BILL to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, and §20-14-8 of the Code
2 of West Virginia, 1931, as amended, all relating to the Hatfield-McCoy Recreation
3 Authority; updating legislative findings; adding the counties of Braxton, Clay, Fayette,
4 Nicholas, and Webster to the list of participating counties; modifying the number of board
5 members and the method by which the board members are appointed; providing that 10
6 members of the board constitutes a quorum; prohibiting persons from consuming non-
7 intoxicating beer, nonintoxicating craft beer, or wine at any time within the Hatfield-McCoy
8 Recreation Area; prohibiting a child under the age of six from being allowed on any trail
9 within the Hatfield-McCoy Recreation Area; prohibits children under the age of eight years
10 who are required to be in a child passenger safety device while occupying a motor vehicle
11 from being allowed on any trail within the Hatfield-McCoy Recreation Area; and requiring
12 all persons operating or riding upon an ATV, UTV, or motorcycle to follow the
13 manufacturer's recommendations for that vehicle relating to age and size limitations for
14 operators and passengers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

1 The West Virginia Legislature finds that there is a significant need within the state and
2 throughout the eastern United States for well-managed facilities for trail-oriented recreation for
3 off-highway motor vehicle enthusiasts. The Legislature further finds that under an appropriate
4 contractual and management scheme, well-managed, trail-oriented recreation facilities could
5 exist on private property without diminishing the landowner's interest, control, or profitability in the
6 land and without increasing the landowner's exposure to liability.

7 The Legislature further finds that, with the cooperation of private landowners, there is an
8 opportunity to provide trail-oriented recreation facilities primarily on private property in the
9 mountainous terrain of southern West Virginia and that the facilities will provide significant

10 economic and recreational benefits to the state and to the communities in southern West Virginia
11 through increased tourism in the same manner as whitewater rafting and snow skiing benefit the
12 state and communities surrounding those activities.

13 The Legislature further finds that the economic benefits of trail development are only
14 realized when the ridership is concentrated in specific areas. Before private capital will be brought
15 to the marketplace in support of a recreational trail system, a density of trail ridership must be
16 demonstrated and sustained over a period of years to warrant the investment. Therefore, any
17 expansion of the state's recreational trail systems must be strategic and require a showing that
18 the new trail system would not only expand visitation, but would not materially detract from the
19 visitation and ridership on existing trail systems where numerous private and public investments
20 have already been made.

21 The Legislature further finds that the creation and empowering of a joint development
22 entity to work with the landowners, county officials and community leaders, state and federal
23 government agencies, recreational user groups, and other interested parties to enable and
24 facilitate the implementation of the facilities will greatly assist in the realization of these potential
25 benefits.

26 The Legislature further finds that it is in the best interests of the state to encourage private
27 landowners to make available for public use through the Hatfield-McCoy Regional Recreation
28 Authority land for these recreational purposes by limiting their liability for injury to persons entering
29 thereon, by limiting their liability for injury to the property of persons entering thereon, and by
30 limiting their liability to persons who may be injured or otherwise damaged by the acts or
31 omissions of persons entering thereon.

§20-14-2. Definitions.

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

3 (a) "Authority" means the Hatfield-McCoy Regional Recreational Authority;

4 (b) "Board" means the board of the Hatfield-McCoy Regional Recreation Authority;

5 (c) "Charge" means, for purposes of limiting liability for recreational purposes set forth in
6 this article, the amount of money asked in return for an invitation to enter or go upon the land,
7 including a one-time fee for a particular event, amusement, occurrence, adventure, incident,
8 experience, or occasion as set by the authority: *Provided*, That the authority may set charges in
9 differing amounts for different categories of participants, including, but not limited to, in-state and
10 out-of-state participants, as the authority sees fit;

11 (d) "Hatfield-McCoy Recreation Area" means a system of recreational trails and
12 appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas,
13 recreational areas, historic or cultural interpretive sites, and other facilities that are a part of the
14 system;

15 (e) "Land" includes, but is not limited to, roads, water, watercourses, private ways and
16 buildings, structures, and machinery or equipment thereon when attached to the realty;

17 (f) "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 (g) "Participant" means any person using the land, trails, and facilities of the Hatfield-
21 McCoy Recreation Area;

22 (h) "Participating county or counties" means the counties of Boone, Braxton, Clay, Fayette,
23 Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming
24 that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint
25 development entity and to participate in its governance; and

26 (i) "Recreational purposes" includes, but is not limited to, any one or any combination of
27 the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping,
28 picnicking, hiking, pleasure driving, motorcycle or motor vehicle driving and riding, bicycling,
29 horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying

30 historical, archaeological, scenic, or scientific sites, or otherwise using land for purposes of the
31 user.

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

1 (a) The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously
2 created by this section is hereby converted to a new public corporation created as a joint
3 development entity of the participating counties for the purpose of enabling and facilitating the
4 development and operation of a system of trail-oriented recreation facilities for use by off-highway
5 motor vehicle enthusiasts. This recreational trail system shall be located in the counties of Boone,
6 Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne,
7 Webster, and Wyoming with significant portions of the recreational trail system being located on
8 private property made available for use through lease, license, easement, or other appropriate
9 legal form by a willing landowner.

10 (b) The authority shall be governed by a board of no more than ~~eighteen members~~ two
11 times the number of participating counties who shall be representative of the various interests
12 involved in the Hatfield-McCoy Recreation Area project in the participating counties and who shall
13 be appointed as follows:

14 (1) The county commission of each participating county, as defined in section two of this
15 article, shall appoint ~~two~~ one member of the board ~~as follows~~ who represents and is associated
16 with travel and tourism or economic development efforts within the county or who is associated
17 with a mining, logging, natural gas, or other resource-extraction industry or who is a licensed land
18 surveyor or licensed professional engineer. The initial appointment shall be for a two-year term,
19 but all subsequent appointments shall be for a four-year term.

20 (2) The county commission of each participating county, as defined in §20-14-2 of this
21 code, may appoint one member of the board who represents and is associated with a corporation
22 or individual landowner whose land is being used or is expected to be used in the future as part
23 of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed
24 to a four-year term.

25 ~~(A) One member who represents and is associated with a corporation or individual~~
26 ~~landowner whose land is being used or is expected to be used in the future as part of the Hatfield-~~
27 ~~McCoy Recreation Area project or their designee. This member shall be appointed to a four-year~~
28 ~~term.~~

29 ~~(B) One member who represents and is associated with travel and tourism or economic~~
30 ~~development efforts within the county or who is associated with a mining, logging, natural gas or~~
31 ~~other resource extraction industry or who is a licensed land surveyor or licensed professional~~
32 ~~engineer. The initial appointment shall be for a two-year term, but all subsequent appointments~~
33 ~~shall be for a four-year term~~

34 Any appointed member whose term has expired shall serve until his or her successor has
35 been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the
36 unexpired term. Any appointed member is eligible for reappointment. ~~The terms of the members~~
37 ~~-serving as of the date of enactment of the amendments of this section made during the 2015~~
38 ~~regular session of the Legislature shall expire on June 30, 2015, and each participating county~~
39 ~~shall appoint two members to the board of the newly converted public corporation with terms to~~
40 ~~commence on July 1, 2015~~ Members of the board are not entitled to compensation for services
41 performed as members but are entitled to reimbursement for all reasonable and necessary
42 expenses actually incurred in the performance of their duties.

43 (c) The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint
44 development entity does not terminate or interrupt its status as a public corporation. The
45 amendments to this article made during the 2015 regular session of the Legislature do not alter
46 the debts, liabilities, responsibilities, or other obligations of any party with regard to this public
47 corporation.

48 (d) The Hatfield-McCoy Regional Recreation Authority is a “public body” for purposes of
49 the West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of
50 this code.

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

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

3 The board shall meet quarterly, unless a special meeting is called by its chairman:
4 *Provided*, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as
5 soon thereafter as feasible, the board shall elect a chairman, secretary, and Treasurer from
6 among its own members.

7 ~~A majority of the~~ Ten members of the board constitute a quorum and a quorum shall be
8 present for the board to conduct business.

9 The board may prescribe, amend, and repeal bylaws and rules governing the manner in
10 which the business of the authority is conducted, rules governing the use of the trail system and
11 the safety of participants, and shall review and approve an annual budget. The fiscal year for the
12 authority begins on July 1 and ends on the thirtieth day of the following June.

13 The board shall appoint an executive director to act as its chief executive officer, to serve
14 at the will and pleasure of the board. The board, acting through its executive director, may employ
15 any other personnel considered necessary and may appoint counsel and legal staff for the
16 authority and retain such temporary engineering, financial, and other consultants or technicians
17 as may be required for any special study or survey consistent with the provisions of this article.
18 The executive director shall carry out plans to implement the provisions of this article and to
19 exercise those powers enumerated in the bylaws. The executive director shall prepare annually
20 a budget to be submitted to the board for its review and approval prior to the commencement of
21 each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue
22 and expenditures for the authority for the upcoming fiscal year, including a detailed list of
23 employees by title, salary, cost of projected benefits, and total compensation. Before August 15
24 the executive director shall provide to the board and the county commission for each participating

25 county a detailed list of actual expenditures and revenue by account and recipient name for the
26 previous fiscal year and a copy of the approved budget for the current fiscal year.

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

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

§20-14-8. Prohibited acts, penalty.

1 (a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a
2 valid, 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
4 that the person owns or leases for purposes related to the ownership or lease of the land and not
5 for recreational purposes;

6 (b) A person may not consume or possess any alcoholic liquor, nonintoxicating beer,
7 nonintoxicating craft beer, or wine at any time or any location within the Hatfield-McCoy
8 Recreation Area.

9 (c) The operator ~~or~~ and all passengers of a motor vehicle within the Hatfield-McCoy
10 Recreation Area shall wear size-appropriate protective helmets at all times. All operators and
11 passengers shall wear helmets that meet the current performance specifications established by
12 the American National Standards Institute standard, z 90.1, the United States Department of
13 Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation
14 safety standards for protective headgear for vehicle users.

15 (d) Each trail user shall obey all traffic laws, traffic-control devices, and signs within the
16 Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor
17 vehicles, motorcycles, or those equipped with roll cages.

18 (e) Each trail user shall at all times remain within and on a designated and marked trail
19 while within the Hatfield-McCoy Recreation Area.

20 (f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time
21 from one-half hour after sunset until one-half hour before sunrise, except in an emergency.

22 (g) Every person within the Hatfield-McCoy Recreation Area who is under 16 years of age
23 shall at all times be under the immediate supervision of, and within sight of, a person who is at
24 least 18 years of age and who either is a parent or guardian of the youth or has the express
25 permission of a parent or guardian to supervise the youth. No parent, guardian, or supervising
26 adult may allow a child under the age of 16 years to leave that person's sight and supervision
27 within the Hatfield-McCoy Recreation Area.

28 (h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area
29 except at a clearly marked location at a trailhead center.

30 (i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle
31 in any competition or exhibition of speed, acceleration, racing, test of physical endurance, or
32 climbing ability unless in an event sanctioned by the authority.

33 (j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area ~~shall~~
34 ~~be~~ is subject to all of the duties applicable to the driver of a motor vehicle by the provisions of
35 §17C-1-1 *et seq.* of this code except where inconsistent with the provisions of this article and
36 except as to those provisions of §17C-1-1 *et seq.* of this code which by their nature can have no
37 application and may not operate a motor vehicle in violation of those duties.

38 (k) A person may not possess a glass container while riding on a motor vehicle within the
39 Hatfield-McCoy Recreation Area.

40 (l) A person may not operate or ride in a utility terrain vehicle, as defined in §17F-1-1 *et*
41 *seq.* of this code, or any other motor vehicle with bench or bucket seating and a steering wheel
42 for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety
43 standard and properly worn by the driver and all passengers.

44 (m) (1) No child under the age of six years may be allowed on any trail within the Hatfield-
45 McCoy Recreation Area; and

46 (2) No child under the age of eight years who is required to be placed in a child passenger
47 safety device system meeting applicable federal motor vehicle safety standards pursuant to §17C-
48 15-46 of this code while occupying a motor vehicle may be allowed on any trail within the Hatfield-
49 McCoy Recreation Area; and

50 (3) All persons operating or riding upon an ATV, UTV, or motorcycle as defined in §20-15-
51 1 et seq. of this code shall follow the manufacturer's recommendations for that vehicle relating to
52 age and size limitations for operators and passengers.

53 ~~(m)~~ (n) A person who violates any provision of this section is guilty of a misdemeanor and,
54 upon conviction thereof, shall be fined not more than \$100. Prosecution or conviction for the
55 misdemeanor described in this subsection shall may not prevent or disqualify any other civil or
56 criminal remedies for the conduct prohibited by this section.

NOTE: The purpose of this bill is to add the counties of Braxton, Clay, Fayette, Nicholas, and Webster to the definition of participating county or counties. The bill prohibits persons from consuming non-intoxicating beer, non-intoxicating craft beer, or wine at any time within the Hatfield-McCoy Recreation Area; prohibits a child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area; prohibits children under the age of eight years who are required to be in a child passenger safety device while occupying a motor vehicle from being allowed on any trail within the Hatfield-McCoy Recreation Area; and requires all persons operating or riding upon an ATV, UTV, or motorcycle to follow the manufacturer's recommendations for that vehicle relating to age and size limitations for operators and passengers.

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