

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENGROSSED

House Bill 3140

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[Originating in the Committee on Finance; Reported

on February 21, 2019.]

1 A BILL to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, and to
2 amend and reenact §20-5-4 of said code, all related to the ability of the Director of the
3 Division of Natural Resources to authorize repair, renovation and rehabilitation for existing
4 facilities, buildings, amenities, and infrastructure and exempting these certain Division of
5 Natural Resources contracts from review and approval of the Division of Purchasing; and
6 adding state forests to the definition of recreational facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities granted and assigned to the
2 director in this chapter and elsewhere by law, the director may:

3 (1) With the advice of the commission, prepare and administer, through the various
4 divisions created by this chapter, a long-range comprehensive program for the conservation of
5 the natural resources of the state which best effectuates the purpose of this chapter and which
6 makes adequate provisions for the natural resources laws of the state;

7 (2) Sign and execute in the name of the state by the Division of Natural Resources any
8 contract or agreement with the federal government or its departments or agencies, subdivisions
9 of the state, corporations, associations, partnerships or individuals: *Provided*, That
10 intergovernmental cooperative agreements and agreements with nongovernmental organizations
11 in furtherance of providing a comprehensive program for the exploration, conservation,
12 development, protection, enjoyment and use of the natural resources of the state are exempt from
13 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That repair, renovation, and
14 rehabilitation and related construction contracts of existing facilities, buildings, amenities, and
15 infra-structure necessary to protect public health or safety or to provide uninterrupted enjoyment
16 and public use of state parks, state forests, wildlife management areas and state natural areas
17 under the jurisdiction of the Division of Natural Resources are exempt from the provisions of §5A-

18 3-1 *et seq.* of this code. Nothing in this section authorizes ~~the~~ new construction of buildings and
19 new construction of recreational facilities as defined in §20-5-4 of this code ~~or replacement of~~
20 ~~capital improvements~~ without complying with the provisions of §5A-3-1 *et seq.* of this code.

21 (3) Conduct research in improved conservation methods and disseminate information
22 matters to the residents of the state;

23 (4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes
24 of control and protection, to classify by regulation the various species into such categories as may
25 be established as necessary;

26 (5) Prescribe the locality in which the manner and method by which the various species of
27 wildlife may be taken, or chased, unless otherwise specified by this chapter.

28 (6) Hold at least six meetings each year at such time and at such points within the state,
29 as in the discretion of the Natural Resources Commission may appear to be necessary and proper
30 for the purpose of giving interested persons in the various sections of the state an opportunity to
31 be heard concerning open season for their respective areas, and report the results of the meetings
32 to the Natural Resources Commission before the season and bag limits are fixed by it;

33 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the state
34 with the prior approval of the Governor in case of an emergency such as a drought, forest fire
35 hazard or epizootic disease among wildlife. The suspension shall continue during the existence
36 of the emergency and until rescinded by the director. Suspension, or reopening after such
37 suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy
38 of the order of suspension or reopening to the wire press agencies at the state capitol;

39 (8) Supervise the fiscal affairs and responsibilities of the division;

40 (9) Designate such localities as he or she shall determine to be necessary and desirable
41 for the perpetuation of any species of wildlife;

42 (10) Enter private lands to make surveys or inspections for conservation purposes, to
43 investigate for violations of provisions of this chapter, to serve and execute warrants and
44 processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

45 (11) Acquire for the state in the name of the Division of Natural Resources by purchase,
46 condemnation, lease or agreement, or accept or reject for the state, in the name of the Division
47 of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or
48 property, both real and personal, and any interest in such property, including lands and waters,
49 which he or she deems suitable for the following purposes:

50 (a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing
51 or protecting watersheds or providing public recreation;

52 (b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic,
53 scientific, cultural, archaeological or historical values or natural wonders, or providing public
54 recreation;

55 (c) For public hunting, trapping or fishing grounds or waters for the purpose of providing
56 areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and
57 the rules issued hereunder;

58 (d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

59 (e) For the extension and consolidation of lands or waters suitable for the above purposes
60 by exchange of other lands or waters under his or her supervision;

61 (f) For such other purposes as may be necessary to carry out the provisions of this chapter;

62 (12) Capture, propagate, transport, sell or exchange any species of wildlife as may be
63 necessary to carry out the provisions of this chapter;

64 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser
65 appointed by the director, from all lands under the jurisdiction and control of the director, except
66 those lands that are designated as state parks and those in the Kanawha State Forest. The
67 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the

68 office of the director and shall be available for public inspection. The director must obtain the
69 written permission of the Governor to sell timber when the appraised value is more than \$5,000.
70 The director shall receive sealed bids therefor, after notice by publication as a Class II legal
71 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication
72 area for the publication shall be each county in which the timber is located. The timber so
73 advertised shall be sold at not less than the appraised value to the highest responsible bidder,
74 who shall give bond for the proper performance of the sales contract as the director shall
75 designate; but the director may reject any and all bids and readvertise for bids. If the foregoing
76 provisions of this section have been complied with and no bid equal to or in excess of the
77 appraised value of the timber is received, the director may, at any time, during a period of six
78 months after the opening of the bids, sell the timber in such manner as he or she deems
79 appropriate, but the sale price may not be less than the appraised value of the timber advertised.
80 No contract for sale of timber made pursuant to this section may extend for a period of more than
81 ten years. And all contracts heretofore entered into by the state for the sale of timber may not be
82 validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of
83 the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited
84 to the division and used exclusively for the purposes of this chapter: *Provided*, That nothing
85 contained herein may prohibit the sale of timber which otherwise would be removed from right-of-
86 way's necessary for and strictly incidental to the extraction of minerals;

87 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel
88 and any other minerals that may be found in the lands under the jurisdiction and control of the
89 director, except those lands that are designated as state parks. The director, before making sale
90 or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal
91 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the
92 publication area for such publication shall be each county in which such lands are located. The
93 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give

94 bond for the proper performance of the sales contract or lease as the director shall designate; but
95 the director may reject any and all bids and readvertise for bids. The proceeds arising from any
96 such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited
97 to the division and used exclusively for the purposes of this chapter;

98 (15) Exercise the powers granted by this chapter for the protection of forests and regulate
99 fires and smoking in the woods or in their proximity at such times and in such localities as may be
100 necessary to reduce the danger of forest fires;

101 (16) Cooperate with departments and agencies of state, local and federal governments in
102 the conservation of natural resources and the beautification of the state;

103 (17) Report to the Governor each year all information relative to the operation and
104 functions of the division and the director shall make such other reports and recommendations as
105 may be required by the Governor, including an annual financial report covering all receipts and
106 disbursements of the division for each fiscal year, and he or she shall deliver the report to the
107 Governor on or before December 1, next after the end of the fiscal year so covered. A copy of the
108 report shall be delivered to each house of the Legislature when convened in January next
109 following;

110 (18) Keep a complete and accurate record of all proceedings, record and file all bonds
111 and contracts taken or entered into and assume responsibility for the custody and preservation of
112 all papers and documents pertaining to his or her office, except as otherwise provided by law;

113 (19) Offer and pay, in his or her discretion, rewards for information respecting the violation,
114 or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

115 (20) Require such reports as he or she may determine to be necessary from any person
116 issued a license or permit under the provisions of this chapter, but no person may be required to
117 disclose secret processes or confidential data of competitive significance;

118 (21) Purchase as provided by law all equipment necessary for the conduct of the division;

119 (22) Conduct and encourage research designed to further new and more extensive uses
120 of the natural resources of this state and to publicize the findings of the research;

121 (23) Encourage and cooperate with other public and private organizations or groups in
122 their efforts to publicize the attractions of the state;

123 (24) Accept and expend, without the necessity of appropriation by the Legislature, any gift
124 or grant of money made to the division for all purposes specified in this chapter and he or she
125 shall account for and report on all such receipts and expenditures to the Governor;

126 (25) Cooperate with the state historian and other appropriate state agencies in conducting
127 research with reference to the establishment of state parks and monuments of historic, scenic
128 and recreational value and to take such steps as may be necessary in establishing the
129 monuments or parks as he or she deems advisable;

130 (26) Maintain in his or her office at all times, properly indexed by subject matter and also
131 in chronological sequence, all rules made or issued under the authority of this chapter. The
132 records shall be available for public inspection on all business days during the business hours of
133 working days;

134 (27) Delegate the powers and duties of his or her office, except the power to execute
135 contracts not related to land and stream management, to appointees and employees of the
136 division, who shall act under the direction and supervision of the director and for whose acts he
137 or she shall be responsible;

138 (28) Conduct schools, institutions and other educational programs, apart from or in
139 cooperation with other governmental agencies, for instruction and training in all phases of the
140 natural resources programs of the state;

141 (29) Authorize the payment of all or any part of the reasonable expenses incurred by an
142 employee of the division in moving his or her household furniture and effects as a result of a
143 reassignment of the employee: *Provided*, That no part of the moving expenses of any one such
144 employee may be paid more frequently than once in twelve months;

145 (30) Establishing procedures and fee schedule for individuals applying for limited permit
146 hunts; and

147 (31) Promulgate rules, in accordance with the provisions of §29A-1-1 *et seq.* of this code,
148 to implement and make effective the powers and duties vested in him or her by the provisions of
149 this chapter and take such other steps as may be necessary in his or her discretion for the proper
150 and effective enforcement of the provisions of this chapter.

§20-5-4. Definitions; state parks and recreation system.

1 As used in this article, unless the context clearly requires otherwise:

2 “Bonds” shall mean bonds issued by the director.

3 “Cost of project” shall embrace the cost of construction, the cost of all land, property,
4 material and labor which are deemed essential thereto, cost of improvements, financing charges,
5 interest during construction and all other expenses, including legal fees, trustees’, engineers’ and
6 architects’ fees which are necessary or properly incidental to the project.

7 “Project” shall be deemed to mean collectively the acquisition of land, the construction of
8 any buildings or other works, together with incidental approaches, structures and facilities,
9 reasonably necessary and useful in order to provide new or improved recreational facilities.

10 “Recreational facilities” shall mean and embrace cabins, lodges, swimming pools, golf
11 courses, restaurants, commissaries and other revenue producing facilities in any state park or
12 state forest.

13 “Rent or rental” shall include all moneys received for the use of any recreational facility.

NOTE: The purpose of this bill is to allow the director of the Division of Natural Resources to authorize repair, renovation and rehabilitation for existing facilities, buildings, amenities, and infrastructure which are to be exempt from §5A-3-1 *et seq.* and to add state forests to the definition of recreational facilities.

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