

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Originating

Senate Bill 676

BY SENATORS MAYNARD, MANN, BEACH, CLINE,

ROBERTS, RUCKER, AND SMITH

[Originating in the Committee on Natural Resources;

Reported on February 25, 2019]

1 A BILL to amend and reenact §17-2A-11 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto new sections, designated §20-1-12a and §20-1-18d;
3 and to amend said code by adding thereto a new article, designated §20-17-1, §20-17-2,
4 §20-17-3, §20-17-4, and §20-17-5, all relating to off-road vehicle recreation; creating an
5 Off-Road Vehicle Recreation Fund for development and maintenance of public roads
6 suitable for off-road vehicle recreation; revising digital road map requirements; requiring
7 an inventory and mapping of state forest roads; describing allowable uses of the Off-Road
8 Vehicle Recreation Fund; defining terms; requiring the development of a comprehensive
9 recreation plan and plans for the construction and maintenance of suitable roads;
10 establishing a program of grants and cooperative agreements to develop and maintain
11 suitable roads and access thereto; mandating review of expenditures; providing for
12 appeals of grant or agreement decisions; and requiring the proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-11. Road maps; digital road map.

1 (a) The commissioner shall prepare and currently maintain a master road and highway
2 map which will show all of the state roads and highways located, created, and classified as
3 provided by law; the mileage of roads and highways; the status of improvements; and travel
4 conditions when practical. The commissioner may make economical reproductions of the map for
5 official use and public information purposes, including a digital road map. The goal is for the maps
6 to be computerized and searchable by the public to map routes for travel throughout the state.

7 (b) ~~The~~ In addition to any other representations deemed useful by the commissioner, the
8 digital road map shall indicate ~~whether public roads are unpaved and unimproved, unpaved and~~
9 ~~improved, unlined and paved, or lined and paved~~ be capable of displaying or indicating the type

10 of roads or highways using the following classifications: (1) Primitive or unimproved roads; (2)
11 graded, drained, soil-, gravel-, or stone-surfaced roads; (3) paved, but unpainted roads; (4) roads
12 with a center line or more than two lanes; and (5) interstate highways. The digital road map shall
13 further indicate the types of vehicles that may use each road, including full-size vehicles and off-
14 highway vehicles, such as all-terrain vehicles, utility-terrain vehicles, motorcycles, and off-road
15 vehicles.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-12a. Inventory and mapping of all state forest roads.

1 (a) The Division of Natural Resources, before July 1, 2020, shall map and make available
2 to the public a comprehensive inventory of forest roads that are state roads.

3 (b) The inventory shall meet both of the following requirements:

4 (1) Identify the location, condition, and surface type of the forest roads; and

5 (2) Determine types of motorized and nonmotorized use currently restricted on each forest
6 road segment and the seasons during which those uses are currently restricted.

§20-1-18d. Development of comprehensive recreation plan and cooperation with other public land-owning entities.

1 The director shall develop a comprehensive and strategic plan for the support and
2 development of outdoor recreation across the state. This plan shall consider and address all forms
3 of outdoor recreation including, but not limited to, camping, hunting, fishing, self-propelled and
4 motorized recreation and travel, equestrian activities, water-based recreation, snow sports, sight-
5 seeing, nature study and observation, plein air arts, adventure sports, and lodging at or near parks
6 and other recreational areas. The plan shall take into consideration the recreational activities
7 available and uses permitted on all publicly owned tracts of land of 1,000 acres or more, be they
8 owned by a federal agency, a state agency, or by a political subdivision of the state. The director

9 is authorized to take such acts necessary to cooperate with the authorities owning and managing
10 these properties in order to develop recreation plans consistent with the legal uses and ownership
11 objectives for each property.

ARTICLE 17. OFF-ROAD VEHICLE RECREATION FUND.

§20-17-1. Definitions.

1 As used in this article:

2 “Off-road vehicle recreation” or “ORV recreation” means recreation using off-road vehicles
3 in off-road transport and travel exclusively or in combination with overlanding or highway travel;

4 “Off-road vehicle” shall have the same meaning as defined in §17F-1-9 of this code;

5 “Overlanding” means a form of recreation using four-wheel drive vehicles, sport-utility
6 vehicles, or other vehicles suitable for travel on primitive roads, for multiday trekking and camping
7 in remote areas without the need for, or access to, retail, dining, or support services for the
8 duration of the trip;

9 “Public roads suitable for off-road vehicle recreation” means public roads or highways, as
10 defined in §17-1-3 of this code, upon which all-terrain vehicles are not prohibited pursuant to
11 §17F-1-1 of this code; and

12 “Trail” means a path or route, regardless of width or the nature of its surface, available for
13 travel by foot or by motorized or nonmotorized means, but which is ordinarily not open to use by
14 automobiles and which does not fall within the terms of §17-1-3 of this code.

§20-17-2. Creation of Off-Road Vehicle Recreation Fund.

1 There is hereby created in the Treasury a dedicated account to be known as the Off-Road
2 Vehicle Recreation Fund. Expenditures from the fund shall be for the purposes set forth in this
3 article and shall be made only in accordance with appropriation by the Legislature. Unexpended
4 or unappropriated money in the fund does not revert to the General Fund.

§20-17-3. Purposes and uses of the Off-Road Vehicle Recreation Fund; comprehensive
planning.

1 Money from the Off-Road Vehicle Recreation Fund shall be used solely for construction,
2 reconstruction, repair, and maintenance of public roads suitable for off-road vehicle recreation,
3 and the payment of obligations incurred in the construction, reconstruction, repair, and
4 maintenance of public roads suitable for off-road vehicle recreation. These terms include the
5 planning and acquisitions necessary to carry out the construction, reconstruction, repair, and
6 maintenance of the roads and the development of mapping, signage, and access areas to
7 facilitate the use of these roads by the public. Reconstruction, repair, and maintenance of roads
8 shall also include the removal and rerouting of roadways as well as restoration, mitigation, and
9 remediation work to protect or rehabilitate environmental, historical, or cultural areas adversely
10 affected by existing roads or by new construction activities.

11 The Director of Natural Resources shall, in collaboration with the Commissioner of
12 Highways, develop a comprehensive plan for the identification, maintenance, construction, and
13 interconnection of public roads suitable for off-road vehicle recreation for which money from the
14 Off-Road Vehicle Recreation Fund may be expended pursuant to this section. This
15 comprehensive plan shall be reviewed and revised on a regular basis, but not more often than
16 annually, to maintain a system of public roads suitable for off-road vehicle recreation in order to
17 promote tourism, the enjoyment of public lands, and commerce across the state.

§20-17-4. Off-road vehicle recreation grant programs; review and appeal process.

1 (a) The Division of Natural Resources shall develop and implement a grant and
2 cooperative agreement program to support the planning, acquisition, development, maintenance,
3 administration, operation, enforcement, restoration, and conservation of public roads suitable for
4 off-road vehicle recreation and access to them. Fifty percent of the money appropriated from the
5 Off-Road Vehicle Recreation Fund shall be dedicated to the grant and cooperative agreement
6 program.

7 (b) The grants and money for cooperative agreements from available funds may be
8 awarded or expended in accordance with the following categories:

9 (1) Construction and maintenance. — Under this subdivision, funds shall be available for
10 grants and cooperative agreements for the acquisition, construction, operation, planning,
11 development, or conservation of public roads and associated facilities suitable for off-road vehicle
12 recreation. Guidelines developed to implement this subdivision shall at a minimum:

13 (A) Give preference to applications that sustain existing or extend authorized off-road
14 vehicle recreation opportunities; and

15 (B) Give additional consideration to applications that improve facilities for access to off-
16 road vehicle recreation opportunities.

17 (2) Reconstruction and Restoration. — Under this subdivision, funds shall be available for
18 grants and cooperative agreements for projects that restore or repair habitat damaged by both
19 legal off-road vehicle recreation and illegal off-highway motor vehicle use.

20 (A) Eligible projects include:

21 (i) Removal of a road or trail or restoration of an area associated with the rerouting and
22 subsequent closure of a designated road or trail;

23 (ii) Removal of roads or trails and the restoration of damaged habitats in any area that is
24 not designated for motorized vehicle use;

25 (iii) The removal of closed roads or trails, or a portion of a closed road or trail, that will help
26 to prevent off-highway motor vehicle access to closed areas;

27 (iv) Scientific and cultural studies regarding the impact of off-highway motor vehicle
28 recreation not otherwise required by state or federal laws;

29 (v) Planning to identify appropriate restoration techniques, strategies, and project
30 implementation, including planning associated with environmental review; and

31 (vi) Restoration projects that generally improve and restore the function of natural resource
32 systems damaged by off-road vehicle recreation activities.

33 (B) Applications that would affect lands identified as inventoried roadless areas by the
34 Forest Service of the United States Department of Agriculture are eligible for cooperative
35 agreements under this subdivision if the application is for a project that does any of the following:

36 (i) Realigns a forest system road or trail to prevent irreparable resource damage that arises
37 from the design, location, use, or deterioration of a classified route and that cannot be mitigated
38 by route maintenance;

39 (ii) Reconstructs a national forest system road or trail to implement a route safety
40 improvement project on a classified route determined to be hazardous on the basis of accident
41 experience or accident potential on that route; or

42 (iii) Maintains a road that is included in the National Forest System Roads and Trails on
43 or before January 1, 2009.

44 (C) Rules and program guidelines developed to implement this subdivision shall at a
45 minimum do all of the following:

46 (i) Give additional consideration to applications for projects that will restore areas that have
47 experienced the most damage from motorized use or face the highest threat of significant
48 environmental damage from motorized use;

49 (ii) Guarantee that no grant will be used for the development or maintenance of trails for
50 motorized use; and

51 (iii) Encourage public agencies managing lands to prepare and implement a management
52 and enforcement plan to prevent recurring damage from unauthorized use.

53 (c) Eligible applicants include local, state, and federal agencies, federally or state-
54 recognized Native American Tribes, educational institutions, certified community conservation
55 corps, resource conservation districts, and nonprofit organizations with demonstrable knowledge,
56 skill, or experience relevant to the proposed project.

57 (d) Legislative and procedural rules developed to implement programs authorized by this
58 section shall promote the following objectives:

- 59 (1) Distribute grants and cooperative agreements on a competitive basis;
60 (2) Be developed with public input, including focus groups;
61 (3) Require applications to be in accordance with local or federal plans and the strategic
62 plan for off-road vehicle recreation prepared by the division;
63 (4) Require grant applicants to comply with the state's environmental laws;
64 (5) Require the applicant to agree to provide matching funds or the equivalent value of
65 services or material used, in an amount not less than 25 percent of the total project cost, except
66 for the category of restoration, which may not be less than 10 percent of the total project cost;
67 and
68 (6) Fund all eligible applications to the extent feasible.
69 (e) Every grant award involving activities on any public lands shall be subject to the
70 following conditions:
71 (1) The applicant shall include a work plan for the project;
72 (2) The applicant shall provide written permission from the appropriate land manager to
73 conduct a project, including a description of how the project fits with the land management goals
74 of the area;
75 (3) The applicant shall provide matching funds or the equivalent value of volunteer
76 services or material used, in an amount not less than 25 percent of the total project cost, except
77 for the category of restoration, which may not be less than 10 percent of the total project cost;
78 and
79 (4) The applicant shall be fiscally responsible for adhering to the terms and conditions of
80 the grants.
81 (f) All grants and cooperative agreements involving ground disturbing activities shall be
82 subject to the uniform application of soil and wildlife habitat protection standards. If the project
83 involves a ground disturbing activity:

84 (1) The recipient shall also prepare a wildlife habitat protection program to sustain a viable
85 species composition for the project area and agrees that, whenever that program is not being met
86 in any portion of a project area, the recipient shall close temporarily that noncompliant portion
87 until the program's requirements are met;

88 (2) The recipient agrees that if there is soil erosion in any portion of a project area, the
89 recipient shall close temporarily that noncompliant portion to repair and prevent accelerated
90 erosion;

91 (3) The recipient agrees to enforce the applicable laws regarding the operation of off-
92 highway motor vehicles;

93 (4) The recipient has identified the potential for the project to reduce illegal and
94 unauthorized motor vehicle use, both on-highway and off-highway activities, in the surrounding
95 areas; and

96 (5) The recipient has included in the application a description of how it is meeting and will
97 meet the operations and maintenance needs of any existing project under its jurisdiction.

98 (g) The division shall conduct an annual review of the grants and cooperative agreements
99 program to evaluate the effectiveness of the awarded activities in serving the division's
100 comprehensive recreation plan to guide the division in consideration of future project applications.

101 (h) The division shall establish an appeal process as part of the grants and cooperative
102 agreements program, subject to the following conditions:

103 (1) Any person may petition the director for an appeal upon the following grounds:

104 (A) The division failed to follow regulations established for the award of grants and
105 cooperative agreements; and

106 (B) The division lacked sufficient factual evidence to support or deny the award of a grant
107 or cooperative agreement;

108 (2) A petition for appeal must be filed in writing within 30 calendar days following the notice
109 of award or denial of a grant or cooperative agreement. Notice of the decision or the rejection of
110 the appeal shall be issued within 60 days following the filing of an appeal; and

111 (3) A person aggrieved by the award or denial of a grant or funding for a cooperative
112 agreement is required to exhaust this appeal process prior to seeking other legal remedies
113 through the courts.

§20-17-5. Legislative rules.

1 The director shall propose rules for legislative approval, in accordance with the provisions
2 of §29A-3-1 et seq. of this code, to implement the provisions of this article.

NOTE: The purpose of this bill is to establish a dedicated fund for the acquisition, construction, maintenance, and rehabilitation of roads suitable for off-road vehicle recreation. The bill also establishes a grant program with administrative provisions to review, approve, and manage applications for grants.

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