

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 580**

By Senators Azinger, Chapman, Maynard, Smith, and  
Roberts

[Introduced January 26, 2024; referred  
to the Committee on Agriculture and Natural  
Resources; and then to the Committee on the  
Judiciary]

1 A BILL to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §20-7-4 of said code; and to amend said code by adding thereto two new  
3 sections, designated §62-1A-12 and §62-1A-13, all relating to warrantless entry of private  
4 lands; setting forth limitations of entry onto private lands; clarifying the process for law-  
5 enforcement entry onto posted private lands; and clarifying the use of surveillance  
6 cameras on or near posted private lands; searches and seizures on private lands;  
7 including the use of an unmanned aerial vehicle to enter or otherwise gather information  
8 from private land as a search requiring a search warrant or other recognized exception for  
9 searches and seizures in open fields; providing a definition; providing for abolishing the  
10 common law open fields doctrine; prohibiting surveillance cameras on private property;  
11 and providing exceptions.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 20. NATURAL RESOURCES.**

### **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 the  
5 natural resources of the state which best effectuates the purpose of this chapter and which makes  
6 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 of  
9 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 of existing facilities, buildings, amenities, and infrastructure necessary to protect  
15 public health or safety or to provide uninterrupted enjoyment and public use of state parks, state  
16 forests, wildlife management areas, and state natural areas under the jurisdiction of the Division of  
17 Natural Resources are exempt from the provisions of §5A-3-1 *et seq.* of this code. Nothing in this  
18 section authorizes new construction of buildings and new construction of recreational facilities as  
19 defined in §20-5-4 of this code without complying with the provisions of §5A-3-1 *et seq.* of this  
20 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 as,  
29 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 be  
31 heard concerning open season for their respective areas, and report the results of the meetings to  
32 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 of  
36 the emergency and until rescinded by the director. Suspension, or reopening after such

37 suspension, of open seasons may be made upon 24 hours' notice by delivery of a copy of the  
38 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~~ Subject to the limitations set forth in §20-7-4 of this code, enter private lands to  
43 make surveys or inspections for conservation purposes, to investigate for violations of provisions  
44 of this chapter, to serve and execute warrants and processes, to make arrests, and to otherwise  
45 effectively enforce the provisions of this chapter;

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

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

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

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

59 (D) For fish hatcheries, game farms, wildlife research areas, and feeding stations;

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

62 (F) For such other purposes as may be necessary to carry out the provisions of this

63 chapter;

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

66 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser  
67 appointed by the director, from all lands under the jurisdiction and control of the director, except  
68 those lands that are designated as state parks and those in the Kanawha State Forest. The  
69 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the  
70 office of the director and shall be available for public inspection. The director must obtain the  
71 written permission of the Governor to sell timber when the appraised value is more than \$5,000.  
72 The director shall receive sealed bids therefor, after notice by publication as a Class II legal  
73 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication  
74 area for the publication shall be each county in which the timber is located. The timber so  
75 advertised shall be sold at not less than the appraised value to the highest responsible bidder, who  
76 shall give bond for the proper performance of the sales contract as the director shall designate; but  
77 the director may reject any and all bids and readvertise for bids. If the foregoing provisions of this  
78 section have been complied with and no bid equal to or in excess of the appraised value of the  
79 timber is received, the director may, at any time, during a period of six months after the opening of  
80 the bids, sell the timber in such manner as he or she deems appropriate, but the sale price may not  
81 be less than the appraised value of the timber advertised. No contract for sale of timber made  
82 pursuant to this section may extend for a period of more than 10 years. And all contracts  
83 heretofore entered into by the state for the sale of timber may not be validated by this section if a  
84 contract is otherwise invalid. The proceeds arising from the sale of the timber so sold shall be paid  
85 to the Treasurer of the State of West Virginia and shall be credited to the division and used  
86 exclusively for the purposes of this chapter: *Provided*, That nothing contained herein may prohibit  
87 the sale of timber which otherwise would be removed from rights-of-way necessary for and strictly  
88 incidental to the extraction of minerals;

89           (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel,  
90 and any other minerals that may be found in the lands under the jurisdiction and control of the  
91 director, except those lands that are designated as state parks. The director, before making sale or  
92 lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal  
93 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication  
94 area for such publication shall be each county in which such lands are located. The minerals so  
95 advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the  
96 proper performance of the sales contract or lease as the director shall designate; but the director  
97 may reject any and all bids and readvertise for bids. The proceeds arising from any such sale or  
98 lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the  
99 division and used exclusively for the purposes of this chapter;

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

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

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

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

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

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

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

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

123 (23) Encourage and cooperate with other public and private organizations or groups in  
124 their efforts to publicize the attractions of the state, including completing the feasibility study for the  
125 Beech Fork State Park Lodge as follows:

126 (A) The director shall convene, prior to October 1, 2019, two public hearings:

127 (i) An initial public hearing shall be for the purpose of seeking public input regarding options  
128 for the construction of a lodge and a conference center, including all available public, private, or  
129 public-private partnership (PPP) funding and financing options; and

130 (ii) A subsequent public hearing at which the feasibility study and any recommendation  
131 shall be available for public comment;

132 (B) The public hearings required by this subdivision must be held in a suitable location  
133 reasonably close to Beech Fork State Park so as to accommodate public participation from the  
134 citizens of Cabell, Lincoln, and Wayne counties; and

135 (C) Upon completion of the feasibility study, it shall be submitted by the director to the Joint  
136 Committee on Government and Finance on or before December 1, 2019;

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

140 (25) Cooperate with the state historian and other appropriate state agencies in conducting

141 research with reference to the establishment of state parks and monuments of historic, scenic, and  
142 recreational value, and to take such steps as may be necessary in establishing the monuments or  
143 parks as he or she deems advisable;

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

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

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

155 (29) Authorize the payment of all or any part of the reasonable expenses incurred by an  
156 employee of the division in moving his or her household furniture and effects as a result of a  
157 reassignment of the employee: *Provided*, That no part of the moving expenses of any one such  
158 employee may be paid more frequently than once in 12 months;

159 (30) Establish procedures and fee schedules for individuals applying for limited permit  
160 hunts;

161 (31) Exempt designated sections within the Division of Natural Resources from the  
162 requirement that all payments must be deposited in a bank within 24 hours for amounts less than  
163 \$500, notwithstanding any other provision of this code to the contrary: *Provided*, That such  
164 designated sections shall make a deposit in any amount no less than every seven working days;  
165 and

166 (32) Promulgate rules, in accordance with the provisions of §29A-1-1 *et seq.* of this code,



167 to implement and make effective the powers and duties vested in him or her by the provisions of  
168 this chapter and take such other steps as may be necessary in his or her discretion for the proper  
169 and effective enforcement of the provisions of this chapter; and

170 (33) Cooperate with the State Resiliency Office to the fullest extent practicable to assist  
171 that office in fulfilling its duties.

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

**§20-7-4. Powers and duties of natural resources police officers.**

1 (a) Natural resources police officers and other persons authorized to enforce the  
2 provisions of this chapter are under the supervision and direction of the director in the performance  
3 of their duties.

4 (b) Natural resources police officers have statewide jurisdiction and have authority to:

5 (1) Arrest on sight, without warrant or other court process, any person or persons  
6 committing a criminal offense in violation of the laws of this state, in the presence of the officer, but  
7 no arrest may be made where any form of administrative procedure is prescribed by this chapter  
8 for the enforcement of the provisions of this chapter;

9 (2) Carry arms and weapons as may be prescribed by the director in the course and  
10 performance of their duties, but no license or other authorization is required for this privilege;

11 (3) Search and examine, in the manner provided by law, any boat, vehicle, automobile,  
12 conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat or other  
13 place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other  
14 forms of aquatic life could be concealed, packed or conveyed whenever they have reason to  
15 believe that they would thereby secure or discover evidence of the violation of the provisions of  
16 this chapter;

17 (4) Execute and serve a search warrant, notice or other process of law issued under the  
18 authority of this chapter or other law relating to wildlife, forests, and all other natural resources, by  
19 a magistrate or court having jurisdiction in the same manner, with the same authority and with the

20 same legal effect as a sheriff;

21 (5) Require the operator of any motor vehicle or other conveyance on or about the public  
22 highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of  
23 allowing the natural resources police officers to conduct game-kill surveys;

24 (6) Summon aid in making arrests or seizures or in executing warrants, notices or  
25 processes, in the same manner as sheriffs;

26 (7) Enter private lands or waters, not including homes or their curtilages, within the state  
27 without a warrant while engaged in the performance of their official duties: Provided, That this  
28 provision may not apply on posted land, as that term is defined in §61-3B-1 of this code, unless the  
29 entry is requested by an owner, lessee, or other person entitled to possession of the posted land,  
30 to dispatch crippled or distressed wildlife that the officer has personally observed from a position  
31 where the officer had a lawful right to be, to prevent the imminent unlawful killing of wildlife or the  
32 destruction of evidence of an unlawful killing where the officer has articulable probable cause to  
33 believe either is about to occur, or to respond to a life-threatening emergency or another  
34 immediate threat to public safety that was either reported to the officer or that the officer personally  
35 observed from a position where he or she had a lawful right to be;

36 (8) Arrest on sight, without warrant or other court process, subject to the limitations set  
37 forth in subdivision (1) of this section, any person or persons committing a criminal offense in  
38 violation of any law of this state in the presence of the officer on any state-owned lands and waters  
39 and lands and waters under lease by the Division of Natural Resources and all national forest  
40 lands, waters and parks and U.S. Corps of Army Engineers' properties within the boundaries of the  
41 State of West Virginia and, in addition to the authority conferred in other subdivisions of this  
42 section, execute all arrest warrants on these state and national lands, waters and parks and U.S.  
43 Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-  
44 two of this code;

45 (9) Arrest any person who enters upon the land or premises of another without written

46 permission from the owner of the land or premises in order to cut, damage or carry away, or cause  
47 to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plants or  
48 products of any growing plant. Any person convicted of cutting, damaging or carrying away or  
49 causing to be cut, damaged or carried away any timber, trees, logs, posts, fruits, nuts, growing  
50 plants or products of growing plants is liable to the owner in the amount of three times the value of  
51 the timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant, in  
52 addition to and notwithstanding any other penalties by law provided by section thirteen, article  
53 three, chapter sixty-one of this code;

54 (10) Make a complaint in writing before any court or officer having jurisdiction, and procure  
55 and execute the warrant, when the officer knows or has reason to believe that a person has  
56 violated a law of this state. The actions of the natural resources police officer have the same force  
57 and effect as if made by a sheriff;

58 (11) Serve and execute warrants for the arrest of any person and warrants for the search of  
59 any premises, buildings, properties or conveyances issued by a properly constituted authority in  
60 the same manner, with the same authority, and with the same legal effect, as a sheriff; and

61 (12) Do all things necessary to carry into effect the provisions of this chapter.

62 (c) No natural resources police officers or other law-enforcement officers authorized to  
63 enforce the provisions of this chapter or other laws of this state may place any surveillance camera  
64 or game camera on posted land, as that term is defined in §61-3B-1 of this code, without first  
65 obtaining consent from the owner, lessee, or other person entitled to possession of the posted land  
66 or a search warrant as required by and under Article III, Section 6 of the Constitution of West  
67 Virginia or the Fourth and Fourteenth Amendments of the Constitution of the United States:  
68 Provided, That nothing in this subsection may prohibit a natural resources police officer or other  
69 person authorized to enforce the provisions of this chapter from placing a camera without consent  
70 or a warrant in an area where the natural resources police officer or other person has a lawful right  
71 to be and facing a location on any land that is open to public view.

72 (d) The provisions of this section do not apply to a law-enforcement agency acting in  
 73 compliance with the provisions of this article: *Provided*, That a law enforcement agency's  
 74 operation of an unmanned aerial vehicle for the purpose of surveillance, investigation into crime,  
 75 or any other purpose related to the enforcement of the criminal laws of this state or those of the  
 76 United States shall be in accordance with the Fourth Amendment to the Constitution of the United  
 77 States, Article III, § 6 of the Constitution of West Virginia, and §62-1A-12 of this code.

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 1A. SEARCH AND SEIZURE.**

**§62-1A-12. Private land.**

1 (a) Notwithstanding any provision of this code to the contrary, and subject only to the  
 2 exceptions set forth in subsection (d) of this section, no law-enforcement officer may search any  
 3 private land in this state without a valid warrant.

4 (b) For purposes of this section, "private land" means posted land, cultivated land, or  
 5 fenced land, as those terms are defined in §61-3B-1 of this code.

6 (c) For purposes of this section, "search" means to enter for the purpose of obtaining  
 7 information or the use of an unmanned aerial vehicle to enter or otherwise gather information from  
 8 private land.

9 (d) This section does not prohibit any law-enforcement officer from searching private land  
 10 without a warrant when:

11 (1) The officer has received permission from the property owner, lessee, or occupant;

12 (2) The officer is responding to a life-threatening emergency or another immediate threat to  
 13 public safety that was either reported to the officer or that the officer personally observed from a  
 14 place they had a lawful right to be; or

15 (3) The officer is dispatching crippled or distressed wildlife that the officer has personally  
 16 observed from a place they had a lawful right to be.

**§62-1A-13. Prohibitions on surveillance cameras on private property.**

1            Notwithstanding any provision of this code to the contrary, no law-enforcement officer may  
2 place any surveillance camera or game camera on private land, as that term is defined in §62-1A-  
3 12 of this code, without first obtaining consent from the owner, lessee, or other person entitled to  
4 possession of the private land or a valid search warrant: *Provided*, That nothing in this subsection  
5 may prohibit a law-enforcement officer from placing a camera in an area where the law-  
6 enforcement officer has a lawful right to be and facing a location on any land that is open to public  
7 view without first obtaining consent or a search warrant.

NOTE: The purpose of this bill is to stop warrantless entry of private lands; limitations of entry onto private lands; clarifying the process for law enforcement entry onto posted private lands; use of surveillance cameras on or near posted private lands; searches and seizures on private lands; requiring a search warrant or other recognized exception for searches and seizures in open fields; providing a definition; providing for abolishing the common law open fields doctrine; prohibiting surveillance cameras on private property; and providing exceptions.

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