

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2949

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[Introduced March 13, 2017; Referred
to the Committee on Agriculture and Natural
Resources then Government Organization.]

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 §20-5-15 of said code, all relating to exempting Division of Natural
 3 Resources' contracts for the replacement, repair or design of repairs to revenue-producing
 4 facilities and related infrastructure where protecting public safety or public enjoyment and
 5 use of the facilities is required; and exempting intergovernmental cooperative agreements
 6 and operational contracts for Prickett's Fort from review and approval requirements of the
 7 Division of Purchasing.

Be it enacted by the Legislature of West Virginia:

1 That §20-1-7 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §20-5-15 of said code be amended and reenacted, all to read as follows:

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 is hereby authorized and empowered
 3 to:

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

8 (2) Sign and execute in the name of the state by the Division of Natural Resources any
 9 contract or agreement with the federal government or its departments or agencies, subdivisions
 10 of the state, corporations, associations, partnerships or individuals: Provided, That
 11 intergovernmental cooperative agreements and agreements with nongovernmental organizations
 12 in furtherance of providing a comprehensive program for the exploration, conservation,
 13 development, protection, enjoyment and use of the natural resources of the state are exempt from
 14 the provisions of article three, chapter five-a of this code: *Provided, however,* That repair and

15 related construction contracts necessary to protect public health or safety or to provide
16 uninterrupted enjoyment and public use of state parks, state forests, wildlife management areas
17 and state natural areas under the jurisdiction of the Division of Natural Resources. Nothing in this
18 section shall authorize the construction or replacement of capital improvements without complying
19 with the provisions of article three, chapter five-a of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 (22) Conduct and encourage research designed to further new and more extensive uses

119 of the natural resources of this state and to publicize the findings of such research;

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

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

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

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

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

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

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

144 (30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this

145 code, to implement and make effective the powers and duties vested in him or her by the
146 provisions of this chapter and take such other steps as may be necessary in his or her discretion
147 for the proper and effective enforcement of the provisions of this chapter.

ARTICLE 5. PARKS AND RECREATION.

§20-5-15. Authority to enter into certain operational contracts; terms and conditions; necessity for legislative notice and public hearing before certain facilities are placed under contract.

1 (a) The director may enter into a contract with a person, firm, corporation, foundation or
2 public agency for the operation of a commissary, restaurant, recreational facility or other
3 establishment within the state parks and public recreational system, for a duration not to exceed
4 ten years, but the contract may provide for an option to renew at the director's discretion for an
5 additional term or terms not to exceed ten years at the time of renewal: Provided, That an
6 operational contract for the operation of Prickett's Fort by the Prickett's Fort Memorial Foundation,
7 Inc. funded by an appropriation for the specific purpose of such operational contract is exempt
8 from the provisions of article three, chapter five-a of this code. Prior to initiating of a contract for
9 the operation of a state park lodge, cabin, campground, gift shop, golf facility, including pro shop
10 operations, or ski facility, the director shall submit written notice of the specific location subject to
11 the contract to the Legislature by letter to the Senate President and the Speaker of the House of
12 Delegates.

13 (b) Prior to initiating a contract for a previously state-operated state park lodge, cabin,
14 campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall
15 conduct a public hearing to be held at a reasonable time and place within the county in which the
16 facility is located. Notice of the time, place and purpose of the public hearing shall be provided as
17 a Class II legal advertisement in accordance with the provisions of section two, article three,
18 chapter fifty-nine of this code which notice shall be given at least for the first publication twenty
19 days in advance of said hearing.

20 (c) Any contract entered into by the director shall provide an obligation upon the part of
21 the operator that he or she maintain a level of performance satisfactory to the director and shall
22 further provide that any contract may be terminated by the director in the event he or she
23 determines that the performance is unsatisfactory and has given the operator reasonable notice
24 of the termination.

NOTE: The purpose of this bill is to exempt specified Division of Natural Resources' contracts for some replacement, repair or design for repairs to facilities from review and approval requirements of the Division of Purchasing.

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