

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4182

**FISCAL
NOTE**

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Introduced January 18, 2018; Referred
to the Committee on Agriculture and Natural
Resources then Government Organization.]

1 A BILL to amend and reenact §20-1-2 and §20-1-7 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §20-1-
 3 7a, all relating to authorizing the Director of the Division of Natural Resources to implement
 4 a sound silvicultural management plan for state park lands, which may include the
 5 harvesting and sale of timber; providing requirements for the sale of timber located on
 6 state park lands; providing requirements for the deposit and expenditure of proceeds; and
 7 authorizing emergency rulemaking authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires a different meaning:

2 “Agency” means any branch, department or unit of the state government, however
 3 designated or constituted.

4 “Alien” means any person not a citizen of the United States.

5 “Bag limit” or “creel limit” means the maximum number of wildlife which may be taken,
 6 caught, killed or possessed by any person.

7 “Big game” means elk, deer, black bears, wild boars and wild turkeys.

8 “Bona fide resident, tenant or lessee” means a person who permanently resides on the
 9 land.

10 “Citizen” means any native-born citizen of the United States and foreign-born persons who
 11 have procured their final naturalization papers.

12 “Closed season” means the time or period during which it shall be unlawful to take any
 13 wildlife as specified and limited by this chapter.

14 “Commission” means the Natural Resources Commission.

15 “Commissioner” means a member of the advisory commission of the Natural Resources
 16 Commission.

17 “Director” means the Director of the Division of Natural Resources.

18 “Fishing” or “to fish” means the taking, by any means, of fish, minnows, frogs or other
19 amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

20 “Fur-bearing animals” includes: (a) The mink; (b) the weasel; (c) the muskrat; (d) the
21 beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h)
22 the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; (l) the fisher; and
23 (m) *canis latrans* var., more commonly known as the coyote.

24 “Game” means game animals, game birds and game fish as herein defined.

25 “Game animals” includes: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d)
26 the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases -
27 red, gray, black or albino; (e) the raccoon; (f) the black bear; (g) the wild boar; and (h) the marmot
28 *monax*, more commonly known as woodchuck or groundhog. The term “game animals” does not
29 include captive cervids regulated pursuant to §19-2H-1 *et seq.* of this code.

30 “Game birds” includes: (a) The anatidae, commonly known as swan, geese, brants and
31 river and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and
32 gallinule; (c) the limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers,
33 yellow legs and curlews; (d) the galliformes, commonly known as wild turkey, grouse, pheasants,
34 quails and partridges (both native and foreign species); (e) the columbidae, commonly known as
35 doves; (f) the icteridae, commonly known as blackbirds, redwings and grackle; and (g) the
36 corvidae, commonly known as crows.

37 “Game fish” includes: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow
38 trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain
39 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white
40 crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue
41 catfish; (u) sauger; and (v) all game fish hybrids.

42 “Hunt” means to pursue, chase, catch or take any wild birds or wild animals. However, the

43 definition of “hunt” does not include an officially sanctioned and properly licensed field trial, water
44 race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

45 “Lands” means land, waters and all other appurtenances connected therewith.

46 “Migratory birds” means any migratory game or nongame birds included in the terms of
47 conventions between the United States and Great Britain and between the United States and
48 United Mexican States, known as the Migratory Bird Treaty Act, for the protection of migratory
49 birds and game mammals concluded, respectively, August 16, 1916, and February 7, 1936.

50 “Nonresident” means any person who is a citizen of the United States and who has not
51 been a domiciled resident of the State of West Virginia for a period of thirty consecutive days
52 immediately prior to the date of his or her application for a license or permit except any full-time
53 student of any college or university of this state, even though he or she is paying a nonresident
54 tuition.

55 “Open season” means the time during which the various species of wildlife may be legally
56 caught, taken, killed or chased in a specified manner and shall include both the first and the last
57 day of the season or period designated by the director.

58 “Person”, except as otherwise defined elsewhere in this chapter, means the plural
59 “persons” and shall include individuals, partnerships, corporations or other legal entities.

60 “Preserve” means all duly licensed private game farmlands, or private plants, ponds or
61 areas, where hunting or fishing is permitted under special licenses or seasons other than the
62 regular public hunting or fishing seasons. The term “preserve” does not include captive cervid
63 farming facilities regulated pursuant to §19-2H-1 *et seq.* of this code.

64 “Protected birds” means all wild birds not included within the definitions of “game birds”
65 and “unprotected birds”.

66 “Resident” means any person who is a citizen of the United States and who has been a
67 domiciled resident of the State of West Virginia for a period of thirty consecutive days or more
68 immediately prior to the date of his or her application for license or permit. However, a member

69 of the armed forces of the United States who is stationed beyond the territorial limits of this state,
70 but who was a resident of this state at the time of his or her entry into such service and any full-
71 time student of any college or university of this state, even though he or she is paying a
72 nonresident tuition, shall be considered a resident under this chapter.

73 “Roadside menagerie” means any place of business, other than a commercial game farm,
74 commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game
75 animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people
76 for commercial purposes.

77 “Small game” includes all game animals, fur-bearing animals and game birds except elk,
78 deer, black bears, wild boars and wild turkeys.

79 “Take” means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity,
80 gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so. However, the definition
81 of “take” does not include an officially sanctioned and properly licensed field trial, water race or
82 wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

83 “Tract” means any area of a state park not generally utilized by the public and designated
84 as eligible for harvesting pursuant to the provisions of §20-1-7a of this code.

85 “Unprotected birds” shall include: (a) The English sparrow; (b) the European starling; and
86 (c) the cowbird.

87 “Wild animals” means all mammals native to the State of West Virginia occurring either in
88 a natural state or in captivity, except house mice or rats, and includes coyotes and porcupines
89 and all species of cervids. The term “wild animals” does not include captive cervids owned and
90 possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code.

91 “Wild birds” shall include all birds other than: (a) Domestic poultry — chickens, ducks,
92 geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and
93 parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring
94 dove. All wild birds, either: (i) Those occurring in a natural state in West Virginia; or (ii) those

95 imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse,
96 regardless of how long raised or held in captivity, shall remain wild birds under the meaning of
97 this chapter.

98 "Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including
99 minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish
100 bait, whether dead or alive. The term "wildlife" does not include captive cervids regulated pursuant
101 to 19-2H-1 *et seq.* of this code.

102 "Wildlife refuge" means any land set aside by action of the director as an inviolate refuge
103 or sanctuary for the protection of designated forms of wildlife.

§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 §5A-3-1 *et seq.* of this code: *Provided, however*, That repair and related
15 construction contracts necessary to protect public health or safety or to provide uninterrupted
16 enjoyment and public use of state parks, state forests, wildlife management areas and state

17 natural areas under the jurisdiction of the Division of Natural Resources are exempt from the
18 provisions of §5A-3-1 *et seq.* of this code. Nothing in this section shall authorize the construction
19 or replacement of capital improvements without complying with the provisions of §5A-3-1 *et seq.*
20 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~~ times and ~~at such~~ points within the
29 state, as in the discretion of the Natural Resources Commission may appear to be necessary and
30 proper for the purpose of giving interested persons in the various sections of the state an
31 opportunity to be heard concerning open season for their respective areas, and report the results
32 of the meetings to the Natural Resources Commission before ~~such~~ the season and bag limits are
33 fixed by it;

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

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

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

43 (10) Enter private lands to make surveys or inspections for conservation purposes, to
44 investigate for violations of provisions of this chapter, to serve and execute warrants and
45 processes, to make arrests and to otherwise 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
48 of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or
49 property, both real and personal, and any interest in ~~such~~ the 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
52 or protecting watersheds or providing public recreation;

53 (b) For state parks or recreation areas for the purpose of ~~preserving~~ maintaining scenic,
54 aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing
55 public 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~~ any other purpose necessary to carry out the
63 provisions of this 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~~ of the timber as appraised by a qualified
67 appraiser appointed by the director, from all lands under the jurisdiction and control of the director,
68 except ~~those lands that are designated as state parks and those in the Kanawha State Forest.~~

69 The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in
70 the 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 such 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,
76 who shall give bond for the proper performance of the sales contract as the director shall
77 designate; but the director shall have the right to reject any and all bids and to readvertise for
78 bids. If the foregoing provisions of this section have been complied with and no bid equal to or in
79 excess of the appraised value of the timber is received, the director may, at any time, during a
80 period of six months after the opening of the bids, sell the timber in such manner as he or she
81 deems appropriate, but the sale price shall not be less than the appraised value of the timber
82 advertised. No contract for sale of timber made pursuant to this section shall extend for a period
83 of more than ten years. And all contracts heretofore entered into by the state for the sale of timber
84 shall not be validated by this section if the same be otherwise invalid. The proceeds arising from
85 the sale of the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall
86 be credited to the division and used exclusively for the purposes of this chapter: *Provided, That*
87 nothing contained herein shall prohibit the sale of timber which otherwise would be removed from
88 rights-of-way necessary for and strictly 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
92 or 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
94 publication area for such publication shall be each county in which such lands are located. The

95 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give
96 bond for the proper performance of the sales contract or lease as the director shall designate; but
97 the director shall have the right to reject any and all bids and to readvertise for bids. The proceeds
98 arising from any such sale or lease shall be paid to the Treasurer of the State of West Virginia
99 and shall be credited to the 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~~ any other reports and recommendations
107 as 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 such report to the
109 Governor on or before December 1, next after the end of the fiscal year so covered. A copy of
110 such 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
113 and contracts taken or entered into and assume responsibility for the custody and preservation of
114 all 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 deem to be~~ deems necessary from any person
118 issued a license or permit under the provisions of this chapter, but no person shall 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
122 of the natural resources of this state and to publicize the findings of such 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;

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

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

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

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

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

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

147 (30) 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.

§20-1-7a. Sound Silvicultural Management of State Park Lands.

1 (a) The director is hereby authorized to implement a sound silvicultural management plan
2 for state park lands under his or her control. The director may select and sell timber located on
3 state park lands only as part of a sound silvicultural management plan implemented pursuant to
4 this section.

5 (b) The director, the state park superintendent of the property being analyzed, and the
6 Director of the Division of Forestry shall determine the most effective management plan and write
7 necessary prescriptions to ensure the successful implementation of the sound silvicultural
8 management plan.

9 (c) Any prescriptions written relating to timber harvesting shall not exceed the average of
10 four trees per acre per tract nor more than one half of the merchantable timber volume of the acre.
11 Only trees with a circumference of at least sixteen inches based on the diameter at breast height,
12 may be harvested.

13 (d) Any harvesting of timber from state park lands shall be conducted pursuant to the
14 provisions of §21-1-7(13) of this code: *Provided*, That the proceeds arising from a sale of timber
15 located on state park lands shall be paid to the State Treasurer, credited to the division, and used
16 exclusively for the purposes of maintaining, improving, and operating state parks.

17 (e) The division may promulgate emergency rules pursuant to §29A-3-15 of this code in
18 order to carry out the intent of this section, prevent additional harm to state lands, and protect the
19 public interests.

NOTE: The purpose of this bill is to authorize the Director of the Division of Natural

Resources to implement a sound silvicultural management plan for state park lands, which may include the harvesting of timber provided that certain requirements are satisfied.

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