

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2375

BY DELEGATES HOTT, HOWELL, B. WARD, JENNINGS,
ROWAN, MARTIN, PHILLIPS, STATLER, MILLER, SYPOLT
AND D. JEFFRIES

[Introduced February 13, 2021; Referred to the
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §20-19-1, §20-19-2, §20-19-3, §20-19-4, and §20-19-5, all relating to the
3 Mount Storm merchant power plant in Grant County, West Virginia owned by Dominion
4 Energy, in order to provide a means by which the State of West Virginia and Dominion
5 Energy can come to an agreement of the value of the lake, dam and surrounding property
6 owned by Dominion Energy; in lieu of any state tax liability owed to the State of West
7 Virginia, and based on the agreed value of Mount Storm Lake, Dominion Energy shall
8 have a process by which to transfer ownership of the lake, dam and surrounding property
9 owned by Dominion Energy to the State of West Virginia in order to cover the cost of those
10 taxes; the State of West Virginia may retain the land it received from Dominion Energy in
11 order to build a state park/lodge similar to Stonewall Jackson State Park, but the remaining
12 buffer land to the water line must be sold at auction in either lot form or to developers - not
13 just one developer; the State of West Virginia shall retain the right of ways allowing for
14 land of developable size between the right of way and the lake shore; and the State of
15 West Virginia shall preserve certain private property owners around the lake, who have
16 been given access by Dominion Energy to the lake by ensuring that these access points
17 remain if the state purchases the lake, as a right of way.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. MOUNT STORM LAKE PRESERVATION AND DEVELOPMENT ACT.

§20-19-1. Findings.

1 (a) The primary purposes for the promulgation of regulations for Mount Storm Lake are
2 the protection of the lake as a natural resource, the preservation of its ecological balance, and
3 furtherance of its highest use as a recreational resource and tourism destination for the State of
4 West Virginia.

5 (b) The State of West Virginia has the authority and responsibility under State law to
6 regulate many public, recreational uses of natural resources in and around the lake, such as

7 boating and fishing. Other regulations in this title also apply to activities on the lake and buffer
8 strip.

9 (c) Dominion Energy presently owns Mount Storm Lake in Grant County, West Virginia,
10 including the land under the lake, the dam, the buffer strip, and surrounding land adjacent to the
11 lake. With the shutdown of the power plant on this land eminent, the State of West Virginia has a
12 vested interest in both preserving the land and overseeing private development of certain areas
13 around the lake.

14 (d) With the shutdown of the plant at Mount Storm Lake eminent, Dominion Energy is
15 likely to have state tax liability associated with the lake and surrounding property.

16 (e) Knowing that Dominion Energy shall be responsible for such tax liability, and with the
17 goal of preserving Mount Storm Lake for the future, the State of West Virginia, based on an agreed
18 value, Dominion Energy may transfer ownership of the lake, dam and surrounding property owned
19 by Dominion Energy to the State of West Virginia in order to cover the cost of those taxes owed.

20 (f) If there is a possibility of either Dominion Energy or another company maintaining a
21 power plant at the present location, this shall take priority in the interest of preserving jobs.

22 (g) Dominion Energy shall have the ability to pay taxes while the Mount Storm plant is still
23 operational, and once the property has been transferred, Dominion Energy may continue to
24 operate the Mount Storm plant at a \$1 per year lease, and if the Mount Storm plant is inoperable
25 for a period of one year, the State of West Virginia has the option to not renew the lease.

26 (h) The State of West Virginia shall at all times make every effort possible to keep the
27 existing Mount Storm power plant operational.

28 (i) If the power plant is no longer operational, then the State of West Virginia may retain
29 land it received in order to build a state park/lodge similar to Stonewall Jackson Resort, but the
30 remaining land down to the water line must be sold at auction in lot form or to developers (not
31 exclusively one developer), while the state shall retain road right of ways allowing for land of
32 developable size between the right of way and the lake shore.

33 (j) The proceeds from the sale of the land shall be used to create a special fund in order
34 to build a potential resort/lodge, and to provide funds for road construction around the lake for the
35 WVDOH, with the State of West Virginia maintaining the ability to retain a right of way back from
36 the shoreline to the road.

37 (k) Finally, the State of West Virginia intends to preserve the rights of certain private
38 property owners around Mount Storm Lake who have been given access by Dominion Energy to
39 the lake. The State intends to ensure right of ways and private property rights/access points for
40 private property owners if the State of West Virginia purchases the lake.

§20-19-2. Definitions.

1 In this subtitle, the following terms have the meanings indicated:

2 (1) "Adjacent Landowner" means a person, other than a commercial landowner, who: (a)
3 Owns property immediately adjacent to the buffer strip/right of way; (b) owns property immediately
4 adjacent to a public right-of-way that is adjacent to the buffer strip; or (c) has deeded access to
5 the buffer strip/right of way.

6 (2) "Buffer strip" means an area above the lake elevation to the normal high water mark -
7 not to exceed the maximum possible lake elevation - and not presently fenced or posted by the
8 State of West Virginia to limit or exclude use by the public.

9 (3) "Commercial landowner" (a) Means a person who owns or leases property immediately
10 adjacent to the buffer strip or property immediately adjacent to a public right-of-way that is
11 adjacent to the buffer strip and who legally pursues a trade, business, or other nonpersonal
12 enterprise on that property; and (b) does not include those persons eligible for a development
13 permit.

14 (4) "Common dock facility" means a boating or swimming facility owned or used in
15 common.

16 (5) "Deeded access" means a right, conveyed in connection with a subdivided lot not
17 fronting on the buffer strip, that authorizes persons from the lot to cross property fronting on the

18 buffer strip in order to reach the buffer strip. For deeded access created after the passage of this
19 bill, this right will be recognized only if it is conveyed by a person who intends to develop land by
20 subdividing lots out of a parcel or adjacent parcels of land that includes frontage on the buffer
21 strip. A person with deeded access, for purposes of these regulations, is one who acquires the
22 right to apply for a buffer strip use permit by the means described above.

23 (6) "Development permit" means a permit issued by the State of West Virginia for the
24 development of the land surrounding Mount Storm Lake, including the shoreline, "buffer strip,"
25 and nearby property associated with the lake.

26 (7) "Dominion Energy" means the Dominion Energy Company.

27 (8) "General public" means those persons who do not hold a valid buffer strip use permit
28 or who are not the tenants or guests of a person who holds a valid buffer strip use permit.

29 (9) "Lake" means the area of pooled water of Mount Storm Lake in Grant County, West
30 Virginia.

31 (10) "Land records" means the duly recorded documents filed, recorded, and indexed in
32 the custody of the Clerk of the Circuit Court for Grant County, West Virginia.

33 (11) "Multiple-family dwelling" means a residential building containing more than one
34 separate living unit.

35 (12) "Nonconforming use" means an activity on, or a use of, the buffer strip or Mount Storm
36 Lake, or both, which does not conform to the regulations of this subtitle, but which existed lawfully
37 and under authorization of the State of West Virginia.

38 (13) "Nonconforming use permit" means a permit issued by the lake manager for any
39 activity on, or use of, the buffer strip or Mount Storm Lake which does not conform to the
40 regulations of this subtitle, but which existed lawfully and under authorization of the State of West
41 Virginia.

42 (14) "Permanent structure or facility" means a structure or facility imbedded in the land or
43 otherwise affixed to the buffer strip or lake bottom so as to be not readily removable.

44 (15) "Recreational permit" means a permit issued by the State of West Virginia to a person
45 who did not: (a) Own land adjacent to the buffer strip or adjacent to a public right-of-way adjacent
46 to the buffer strip; or (b) hold deeded access to the buffer strip.

47 (16) "Special permit" means a permit issued by the lake manager for any temporary or
48 permanent alteration or improvement, or both, to or of the buffer strip.

49 (17) "Temporary structure or facility" means a structure or facility placed on the buffer strip
50 or in the lake so as to be readily removable.

51 (18) "Vessel" means a water craft, other than a sea plane, used or capable of being used
52 as means of transportation on the water.

53 (19) "West Virginia DNR" means the West Virginia Division of Natural Resources.

§20-19-3. Buffer Strip and Right of Way Uses.

1 As to the general public use of the "buffer strips" and public right of ways around Mount
2 Storm Lake, the following shall apply:

3 (a) Applicability: The provisions of this regulation apply to the general public, including
4 persons who own property adjacent to the buffer strip but who do not obtain a buffer strip use
5 permit.

6 (b) Permissible Uses: A person may walk along any portion of the buffer strip; in an
7 emergency a person may use any portion of the buffer strip for access to and from the lake; and
8 a person who holds a valid fishing license may fish from the buffer strip.

9 (c) Prohibited Uses: Except as authorized by a permit issued by the lake manager, a
10 person may not:

11 (1) Construct, place, or maintain private water lines upon the buffer strip – commercial
12 public water lines may be constructed in certain circumstances.

13 (2) Deposit on the buffer strip or in the lake debris, garbage, sewage, waste, decaying or
14 unused barrels, unused dock facilities, food stuff, paper, or other litter or obnoxious material, or
15 solid waste.

16 (3) Attach a permanent rope or cable to, or around, trees or shrubs on the buffer strip.

17 (4) Construct, place, or maintain private septic/sewage systems upon the buffer strip –
18 commercial septic/sewage systems may be constructed in certain circumstances.

19 As to adjacent landowner use of the buffer strip/right of way, a permit shall be required,
20 and an adjacent landowner may make only such uses of the buffer strip as are authorized for the
21 general public, unless the landowner obtains a buffer strip use permit from the lake manager, or
22 is a member of an association, condominium, or group validly operating a common dock facility
23 for residential purposes, which has obtained a valid buffer strip use permit.

24 In relation to commercial landowner use of the buffer strip/right of way, a commercial
25 landowner shall be regulated in the same manner in which an adjacent landowner is regulated,
26 and shall be subject to all the same provisions. In addition, a commercial landowner shall have
27 his or her buffer strip use permit validated for commercial use.

§20-19-4. Development of Mount Storm Resort and Surrounding Property.

1 Upon the transfer of ownership of the lake, dam, and surrounding property owned by
2 Dominion Energy to the State of West Virginia, the state may retain the land received in order to
3 build a state park/lodge similar to those across West Virginia. However, the remaining land
4 leading down to the water line of Mount Storm Lake must be sold at auction in either lot form or
5 to developers, not simply one developer. In doing so, the State of West Virginia shall retain right
6 of ways governed in §20-19-3 of this section allowing for land of developable size between the
7 right of way and the lake shore. This land shall be limited to the existing boat launch on Mount
8 Storm Lake, and the footprint of the existing infrastructure of the Dominion Energy power plant
9 infrastructure. If the power plant is not able to continue operation, and the land is provided to the
10 State of West Virginia, then the land where the power plant is presently located shall be the
11 location for a resort/lodge. Dominion Energy, or whichever power plant was in operation of the
12 structures on the property at the time of the transfer, shall be responsible for the razing of all
13 structures that are used to produce energy.

14 In the development of land around Mount Storm Lake, any lake front lot for development
15 shall not exceed 100 feet of lake frontage, with the exception of commercial development for the
16 primary purpose of lodging shall not exceed 200 feet of lake frontage, with all other commercial
17 development not to exceed 100 feet of lake frontage.

18 The State of West Virginia shall encourage the economic development of Mount Storm
19 Lake by providing a means by which to allow for the construction of piers on the lake. Such piers
20 shall have sufficient room for boats to navigate around them and shall allow for water docking.
21 The State of West Virginia shall provide a transferrable 99-year lease to operate such a pier, and
22 allow for the development of such attractions as a fishing pier, or a pier restaurant. Any
23 development shall comport with all other regulations.

§20-19-5. Retention of Private Property Owners of Mount Storm Lake.

1 In recognizing the already existing property rights of those currently at Mount Storm Lake,
2 the State of West Virginia shall preserve the rights of certain private property owners around the
3 lake who had previously been given access by Dominion Energy. The State of West Virginia shall
4 ensure that these access points remain if the state purchases the lake.

NOTE: The purpose of this bill is to provide a means by which Dominion Energy and the State of West Virginia can transfer Mount Storm Lake, and to provide for the further preservation and development of the lake, all while preserving certain public and private right of ways that currently exist.

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