

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 709

FISCAL
NOTE

BY SENATORS MAYNARD, KARNES, AND RUCKER

[Introduced March 22, 2021; referred
to the Committee on Natural Resources; and then to
the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §20-5N-1, §20-5N-2, §20-5N-3, §20-5N-4, §20-5N-5, §20-5N-6, §20-5N-7,
 3 §20-5N-8, §20-5N-9, §20-5N-10, §20-5N-11, §20-5N-12, §20-5N-13, §20-5N-14, §20-5N-
 4 15, and §20-5N-16, all relating to establishing an Adventure Travel Recreation Program
 5 within the Division of Natural Resources; making legislative findings and declaring
 6 legislative intent; defining terms; establishing an Adventure Travel Recreation
 7 Commission and specifying the composition and duties thereof; establishing the Office of
 8 Adventure Travel Recreation and defining the duties and responsibilities thereof;
 9 establishing conservation priorities of the office; providing for distribution of program
 10 information; authorizing contracts for goods and services to carry out responsibilities of
 11 the office; restricting the use of eminent domain; providing immunity and protection from
 12 liability for property holders or owners; requiring opportunity for public comment and for
 13 use for best available science; authorizing the creation of state vehicular recreation areas
 14 and providing for protection of sensitive areas; authorizing the designation and
 15 development of a West Virginia Statewide Motorized Trail; providing for a program of
 16 grants and cooperative agreements; apportioning funds; establishing criteria for various
 17 functions; detailing special, mandatory preconditions for grant and project applications;
 18 establishing an Adventure Travel Recreation Fund; and specifying an apportionment and
 19 allowable uses of moneys in the fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5N. ADVENTURE TRAVEL RECREATION.

§20-5N-1. Legislative findings and intent.

- 1 (a) The Legislature declares the following findings:
 2 (1) Adventure travel is enjoying an ever-increasing popularity in West Virginia.
 3 (2) Adventure travel includes both motorized recreation and motorized off-highway access
 4 to nonmotorized recreation activities.

5 (3) The indiscriminate and uncontrolled use of those vehicles may have a deleterious
6 impact on the environment, wildlife habitats, sensitive areas, native wildlife, and native flora.

7 (b) The Legislature hereby declares that effectively managed areas and adequate facilities
8 for the use of off-highway vehicles and conservation and enforcement are essential for
9 ecologically balanced recreation.

10 (c) Accordingly, it is the intent of the Legislature that:

11 (1) Existing adventure travel recreational areas, facilities, and opportunities should be
12 expanded and managed in a manner consistent with this article, with particular focus on
13 maintaining sustained, long-term use;

14 (2) New adventure travel recreational areas, facilities, and opportunities should be
15 provided and managed pursuant to this article in a manner that will conscientiously sustain long-
16 term use;

17 (3) The Division of Natural Resources should support both motorized adventure travel
18 recreation and motorized off-highway access to nonmotorized recreation;

19 (4) When an area or trail or portion thereof cannot be maintained to appropriate
20 established standards for sustained long-term use, it should be closed to use and brought back
21 into compliance with those standards. Those areas should remain closed until they can be
22 managed within soil conservation and wildlife protection standards and, if these standards cannot
23 be met, those areas should, at a minimum, be restored to the condition prior to the use of the
24 area, trail, or portion for vehicular recreation.;

25 (5) Prompt and effective implementation of the Adventure Travel Recreation Program by
26 the division and the Office of Adventure Travel Recreation should have an equal priority among
27 other programs in the division;

28 (6) Off-highway motor vehicle recreation should be managed in accordance with this
29 article through financial assistance to local governments and joint undertakings with agencies of
30 the United States.

§20-5N-2. Definitions.

1 For the purposes of this article:

2 “Adaptive management” means to use the results of information gathered through a
3 monitoring program or scientific research to adjust management strategies and practices to
4 conserve cultural resources and provide for the conservation and improvement of natural
5 resources;

6 “Commission” means the Adventure Travel Recreation Commission;

7 “Division” means the West Virginia Division of Natural Resources’

8 “Fund” means the Off-Highway Vehicle Recreation Fund created by §20-5N-16 of this
9 code;

10 “Grant program” means the local assistance grant program and the cooperative
11 agreement program;

12 “Monitoring program” means a program adopted by the division that provides periodic
13 evaluations of the condition of resources and informs adaptive management within state vehicular
14 recreation areas;

15 “Off-highway motor vehicle” means an off-highway motor vehicle as defined in §17F-1-9
16 of this code;

17 “Office” means the Office of Adventure Travel Recreation established under this article;

18 “Program” means the Adventure Travel Recreation Program;

19 “Restoration” and “restore” mean, upon closure of the unit or any portion thereof, the
20 restoration of land to the contours, the plant communities, and the plant covers comparable to
21 those on surrounding lands or at least those that existed prior to adventure travel use;

22 “State vehicular recreation area” means a unit of the state park system established
23 pursuant to §20-5N-12 of this code; and

24 “System” means the state vehicular recreation areas, the West Virginia Statewide
25 Motorized Trail, areas and trails within the state park system, and areas supported by the grant

26 program.

§20-5N-3. Adventure Travel Recreation Commission.

1 (a) The Adventure Travel Recreation Commission is hereby established, consisting of
2 seven members, to be appointed by the Governor and subject to confirmation by the Senate.

3 (b) In making appointments to the commission, the Governor shall consider the places of
4 residence of the members of the commission to ensure statewide representation. Nominees to
5 the commission be selected from one or more of the following groups:

6 (1) Off-highway vehicle recreation interests;

7 (2) Biological or soil scientists;

8 (3) Groups or associations of predominantly rural landowners;

9 (4) Law enforcement;

10 (5) Environmental protection organizations;

11 (6) Nonmotorized recreation interests; and

12 (7) Businesses that are dependent, in a substantial portion, on tourism in this state.

13 (c) By December 31, 2021, the division shall convene a stakeholder process to make
14 recommendations to the Governor regarding ways to implement this section. The stakeholder
15 process may consider a variety of recommendations, including, but not limited to, ways to achieve
16 a diverse commission, including the geographic diversity of West Virginia, as well as the diversity
17 of all West Virginians, including, but not limited to, the special needs of all who participate in off-
18 highway vehicular recreation, and ways to achieve diverse public participation in the commission
19 process. The division shall submit these recommendations to the Governor on or before January
20 1, 2022.

21 (d) The terms of the members of the commission shall be four years.

22 (e) The members of the commission shall elect a chairperson from their number who shall
23 serve as chairperson for one year and until his or her successor is elected. The chairperson of
24 the commission may appoint committees composed of members of the commission and prescribe

25 the jurisdiction of each. The director of the division, or his or her designee, shall be the secretary
26 of the commission.

27 (f) Each member of the board not otherwise employed by the state shall be paid the same
28 compensation, and each member of the board shall be paid the expense reimbursement, as is
29 paid to members of the Legislature for their interim duties as recommended by the Citizens
30 Legislative Compensation Commission and authorized by law for each day or portion thereof
31 engaged in the discharge of official duties, as provided in §4-2A-5, §4-2A-6, and §4-2A-7 of this
32 code.

§20-5N-4. Duties and responsibilities of the commission.

1 The commission has the following duties and responsibilities:

2 (1) Be fully informed regarding all governmental activities affecting the program;

3 (2) Meet at least four times per year at various locations throughout the state to receive
4 comments on the implementation of the program. Establish an annual calendar of proposed
5 meetings at the beginning of each calendar year. The meetings shall include a public meeting,
6 before the beginning of each grant program cycle, to collect public input concerning the program,
7 recommendations for program improvements, and specific project needs for the system;

8 (3) Hold a public hearing to receive public comment regarding any proposed substantial
9 acquisition or development project at a location in close geographic proximity to the project,
10 unless a hearing consistent with federal law or regulation has already been held regarding the
11 project.

12 (4) Consider, upon the request of any owner or tenant, whose property is in the vicinity of
13 any land in the system, any alleged adverse impacts occurring on that person's property from the
14 operation of off-highway motor vehicles and recommend to the office suitable measures for the
15 prevention of any adverse impact determined by the commission to be occurring, and suitable
16 measures for the restoration of adversely impacted property;

17 (5) Review and comment annually to the director on the proposed budget of expenditures

18 from the fund;

19 (6) Review all plans for new and expanded local and regional vehicle recreation areas that
20 have applied for grant funds;

21 (7) Review and comment on strategic plans periodically developed by the office;

22 (8) Prepare and submit a program report to the Governor and the appropriate policy and
23 fiscal committees of each house of the Legislature on or before January 1, 2022, and every three
24 years thereafter. The report shall be adopted by the commission after discussing the contents
25 during a minimum of two or more public meetings. One of the public meetings shall be held in
26 northern West Virginia and one shall be held in southern West Virginia. The report shall address
27 the status of the program and adventure travel recreation, including all of the following:

28 (A) A summary of the process, standards, and plans developed pursuant to this article;

29 (B) The condition of natural and cultural resources of areas and trails receiving state
30 adventure travel funds and the resolution of conflicts of use in those areas and trails;

31 (C) The status and accomplishments of funds appropriated for restoration pursuant to §20-
32 5N-14 and §20-5N-16 of this code;

33 (D) A summary of resource monitoring data compiled and restoration work completed;

34 (E) Actions taken by the office and division since the last program report to discourage
35 and decrease trespass of off-highway motor vehicles on private property; and

36 (F) Other relevant program-related environmental issues that have arisen at state
37 vehicular recreation areas since the last program report, including, but not limited to, actions
38 undertaken to ensure compliance with the federal Endangered Species Act, state air quality laws
39 and regulations, federal Clean Water Act, and state water quality regulations, or permits; and

40 (9) Make other recommendations to the director regarding the adventure travel recreation
41 program.

§20-5N-5. Office of Adventure Travel Recreation.

1 (a) The Office of Adventure Travel Recreation is hereby established as a unit of the

2 Division of Natural Resources. The office has the following duties and responsibilities:

3 (1) Planning, acquisition, development, conservation, and restoration of lands in the state
4 vehicular recreation areas;

5 (2) Management, maintenance, administration, and operation of lands in the state
6 vehicular recreation areas;

7 (3) Provision for law enforcement and appropriate public safety activities;

8 (4) Implementation of all aspects of the program;

9 (5) Ensure program compliance with the environmental protection laws of the state in state
10 vehicular recreation areas;

11 (6) Provide staff assistance to the commission;

12 (7) Prepare and implement management and wildlife habitat protection plans for lands in,
13 or proposed to be included in, state vehicular recreation areas, including new state vehicular
14 recreation areas. These plans shall be developed in consideration of statutorily required state and
15 regional conservation objectives. Trails may only be added or included as components of existing
16 trail systems when developing or updating plans in state vehicular recreation areas, upon
17 completion of full environmental review;

18 (8) Conduct, or cause to be conducted, surveys, and prepare, or cause to be prepared,
19 studies that are necessary or desirable for implementing the program;

20 (9) Recruit and utilize volunteers to further the objectives of the program;

21 (10) Prepare and coordinate safety and education programs;

22 (11) Provide for the enforcement of motor vehicle and other laws regulating the use or
23 equipment of off-highway motor vehicles in all areas acquired, maintained, or operated by funds
24 from the fund; however, the Division of the Natural Resources shall have concurrent jurisdiction
25 for enforcement on highways in immediate proximity to state vehicular recreation areas;

26 (12) Provide for the conservation of natural and cultural resources, including appropriate
27 mitigation;

28 (13) Post on the division’s website all plans, reports, and studies related to off-highway
29 vehicle recreation developed by the office;

30 (14) Report on any closure implemented pursuant to this article at the next commission
31 meeting following the closure; and

32 (15) Complete other duties as determined by the director.

33 (b) Nothing in this article relieves the office from compliance with state and federal laws
34 and regulations, including permit requirements.

§20-5N-6. Distribution of program information.

1 (a) In cooperation with the commission, the office shall make available on a public website
2 information regarding adventure travel recreation opportunities, pertinent laws and regulations,
3 and responsible use of the system. Where practical, the website shall include the following:

4 (1) The text of laws and regulations relating to the program and operation of off-highway
5 vehicles;

6 (2) A statewide map and regional maps of federal, state, and local off-highway vehicle
7 recreation areas and facilities in the state, including links to maps of federal off-highway vehicle
8 routes resulting from the route designation process;

9 (3) Information concerning safety, education, and trail etiquette; and

10 (4) Information to prevent trespass, damage to public and private property, and damage
11 to natural resources, including penalties and liability associated with trespass and damage
12 caused.

13 (b) The office may create, and update when appropriate, a guidebook of federal, state,
14 and local off-highway vehicle recreation opportunities that includes information where current
15 specific maps and information for each facility can be located. Contact information shall be
16 provided and shall include available Internet Website addresses, telephone numbers, and
17 addresses of offices where maps can be accessed. The guidebook shall also include the address
18 of the website where the information in subdivision (a) of this section may be found.

19 (c) The office may work with retailers of off-highway motor vehicles and off-highway
20 recreation associations to distribute the guidebook developed under subdivision (b) of this section
21 and to increase awareness of the resources available on the public website.

**§20-5N-7. Soil conservation and wildlife preservation; development of standard; duties to
restore certain areas; cultural and historic preservation.**

1 (a) The protection of public safety, the appropriate utilization of lands, and the
2 conservation of natural and cultural resources are of the highest priority in the management of
3 the state vehicular recreation areas. Additionally, the office shall promptly repair and continuously
4 maintain areas and trails, and shall anticipate and prevent accelerated and unnatural erosion and
5 other off-highway vehicle impacts to the most reasonable extent possible. The office shall take
6 steps necessary to prevent damage to significant natural and cultural resources within state
7 vehicular recreation areas.

8 (b)(1) The office, in consultation with the United States Natural Resource Conservation
9 Service, the United States Geological Survey, the United States Forest Service, the United States
10 Bureau of Land Management, and United States Fish and Wildlife Service, shall, by December
11 31, 2022, formulate a Soil Conservation Standard and Guidelines to establish a generic and
12 measurable soil conservation standard. The office shall subsequently review and update the
13 standard when deemed necessary by the division.

14 (2) If the office determines that the soil conservation standards and habitat protection
15 plans are not being met in any portion of any state vehicular recreation area, the office shall
16 temporarily close the noncompliant portion to repair and prevent accelerated erosion, until the soil
17 conservation standards are met.

18 (3) If the office determines that the soil conservation standards cannot be met in any
19 portion of any state vehicular recreation area, the office shall close the noncompliant portion and
20 restore the portion pursuant to this article.

21 (c)(1) In cooperation with other sections or units of the division, the office shall compile

22 and periodically review and update an inventory of wildlife populations and prepare a wildlife
23 habitat protection plan that conserves and improves wildlife habitats for each state vehicular
24 recreation area. By December 31, 2025, the office shall compile an inventory of native plant
25 communities in each state vehicular recreation area to inform future plan updates.

26 (2) If the office determines that the wildlife habitat protection plan is not being met in any
27 portion of any state vehicular recreation area, the office shall close the noncompliant portion
28 temporarily until the wildlife habitat protection plan is met.

29 (3) If the office determines that the wildlife habitat protection plan cannot be met in any
30 portion of any state vehicular recreation area, the office shall close and restore the noncompliant
31 portion pursuant to this article.

32 (d) The office shall monitor annually in each state vehicular recreation area to determine
33 whether soil conservation standards are being met and the objectives of wildlife habitat protection
34 plans are being met.

35 (e) The office shall not fund trail construction unless the trail is capable of complying with
36 the conservation specifications prescribed in this section. The office shall not fund trail
37 construction where conservation is not feasible. The office shall not fund the maintenance of a
38 trail unless that trail is a component of a state vehicular recreation area road and trail system.

39 (f) The office shall protect natural, cultural, and archaeological resources within the state
40 vehicular recreation areas.

§20-5N-8. Contracts for care and maintenance.

1 The office may enter into contracts with concessionaires and grants or cooperative
2 agreements with other public agencies, pursuant to laws and procedures specified in this office,
3 for the care and maintenance of lands in the system, including law enforcement services with
4 public agencies having law enforcement authority.

§20-5N-9. Eminent domain not to be exercised.

1 Eminent domain shall not be exercised to acquire any interest in property for a state

2 vehicular recreation area, the West Virginia Statewide Motorized Trail, or any grant program area
3 or trail by the office or any public agency that has entered into a grant or cooperative agreement
4 with the office.

§20-5N-10. Immunity of land owners and others with legal control over property.

1 No owner or other person having legal control of property in the vicinity of any lands in the
2 system is liable for any actions of any type resulting from, or caused by, the user of an adventure
3 travel who is trespassing on property outside the system; and no owner or other person having
4 legal control of property in the vicinity of any lands in the system is liable for any one's actions of
5 any type commenced on, or taking place within, the boundaries of lands in the system.

§20-5N-11. Best available science and public comment requirements.

6 The division shall require that any soil conservation standard, wildlife habitat protection
7 plan, or monitoring program, required by this article, applies best available science. All standards,
8 plans, and monitoring programs subject to, or required by, this article shall provide opportunities
9 for public comment, including, but not limited to, written comments and public meetings, as
10 appropriate.

§20-5N-12. State vehicular recreation areas.

1 (a) State vehicular recreation areas consist of areas selected, developed, and operated to
2 provide off-highway vehicle recreation opportunities. State vehicular recreation areas shall be
3 selected for acquisition on lands where the need to establish areas to protect natural and cultural
4 resources is minimized, the terrain is capable of withstanding motorized vehicle impacts, and
5 where there are quality recreational opportunities for off-highway motor vehicles. Areas shall be
6 developed, managed, and operated for the purpose of providing the fullest appropriate public use
7 of the vehicular recreational opportunities present, in accordance with the requirements of this
8 article, while providing for the conservation of cultural resources and the conservation and
9 improvement of natural resource values over time.

10 (b) After January 1, 2022, no new cultural or natural preserves or state wildernesses shall

11 be established within state vehicular recreation areas. To protect natural and cultural resource
12 values, sensitive areas may be established within state vehicular recreation areas where
13 determined by the division to be necessary to protect natural and cultural resources. These
14 sensitive areas shall be managed by the office in a manner consistent with the duties of the
15 division director in regard to protection of natural and cultural preserves.

16 (c) If adventure travel use results in damage to any natural or cultural resources or damage
17 within sensitive areas, appropriate measures shall be promptly taken to protect these lands from
18 any further damage. These measures may include the erection of physical barriers and shall
19 include the restoration of natural resources and the repair of damage to cultural resources.

§20-5N-13. West Virginia Statewide Adventure Travel Trail.

1 The office shall assist in the designation of corridors for a West Virginia Statewide
2 Motorized Trail. The West Virginia Statewide Adventure Travel Trail shall consist of corridors that
3 are designated and maintained for recreational travel by off-highway motor vehicles, and that are
4 designated for adventure travel by the owner of, or other person or public entity having control
5 over, the property traversed by the corridor. Portions of the West Virginia Statewide Adventure
6 Travel Trail may include lands designated and maintained as trailheads. The West Virginia
7 Statewide Adventure Travel Trail shall be selected and managed in accordance with this article.
8 Trails designated pursuant to this section may be known as the West Virginia Statewide
9 Adventure Travel Trail.

§20-5N-14. Local assistance grants, grants to nonprofit organizations and educational institutions; and cooperative agreements with federal agencies.

1 (a) The office shall develop and implement a grant and cooperative agreement program
2 to support the planning, acquisition, development, maintenance, administration, operation,
3 enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities
4 associated with the use of adventure travel vehicles, and programs involving adventure travel
5 safety or education.

6 (b) When appropriated by the Legislature for grants and cooperative agreements,
7 available funds shall be awarded in accordance with the following categories:

8 (1) Operation and maintenance. —

9 (A) At least 50 percent of the funds appropriated by the Legislature pursuant to §20-5N-
10 16 of this code shall be expended solely for grants and cooperative agreements for the acquisition,
11 maintenance, operation, planning, development, or conservation of authorized trails and facilities
12 associated with the use of adventure travel vehicles for recreation or motorized access to
13 nonmotorized recreation.

14 (B) Guidelines developed to implement this subdivision, pursuant to subsection (d) of this
15 section, shall at a minimum:

16 (i) Give preference to applications that sustain existing authorized adventure travel
17 recreation opportunities; and

18 (ii) Give additional consideration to applications that improve facilities that provide
19 motorized access to nonmotorized recreation opportunities.

20 (C) Applications that would affect lands identified as inventoried roadless areas by the
21 Forest Service of the United States Department of Agriculture are eligible for cooperative
22 agreements if the application is for a project that does any of the following:

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

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

29 (iii) Maintains a road or trail that was included in the National Forest System Roads and
30 Trails on or before January 1, 2009.

31 (D) Any unencumbered funds under this paragraph shall only be used in future grant

32 cycles for purposes consistent with this paragraph.

33 (2) Restoration. —

34 (A) Of the funds appropriated by the Legislature pursuant to §20-5N-16 of this code, 25
35 percent shall be expended solely for grants and cooperative agreements for projects that restore
36 or repair habitat damaged by either legal or illegal off-highway motor vehicle use.

37 (B) The office shall develop and implement, in consultation with the wildlife section of the
38 division, a competitive grant and cooperative agreement program which shall be administered in
39 accordance with this paragraph.

40 (C) Funds identified in this paragraph shall be available for grants and cooperative
41 agreements for projects that restore or repair habitat damaged by both legal and illegal off-
42 highway motor vehicle use.

43 (D) Eligible projects include:

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

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

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

50 (iv) Scientific and cultural studies regarding the impact of adventure travel recreation not
51 otherwise required by state or federal laws;

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

54 (vi) Restoration projects that generally improve and restore the function of natural resource
55 systems damaged by motorized activities.

56 (E) Eligible applicants include local, state, and federal agencies, federally or state
57 recognized Native American tribes, educational institutions, certified community conservation

58 corps, resource conservation districts, and other eligible nonprofit organizations.

59 (F) Guidelines developed to implement this paragraph shall at a minimum do all of the
60 following:

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

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

66 (iii) Encourage public agencies managing lands to prepare and implement a management
67 and enforcement plan to prevent reoccurring damage from unauthorized use.

68 (G) Any unencumbered funds under this paragraph shall be used only in future grant
69 cycles for purposes consistent with this paragraph.

70 (3) Law enforcement. —

71 (A) Of the funds appropriated by the Legislature pursuant §20-5N-16 of this code, 20
72 percent shall be available for law enforcement grants and cooperative agreements and shall be
73 allocated to local and federal law enforcement entities for peace officers or other personnel who
74 have authority to issue citations or take other official law enforcement action, and related
75 equipment. The amount of the grant or cooperative agreement shall be proportionate to the off-
76 highway motor vehicle enforcement needs under each entity's jurisdiction.

77 (B) The office shall develop a method to determine the law enforcement needs for each
78 applicant.

79 (C) The office shall develop eligibility guidelines for law-enforcement projects. The
80 guidelines, at a minimum, shall require the applicant to do all of the following:

81 (i) Specify formal and informal cooperation with other appropriate law-enforcement
82 entities, including any applicable federal entities;

83 (ii) Establish a policy on how violations of adventure travel vehicle laws and regulations

84 will be enforced on federal land, if the applicant is a local law-enforcement entity;

85 (iii) Identify areas with high priority law enforcement needs because of public safety,
86 cultural resources, and sensitive environmental habitats, including wilderness areas and areas of
87 critical environmental concern;

88 (iv) Explain whether the applicant is recovering a portion of law enforcement costs directly
89 associated with privately sponsored events where sponsors have obtained a local permit;

90 (v) Establish a public education program that includes information regarding safety
91 programs offered in the area and how to report off-highway motor vehicle operation violations;
92 and

93 (vi) Specify how personnel is trained and educated regarding adventure travel vehicle
94 safety and resource and cultural protection.

95 (D) Any unencumbered funds under this paragraph shall be used only in future grant
96 cycles for purposes consistent with this paragraph.

97 (4) Education and safety. —

98 (A) Of the funds appropriated by the Legislature pursuant to §20-5N-16 of this code, five
99 percent shall be available for grants and cooperative agreements that either provide
100 comprehensive education that teaches adventure travel vehicle safety, environmental
101 responsibility, and respect for private property, or provide safety programs associated with
102 adventure travel recreation.

103 (B) Any unencumbered funds under this paragraph shall be used only in future grant
104 cycles for purposes consistent with this paragraph.

105 (c) Eligible grant and cooperative agreement applicants include:

106 (1) Cities, counties, and districts that have approval to apply for grant funds, in the form of
107 a resolution from their governing body;

108 (2) State agencies for projects under subdivision (b)(2) of this section;

109 (3) Agencies of the United States;

- 110 (4) Federally and state recognized Native American tribes; and
- 111 (5) Educational institutions, certified community conservation corps, resource
- 112 conservation districts, and other eligible nonprofit organizations for eligible projects described in
- 113 subsection (f) of this section.
- 114 (d) Guidelines developed to implement this program shall at a minimum do all of the
- 115 following:
- 116 (1) Distribute grants and cooperative agreements on a competitive basis, except for law
- 117 enforcement grants allocated in accordance with subdivision (b)(3) of this section.
- 118 (2) Be developed with public input, including focus groups;
- 119 (3) Require applications to be in accordance with local or federal plans and the strategic
- 120 plan for adventure travel recreation prepared by the office;
- 121 (4) Require grant applicants to comply with all West Virginia environmental protection
- 122 laws. Applicants for cooperative agreements shall complete environmental review procedures as
- 123 part of every application;
- 124 (5) Require the applicant to agree to provide matching funds or the equivalent value of
- 125 services or material used, in an amount not less than 25 percent of the total project cost, except
- 126 for the category of restoration, which shall not be less than 10 percent of the total project cost;
- 127 (6) Require the applicant, if it is a city or county, to disclose how fees collected are being
- 128 used and whether the use of these fees complements the applicant's project; and
- 129 (7) Fund all eligible applications to the extent feasible.
- 130 (e) All grants and cooperative agreements involving ground disturbing activities shall be
- 131 subject to the uniform application of soil and wildlife habitat protection §20-5N-7 of this code.
- 132 (f) Grants may be awarded to educational institutions and nonprofit organizations. Eligible
- 133 projects shall be limited to scientific research, natural resource conservation activities, trail and
- 134 facility maintenance, restoration, and programs involving adventure travel vehicle safety or
- 135 education. If the application for grant funds involves activities on any public lands, all of the

136 following shall apply:

137 (1) The applicant shall include a work plan for the project;

138 (2) The applicant shall provide written permission from the appropriate land manager to
139 conduct a project, including a description of how the project fits with the land management goals
140 of the area;

141 (3) The applicant shall provide matching funds or the equivalent value of volunteer
142 services or material used, in an amount not less than 25 percent of the total project cost, except
143 for the category of restoration, which shall not be less than 10 percent of the total project cost;
144 and

145 (4) The applicant shall be fiscally responsible for adhering to the terms and conditions of
146 the grants.

147 (g) The head or chief of the office shall not participate in the scoring of grants or
148 cooperative agreements.

149 (h) The office shall establish an administrative appeal process as part of the grants and
150 cooperative agreements program. At a minimum, this process shall do all of the following:

151 (1) Give applicants the right to appeal on the following grounds:

152 (A) The office failed to follow regulations established for the award of grants and
153 cooperative agreements.

154 (B) The office lacked sufficient factual evidence to support or deny the award of a grant or
155 cooperative agreement.

156 (2) Require the applicant to first appeal to the deputy director of the office. If that appeal
157 is denied, the applicant may then appeal to the director of the office, or the director's appointee.

158 (3) Require applicants to file their first appeal within 30 calendar days following the notice
159 of award or denial of a grant or cooperative agreement. Notice of the decision or the rejection of
160 the appeal shall be issued within 60 days following the filing of an appeal.

161 (4) Require applicants to exhaust these appeal rights prior to seeking other legal remedies

162 through the courts.

163 (i) A grant shall not be made, nor a cooperative agreement entered into, pursuant to this
164 section without the approval of the director.

§20-5N-15. Special preconditions for grants and cooperative agreements.

1 No funds may be granted or expended pursuant to §20-5N-14 of this code, unless all of
2 the following conditions are met:

3 (1) If the project involves a ground disturbing activity, the recipient has completed wildlife
4 habitat and soil surveys and has prepared a wildlife habitat protection program to sustain a viable
5 species composition for the project area;

6 (2) If the project involves a ground disturbing activity, the recipient agrees to monitor the
7 condition of soils and wildlife in the project area each year in order to determine whether the soil
8 conservation standards adopted pursuant to §20-5N-7 of this code, and the wildlife habitat
9 protection program prepared pursuant to subdivision (1) of this section are being met;

10 (3) If the project involves a ground disturbing activity, the recipient agrees that, whenever
11 the soil conservation standards adopted pursuant to §20-5N-7 of this code are not being met in
12 any portion of a project area, the recipient shall close temporarily that noncompliant portion, to
13 repair and prevent accelerated erosion, until the same soil conservation standards adopted
14 pursuant to §20-5N-7 of this code are met;

15 (4) If the project involves a ground disturbing activity, the recipient agrees that, whenever
16 the wildlife habitat protection program prepared pursuant to subdivision (1) is not being met in any
17 portion of a project area, the recipient shall close temporarily that noncompliant portion until the
18 same wildlife habitat protection program prepared pursuant to subdivision (1) is met;

19 (5) The recipient agrees to enforce the registration of adventure travel vehicles and the
20 other provisions of state motor vehicle laws for adventure travel vehicles and to enforce the other
21 applicable laws regarding the operation of adventure travel vehicles;

22 (6) The recipient agrees to cooperate with appropriate law enforcement entities to provide

23 proper law enforcement at and around the facility;

24 (7) The recipient has identified the potential for the facility to reduce illegal and
25 unauthorized adventure travel recreation activities in the surrounding areas; and

26 (8) The recipient has included in its application a description of how it is meeting the
27 operations and maintenance needs of any existing adventure travel recreation facility under its
28 jurisdiction.

§20-5N-16. Adventure Travel Recreation Fund; fiscal management.

1 (a) The Adventure Travel Recreation Fund is hereby created. The fund shall be
2 administered by the West Virginia Division of Natural Resources through its Office of Adventure
3 Travel Recreation and shall consist of all moneys made available for the purposes and from the
4 sources set forth in this section of the code.

5 (b) The fund consists of moneys received from the following sources:

6 (1) All appropriations provided by the Legislature;

7 (2) Any moneys available from external sources;

8 (3) All interest and other income earned from investment of moneys in the fund;

9 (4) Unexpended service fees and proceeds from authorized permit programs;

10 (5) Fees and other proceeds collected at state vehicular recreation areas;

11 (6) Reimbursements; and

12 (7) Revenues and income from any other source required by law to be deposited in the
13 fund.

14 (c) Moneys in the fund shall be available, upon appropriation by the Legislature, as follows:

15 (1) An amount, not to exceed 50 percent of the annual revenues to the fund, shall be
16 available for grants and cooperative agreements pursuant to §20-5N-16 of this code.

17 (2)(A) The remainder of the annual revenues to the fund shall be available for the support
18 of the office in implementing the adventure travel recreation program and for the planning,
19 acquisition, development, mitigation, construction, maintenance, administration, operation,

20 restoration, and conservation of lands in the system.

21 (B) As used in this section, "support of the office" includes functions performed outside of
22 the office by others on behalf of the office, including a pro-rated share of the division's common
23 overhead and other costs incurred on behalf of the office for personnel management and training,
24 accounting, and fiscal analysis, records, purchasing, public information activities, consultation of
25 professional scientists and reclamation experts for the purposes of §20-5N-7 of this code, and
26 legal services.

27 (d) Money in the fund shall also be used to pay for the repair of any boundary fence that
28 segregates off-highway vehicle use from adjoining landowners and is adjacent to an off-highway
29 vehicle site that is funded by the fund, when the fence has become broken or damaged by off-
30 highway vehicle users.

NOTE: The purpose of this bill is to establish a state Adventure Travel Recreation Program and provide for state vehicular recreation areas and West Virginia Statewide Adventure Travel Trail.

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