

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4408

BY DELEGATES DEAN, PAYNTER, PHILLIPS, J. JEFFRIES,

COOPER, MILLER AND FERRELL

[Introduced January 26, 2022; referred
to the Committee on Agriculture and Natural
Resources then Government Organization]

1 A BILL to amend and reenact §20-5-15 and §20-5-16 of the Code of West Virginia, 1931, as
2 amended, relating to the authority of the Division of Natural Resource to enter into certain
3 contracts.

Be it enacted by the Legislature of West Virginia:

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~~ 30 years, but the contract may provide for an option to renew at the director's discretion for
5 an additional term or terms not to exceed ~~ten~~ 20 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~~ §5A-3-1 *et seq.* of this code. Prior to initiating of a contract for the operation
9 of a state park lodge, cabin, campground, gift shop, golf facility, including pro shop operations, or
10 ski facility, the director shall submit written notice of the specific location subject to the contract to
11 the Legislature by letter to the Senate President and the Speaker of the House of Delegates.

12 (b) Prior to initiating a contract for a previously state-operated state park lodge, cabin,
13 campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall
14 conduct a public hearing to be held at a reasonable time and place within the county in which the
15 facility is located. Notice of the time, place and purpose of the public hearing shall be provided as
16 a Class II legal advertisement in accordance with ~~the provisions of~~ §59-3-2 of this code which
17 notice shall be given at least for the first publication 20 days in advance of ~~said~~ the hearing.

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

§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.

1 (a) Notwithstanding any other provision of this code to the contrary, in addition to all other
2 powers and authority vested in the director, he or she ~~is hereby authorized and empowered to~~
3 may:

4 (1) Enter into contracts with third parties for the financing, construction, and operation of
5 recreational, lodging, and ancillary facilities at ~~Chief Logan State Park, Beech Fork State Park,~~
6 ~~Tomlinson Run State Park, Stonewall Jackson Lake State Park, Lost River State Park and~~
7 ~~Canaan Valley Resort State Park~~ all state parks and state forests under the jurisdiction of the
8 Division of Natural Resources. The contracts may allow and recognize both direct and subsidiary
9 investment arrangements. The term of the contracts may not exceed a period of ~~twenty-five~~ 50
10 years, at which time the full title to the recreational facilities shall vest in the state, except as
11 otherwise provided in this section;

12 (2) Enter into contracts with third parties for the construction, but not the operation, of
13 cabins at any state park or forest. Upon completion of the construction of the cabins, full title to
14 the cabins shall immediately vest in the state and the cabins shall be operated by the parks and
15 recreation section;

16 (3) Authorize the construction of at least five cabins by any single third party in state parks
17 and state forests which do not offer the facilities on the effective date of this subsection; and

18 (4) Propose emergency and legislative rules, in accordance with ~~the provisions of §29A-~~
19 3-1 *et seq.* of this code, that set the conditions upon which the director may enter into a contract
20 with a single third party proposing to construct cabins.

21 (b) All contracts shall be presented to the Joint Committee on Government and Finance
22 for review and comment prior to execution.

23 (c) A contract may provide for renewal for the purpose of permitting continued operation
24 of the facilities at the option of the director for a term or terms not to exceed 10 years.

25 ~~(d) Except as otherwise authorized by this section, no extension or renewal beyond the~~
26 ~~original twenty-five year term may be executed by the director absent the approval of the Joint~~
27 ~~Committee on Government and Finance~~

28 ~~(e)~~ (d) *Stonewall Jackson Lake State Park.* —

29 (1) With respect to the financing, construction, and operation of lodging at Stonewall
30 Jackson Lake State Park, in addition to the lodging in existence as of July 1, 2008, contracts
31 entered into pursuant to this section may grant, convey, or provide for commercially reasonable
32 lodging usage and related rights and privileges all on terms and conditions as the director may
33 deem appropriate, desirable or necessary to attract private investment for the construction of
34 additional lodging units.

35 (2) No contracts may be entered into prior to the preparation of lodging unit development
36 plans and standard lodging unit contract documents in a form and at a level of detail acceptable
37 to the United States Army Corps of Engineers and the director, and subsequent to the
38 presentation of the lodging unit development plans and standard lodging unit contract documents
39 to the Joint Committee on Government and Finance for review and comment.

40 (3) At a minimum, the lodging unit development plans and standard lodging unit contracts
41 shall comply with the following requirements:

42 (A) That no more than 100 additional lodging units may be constructed, in addition to the
43 lodging in existence as of July 1, 2008;

44 (B) That lodging unit contracts, with respect to any additional lodging units that may be
45 financed, constructed or operated pursuant to the provision of this section, shall generally conform
46 to the contracts entered into by federal agencies or the National Park Service with private parties
47 regarding privately financed property that is constructed, developed or operated on public lands
48 administered by federal agencies or the National Park Service, subject to modification and
49 adaptation by the director as the director deems appropriate, suitable and relevant to any lodging
50 units to be constructed at Stonewall Jackson Lake State Park.

51 (C) That a party granted rights and privileges under lodging unit contracts awarded under
52 the provisions of this subsection shall have the right to renew his ~~or her~~ her or its lodging unit
53 contract for successive terms not to extend beyond the termination date of the state's lease with
54 the United States Army Corps of Engineers; or, in the event that the state's lease with the United
55 States Army Corps of Engineers is extended beyond the termination date of the lease as of July
56 1, 2007, not to exceed five 10-year extensions or renewals beyond the termination date of the
57 lease between the state and the United States Army Corps of Engineers in effect as of July 1,
58 2007: *Provided*, That the party extended the renewal rights is in compliance with all material rights,
59 duties and obligations arising under his ~~or her~~, her or its contract and all relevant and applicable
60 provisions of federal, state and local laws, rules, regulations, contracts or agreements at the time
61 of renewal: *Provided, however*, That if ~~and in the event~~ the director makes an affirmative
62 determination that further renewals beyond the time periods set forth in this subsection are in the
63 best interest of the state and Stonewall Jackson Lake State Park, giving due consideration to
64 financial, operational and other considerations deemed relevant and material by the director, that
65 the director may authorize further renewals;

66 (D) That all rights and privileges arising under a lodging unit contract shall be transferred
67 to the state or the state's designee upon the expiration or termination of the contract, upon the
68 terms and conditions as each contract may provide or as may otherwise be agreed upon between
69 the parties;

70 (E) That the state is not, ~~and cannot be,~~ obligated for any costs, expenses, fees, or other
71 charges associated with the development of the additional lodging units under this subsection or
72 the operation and maintenance of the additional lodging units over time, including, but not limited
73 to, costs associated with infrastructure improvements associated with development or operation
74 of the additional lodging units. In his or her discretion, the director may engage professionals to
75 assist the state in connection with its review and oversight of development of the additional lodging
76 units;

77 (F) That at any time following the initial term and first renewal period of any lodging unit
78 contract entered into with a private party with respect to an additional lodging unit that is
79 constructed under this section, the state shall have the right and option, in its sole discretion, to
80 purchase a lodging unit or lodging units in accordance with the provisions of this subsection and
81 any and all contracts that may be entered into from time to time under this section;

82 (G) That ~~at its sole option and discretion,~~ the state may elect to purchase a lodging unit
83 from a private party. ~~In that event, If~~ the private party ~~shall be~~ is paid the fair value of the private
84 party's residual rights and privileges under the lodging unit contract, the residual rights and
85 privileges to be valued generally in accordance with the valuation standards set forth in the
86 National Park Service's standard contract provisions, or other relevant federal agency standards
87 applicable to similar or like contract rights and provisions as may be in existence at the time of
88 transfer, all as the same may be ~~deemed~~ considered relevant and appropriate by the director,
89 and all in the exercise of the director's reasonable discretion. Nothing in this section is intended
90 or ~~shall~~ may be construed to impose an obligation on the state to purchase, buy, buy out or
91 otherwise acquire or pay for any lodging unit under this section, or to limit the right and ability of
92 a private party to donate or contribute his or ~~her,~~ her or its interest in and to any lodging unit
93 constructed under this section to the state or any charitable foundation that may be established
94 and operating from time to time to support the continued operation and development of Stonewall
95 Jackson Lake State Park;

96 (H) That the state ~~shall have~~ has no obligation whatsoever to purchase, buy, buy out or
97 otherwise acquire or pay for any lodging unit that is developed or constructed under this section;
98 and

99 (I) The director ~~shall have the right to~~ may review and approve the form and content of all
100 contracts that may be entered into pursuant to this subsection in connection with the development,
101 operation, and maintenance of additional lodging units at Stonewall Jackson Lake State Park.

NOTE: The purpose of this bill is to extend the existing authority of the director to enter into third party contracts for the financing, construction, and operation of recreational, lodging, and ancillary facilities to all West Virginia state parks, state forests, and state rail trails.

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