

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4408

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

COOPER, MILLER AND FERRELL

[Passed March 12, 2022; in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

§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 may:

3 (1) Enter into contracts with third parties for the financing, construction, and operation of
4 new recreational, lodging, and ancillary facilities at all state parks and state forests under the
5 jurisdiction of the Division of Natural Resources except for Watoga State Park. The contracts may
6 allow and recognize both direct and subsidiary investment arrangements. The term of the
7 contracts may not exceed a period of 40 years, at which time the full title to the recreational
8 facilities shall vest in the state, except as otherwise provided in this section;

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

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

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

18 (b) Any contract entered into pursuant to this section shall be approved prior to execution
19 by the Secretary of the Department of Commerce, the Secretary of the Department of Tourism,
20 and the Secretary of the Department of Economic Development.

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

23 (d) The director shall provide prior electronic notice of any contract, extension, and
24 renewal entered into pursuant to this section to the Joint Committee on Government and Finance.

25 (e) Any vendor which is contracted with pursuant to this section may not employ or contract
26 with the individual who holds the position of director when the contract is executed for a period of
27 one year following the individual's separation from the position of director.

28 (f) Prior to initiating a contract for new recreational, lodging, and ancillary facilities at all
29 state parks and state forests under the jurisdiction of the Division of Natural resources, the director
30 shall conduct a public hearing to be held at a reasonable time and place within the county in which
31 the facility is located. Notice of the time, place and purpose of the public hearing shall be provided
32 as a Class II legal advertisement in accordance with §59-3-2 of this code which notice shall be
33 given at least for the first publication 20 days in advance of the hearing.

34 (g) *Stonewall Jackson Lake State Park.* —

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

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

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

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

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

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

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

76 (E) That the state is not obligated for any costs, expenses, fees, or other charges
77 associated with the development of the additional lodging units under this subsection or the
78 operation and maintenance of the additional lodging units over time, including, but not limited to,
79 costs associated with infrastructure improvements associated with development or operation of
80 the additional lodging units. In his or her discretion, the director may engage professionals to
81 assist the state in connection with its review and oversight of development of the additional lodging
82 units;

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

88 (G) That the state may elect to purchase a lodging unit from a private party. If the private
89 party is paid the fair value of the private party's residual rights and privileges under the lodging
90 unit contract, the residual rights and privileges to be valued generally in accordance with the
91 valuation standards set forth in the National Park Service's standard contract provisions, or other
92 relevant federal agency standards applicable to similar or like contract rights and provisions as
93 may be in existence at the time of transfer, all as the same may be considered relevant and
94 appropriate by the director, and all in the exercise of the director's reasonable discretion. Nothing
95 in this section is intended or may be construed to impose an obligation on the state to purchase,
96 buy, buy out or otherwise acquire or pay for any lodging unit under this section, or to limit the right
97 and ability of a private party to donate or contribute his or her or its interest in and to any lodging

98 unit constructed under this section to the state or any charitable foundation that may be
99 established and operating from time to time to support the continued operation and development
100 of Stonewall Jackson Lake State Park;

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

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

106 (h) Any facilities constructed under the authority granted under this section must be in
107 accordance with the purpose, powers, and duties of the Section of Parks and Recreation as
108 provided by §20-5-3 of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor