

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4408**

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COOPER, MILLER AND FERRELL

[Originating in the Committee on Government

Organization; February 21, 2022]



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. Any  
12 facilities constructed under the authority granted under this section must be in accordance with  
13 the purpose, powers, and duties of the Section of Parks and Recreation in accordance with the  
14 provisions of §20-5-3 et seq. of this code.

15 (b) Prior to initiating a contract for a previously state-operated state park lodge, cabin,  
16 campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall  
17 conduct a public hearing to be held at a reasonable time and place within the county in which the  
18 facility is located. Notice of the time, place and purpose of the public hearing shall be provided as

19 a Class II legal advertisement in accordance with ~~the provisions of~~ §59-3-2 of this code which  
20 notice shall be given at least for the first publication 20 days in advance of ~~said~~ the hearing.

21 (c) Any contract entered into by the director shall provide an obligation upon the part of  
22 the operator that he or she maintain a level of performance satisfactory to the director and shall  
23 further provide that any contract may be terminated by the director ~~in the event~~ if he or she  
24 determines that the performance is unsatisfactory and has given the operator reasonable notice  
25 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) The director shall provide prior electronic notice of any contract, extension, and  
26 renewal entered into pursuant to this section to the Joint Committee on Government and Finance.  
27 ~~Except as otherwise authorized by this section, no extension or renewal beyond the original~~  
28 ~~twenty-five year term may be executed by the director absent the approval of the Joint Committee~~  
29 ~~on Government and Finance.~~

30 (e) *Stonewall Jackson Lake State Park.* —

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

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

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

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

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

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

68 (D) That all rights and privileges arising under a lodging unit contract shall be transferred  
69 to the state or the state's designee upon the expiration or termination of the contract, upon the

70 terms and conditions as each contract may provide or as may otherwise be agreed upon between  
71 the parties;

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

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

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

96 and operating from time to time to support the continued operation and development of Stonewall  
97 Jackson Lake State Park;

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

100 and

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

104 (f) Any facilities constructed under the authority granted under this section must be in  
105 accordance with the purpose, powers, and duties of the Section of Parks and Recreation in  
106 accordance with the provisions of §20-5-3 et seq. of this code.

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.