

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 485

FISCAL  
NOTE

BY SENATORS SYPOLT AND SMITH

[Introduced January 25, 2022; referred  
to the Committee on Natural Resources; and then to  
the Committee on Finance]

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~~ 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 (l) 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.