WEST VIRGINIA CODE CHAPTER 20 ARTICLE 14

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§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway motor vehicle enthusiasts. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented recreation facilities could exist on private property without diminishing the landowner's interest, control, or profitability in the land and without increasing the landowner's exposure to liability.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the economic benefits of trail development are only realized when the ridership is concentrated in specific areas. Before private capital will be brought to the marketplace in support of a recreational trail system, a density of trail ridership must be demonstrated and sustained over a period of years to warrant the investment. Therefore, any expansion of the state's recreational trail systems must be strategic and require a showing that the new trail system would not only expand visitation, but would not materially detract from the visitation and ridership on existing trail systems where numerous private and public investments have already been made.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups, and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make available for public use through the Hatfield-McCoy Regional Recreation Authority land for these recreational purposes by limiting their liability for injury to persons entering thereon, by limiting their liability for injury to the property of persons entering thereon, and by limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

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§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(a) “Authority” means the Hatfield-McCoy Regional Recreational Authority;

(b) “Board” means the board of the Hatfield-McCoy Regional Recreation Authority;

(c) “Charge” means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by the authority: Provided, That the authority may set charges in differing amounts for different categories of participants, including, but not limited to, in-state and out-of-state participants, as the authority sees fit;

(d) “Hatfield-McCoy Recreation Area” means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities that are a part of the system;

(e) “Land” includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment thereon when attached to the realty;

(f) “Owner” means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

(g) “Participant” means any person using the land, trails, and facilities of the Hatfield-McCoy Recreation Area;

(h) “Participating county or counties” means the counties of Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint development entity and to participate in its governance; and

(i) “Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or motor vehicle driving and riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites, or otherwise using land for purposes of the user.

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§20-14-3. Creation; appointment of board; terms.

(a) The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously created by this section is hereby converted to a new public corporation created as a joint development entity of the participating counties for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway motor vehicle enthusiasts. This recreational trail system shall be located in the counties of Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of no more than two times the number of participating counties who shall be representative of the various interests involved in the Hatfield-McCoy Recreation Area project in the participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint one member of the board who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas, or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(2) The county commission of each participating county, as defined in §20-14-2 of this code, shall appoint one member of the board who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed to a four-year term.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint development entity does not terminate or interrupt its status as a public corporation. The amendments to this article made during the 2015 regular session of the Legislature do not alter the debts, liabilities, responsibilities, or other obligations of any party with regard to this public corporation.

(d) The Hatfield-McCoy Regional Recreation Authority is a “public body” for purposes of the

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West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

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§20-14-4. Board; quorum; executive director; expenses.

The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

The board shall meet quarterly, unless a special meeting is called by its chairman: Provided, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall elect a chairman, secretary, and Treasurer from among its own members.

Ten members of the board constitute a quorum and a quorum shall be present for the board to conduct business.

The board may prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants, and shall review and approve an annual budget. The fiscal year for the authority begins on July 1 and ends on the thirtieth day of the following June.

The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits, and total compensation. Before August 15 the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

All costs incidental to the administration of the authority, including office expenses, personal services expense, and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

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§20-14-4a. Financial review and oversight.

(a) The authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county and the Legislative Auditor. The cost of the audit shall be paid by the authority.

(b) If the authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures and performance of the Hatfield-McCoy Regional Recreation Authority and for these purposes shall have the power to inspect the properties, equipment, facilities of the authority and to request, inspect and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within forty-five days of the close of that fiscal year.

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§20-14-5. Powers of authority.

The authority, as a public corporation and joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold and dispose of property, real and personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations or assets in such amounts and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements and provide such other legal services as may be requested by the authority;

(8) To adopt, use and alter at will a corporate seal;

(9) To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;

(10) To appoint officers, agents and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;

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(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue notes and to provide for the payment of notes and to provide for the rights of the holders of the notes and to purchase, hold and dispose of any of its notes;

(15) To issue notes payable solely from the revenues or other funds available to the authority, and the authority may issue its notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on notes issued by it whether the notes or interest to be funded or refunded have or have not become due;

(B) The establishment or increase of reserves to secure or to pay notes or the interest on the notes and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than ten years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption or payment of the notes to be refunded;

(18) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants;

(19) To the extent permitted under its contracts with the holders of notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate and manage the Hatfield-McCoy Recreation Area at the locations within the participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the Hatfield-McCoy Recreation Area and to reimburse the Division of Natural Resources for its costs therefor;

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(22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy Recreation Area at such locations within the participating counties as may be determined by the authority;

(23) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

(24) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(25) To develop, maintain and operate or to contract for the development, maintenance and operation of the Hatfield-McCoy Recreation Area;

(26) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

(27) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers or other facilities which are part of the Hatfield-McCoy Recreation Area and to retain and utilize that revenue for any purposes consistent with this article;

(28) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Hatfield-McCoy Recreation Area; and

(29) To directly operate and manage recreation activities and facilities within the Hatfield-McCoy Recreation Area.

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§20-14-6.

Repealed.

Acts, 2015 Reg. Sess., Ch. 117.

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§20-14-7.

Repealed.

Acts, 2015 Reg. Sess., Ch. 117.

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§20-14-8. Prohibited acts, penalty.

(a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for recreational purposes;

(b) A person may not consume or possess any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, or wine at any time or any location within the Hatfield-McCoy Recreation Area.

(c) The operator and all passengers of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute Standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation Safety Standards for protective headgear for vehicle users.

(d) Each trail user shall obey all traffic laws, traffic-control devices, and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles, or those equipped with roll cages.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

(f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one-half hour after sunset until one-half hour before sunrise, except in an emergency.

(g) Every person within the Hatfield-McCoy Recreation Area who is under 16 years of age shall at all times be under the immediate supervision of, and within sight of, a person who is at least 18 years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian, or supervising adult may allow a child under the age of 16 years to leave that person’s sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.

(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance, or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area is subject to all of the duties applicable to the driver of a motor vehicle by the provisions of §17C-1-1 et seq. of this code except where inconsistent with the provisions of this article and

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except as to those provisions of §17C-1-1 et seq. of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in §17F-1-1 et seq. of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety standard and properly worn by the driver and all passengers.

(m) (1) No child under the age of six years may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(2) No child under the age of eight years who is required to be placed in a child passenger safety device system meeting applicable federal motor vehicle safety standards pursuant to §17C-15-46 of this code while occupying a motor vehicle may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(3) All persons operating or riding upon an ATV, UTV, or motorcycle as defined in §20-15-1 et seq. of this code shall follow the manufacturer's recommendations for that vehicle relating to age and size limitations for operators and passengers.

(n) (1) A person who violates any provision of this section, except for subsection (e), is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

(2) A person who violates subsection (e) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000: Provided, That in the event the person's violation of subsection (e) of this section causes damage to a landowner's property outside of the designated and marked trail within the Hatfield-McCoy Recreation Area or interferes with a landowner's or lawful possessor's use of the property outside of the designated and marked trail within the Hatfield-McCoy Recreation Area, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2,000.

(3) Prosecution or conviction for the misdemeanors described in this subsection may not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

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§20-14-9. Limiting liability.

(a) An owner of land used by, or for the stated purposes of, the Hatfield-McCoy Regional Recreation Authority, whether with or without charge, owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure or activity on the premises to persons entering for those purposes.

(b) Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the authority for recreational purposes, whether with or without charge, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the authority for recreational purposes does not by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.

(c) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: Provided, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself.

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§20-14-10. Purchasing and bidding procedures.

(a) Whenever the authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed $2,500 in cost, the purchase or contract shall be based on competitive bids. Where the purchase of particular commodities or services is reasonably anticipated to be $25,000 or less, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state master contracts as provided in section ten-e, article three, chapter five-a of this code.

(b) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed $25,000, the executive director shall solicit sealed bids for the commodities or services to be provided: Provided, That the executive director may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of article three, chapter fifty-nine of this code and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority's budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(c) For any contract that exceeds $25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least fifty percent of the contract price conditioned upon faithful performance and completion of the contract.

(d) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreation area, information distribution and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage or administrative facilities.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than $10 nor more than $1000, or both confined and fined.

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§20-14-11. Conflicts of interest prohibiting certain contracts.

(a) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the board or an employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority or to any vendor or prospective vendor in which a member of the board or employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority has an ownership interest of greater than five percent.

(b) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the West Virginia Legislature, or a spouse, sibling, child or parent of a member of the Legislature, or to any vendor or prospective vendor in which a member of the Legislature or a spouse, sibling, child or parent of a member of the Legislature, has an ownership interest of greater than five percent.

(c) All responses to bid solicitations, requests for quotation, requests for proposal, contracts, change orders and contract renewals with the authority submitted or approved under the provisions of this article shall include an affidavit that the vendor or prospective vendor is not in violation of this section.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than $10 nor more than $1000, or both confined and fined.

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§20-14-12. Civil remedies for unlawful purchasing and contracts.

The county commission of any participating county may challenge the validity of any contract or purchase entered, solicited or proposed by the authority in violation of section ten or eleven of this article by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of section ten or eleven of this article have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

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§20-14-13. Authorization to contract to build and maintain trails on private property.

The Hatfield-McCoy Regional Recreation Authority shall be authorized to contract to build and maintain trails on privately owned property, with the consent of the private property owner. This authorization shall allow the authority to build and/or maintain motorized and nonmotorized trails.

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