# WEST VIRGINIA CODE CHAPTER 20 ARTICLE 5A

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## §20-5A-1. Establishment of fund; deposits; expenditures; investments; use of fund for the State Parks Enhancement Loan Insurance Program.

(a) There is continued in the office of the State Treasurer a special revenue account fund to be known as the West Virginia State Parks and Recreation Endowment Fund.

(b) The following shall be deposited into the fund:

(1) The royalties received from the leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries; and

(2) The proceeds of any gifts, grants, contributions, or other moneys accruing to the state which are specifically designated for inclusion in the fund.

(c) The board of trustees established pursuant to this article shall invest the assets of the fund consistent with the provisions of §12-6-1 of this code.

(d) Expenditures from the fund shall be for the purposes set forth in this section and are to be made in accordance with appropriation of the Legislature under the provisions of §12-3-1 *et seq*. of this code, and in compliance with the provisions of §11B-2-1 *et seq*. of this code as follows:

(1) Income accruing from investments of the fund pursuant to this article shall be distributed or expended at the direction of the board for either of the following purposes: (A) Maintenance, repair, and improvement of any existing recreational facilities, including any supporting or related infrastructure and associated recreational features, all to provide uninterrupted enjoyment and public use of state parks, state forests, and state rail trails.

(B) Maintenance, repair, and procurement of any fixture, furnishing, and equipment necessary to provide uninterrupted enjoyment and public use of state parks, state forests, and state rail trails.

(2) Notwithstanding the provisions of §5A-11-3(a), on and after July 1, 2026, fifty percent of the royalties received from the leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries deposited into the fund shall be distributed or expended for the operation, maintenance and improvement of the state parks, state forests and state rail trails by the director: *Provided*, That when the balance in the fund equals or exceeds $100 million, one hundred percent of the royalties received from the leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries deposited into the fund shall be distributed or expended for the operation, maintenance and improvement of the state parks, state forests and state rail trails by the director: *Provided, however*, That if the balance in the fund is less than $100 million, the amount of the royalties received from the leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries that may be distributed or expended for the operation, maintenance and improvement of the state parks, state forests and state rail trails shall be reduced to fifty

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percent until such time as the balance equals or exceeds $100 million.

(e) Notwithstanding any other provision of this article to the contrary, the assets of the fund may be used by the board of trustees to facilitate or provide collateral for the State Parks Enhancement Loan Insurance Program established in §20-5A-3 of this code: *Provided*, That no amount of the fund's income from investments may be used to provide loan insurance.

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## §20-5A-2. Board of trustees.

(a) A board of trustees is hereby created to administer the State Parks and Recreation Endowment Fund.

(b) The board shall be composed of the Director of the Division of Natural Resources, serving as chair, the Chief of the Parks and Recreation Section of the Division of Natural Resources, the executive secretary of the division, the division fiscal officer, and the President of the West Virginia State Parks Foundation, who shall serve as voting ex officio members, and six voting members to be appointed by the Governor. Two of the appointed members shall be state park superintendents and four of the appointed members shall be selected from citizen membership of state park associations that represent a lodge state park, a cabin state park, a day-use state park, a state forest, or a state rail trail under the jurisdiction of the division: *Provided*, That to the extent possible, the Governor shall appoint the citizen members to ensure an equal geographic representation throughout the state and their terms shall be staggered from July 1, 2020. Of the citizen members first appointed, two citizen members shall be appointed for a term of three years; and two citizen members shall be appointed for a term of four years. Successors to appointed citizen members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed citizen member may not serve for more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

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## §20-5A-3. State Parks Enhancement Loan Insurance Program.

(a) Legislative findings and purpose.

(1) The Legislature finds that certain areas of the state currently have existing developments or attractions, including, but not limited to, developments in West Virginia State Parks and resorts that are constructed on U.S. Army Corps of Engineers property, wherein such attractions and developments are unable to serve as collateral for loans. Because of this, the expansion of tourism and development projects in these areas is severely restricted or significantly impeded.

(2) The purpose of this section is to establish the State Parks Enhancement Loan Insurance Program, which may provide for the guarantee of a loan made to an eligible entity to be used exclusively for further development on these properties to encourage economic development and tourism.

(b) Terms defined. – As used in this section, unless the context clearly indicates otherwise:

(1) Board of trustees means the board provided for in §20-5A-2 of this code.

(2) Development project means any new project, or any project at any existing development or attraction, being pursued by a private entity, which has established a partnership or agreement with the division to operate on U.S. Army Corps of Engineers property, State Parks and resorts property, any other property under the jurisdiction of the division, or on a hybrid tourism destination, for the purpose of increasing recreational opportunities, tourism, and economic development.

(3) Director means the director of the Division of Natural Resources.

(4) Division means the Division of Natural Resources.

(5) Eligible entity means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity operating or intending to operate a development project, whether owned or leased, that receives the approval pursuant to this section to apply for an insurance agreement under the State Parks Enhancement Loan Insurance Program.

(6) Program means the State Parks Enhancement Loan Insurance Program.

(c) The State Parks Enhancement Loan Insurance Program is established. The program may insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an eligible entity with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money. Eligible entities shall submit applications for loan insurance to the board of trustees. By a majority vote, the board of trustees may approve or deny any application. If approved, the board of trustees shall enter into an

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insurance agreement with the eligible entity and any necessary financial institution.

(d) In order to effectuate the purposes of this section, the board of trustees shall cooperate with the West Virginia Economic Development Authority pursuant to §31-15-8b of this code. The board of trustees may utilize the staff and resources of the authority for guidance and assistance in administering the program.

(e) The board of trustees may, subject to a recommendation by the director, establish additional requirements and procedures for the issuance of loan insurance; including, but not limited to, setting the premiums and fees to be paid to it for providing financial assistance under this section. The premiums and fees set by the board of trustees shall be payable in the amounts, at the time, and in the manner that the board of trustees, in its sole and absolute discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount: (1) Among transactions; and (2) at different stages during the terms of transactions.

(f) The board of trustees may, in its sole and absolute discretion, require the security it believes sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt, or other instruments: *Provided*, That the board of trustees may not require a security interest in the real property or permanent improvements which are part of the development project when the eligible entity will not hold ownership on the real or personal property of the development project.

(g) The obligations of the board of trustees under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state, the division, or of any county, municipality, or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment.

(h) The board of trustees may not authorize any amount of loan insurance through the program that exceeds $10 million in the aggregate of the assets existing in the West Virginia State Parks and Recreation Endowment Fund: *Provided*, That no more than $5 million may be authorized for any project: *Provided, however*, That no amount of the fund's income from investments may be used to provide loan insurance. However, any amount of loan insurance issued by the board of trustees shall not require the encumbrance or otherwise segregation of funds within the West Virginia State Parks and Recreation Endowment Fund.

(i) The board of trustees may establish an application and additional procedures or guidelines for the program. Prior to submission of an application to the board of trustees, an eligible entity must receive approval in writing from the Secretary of the Department of Commerce, the Secretary of the Department of Economic Development, and the Secretary of the Department of Tourism.

(j) The West Virginia Department of Commerce shall maintain a list of approved projects

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using this loan insurance program and shall submit this list to the Joint Committee on Government and Finance in the form of an annual report for legislative review.

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