WEST VIRGINIA CODE CHAPTER 29 ARTICLE 1

WV Legislature

§29-1-1. Abolishing the Department of Arts, Culture, and History and reorganizing its sections under the Department of Tourism; sections and commissions; purposes; definitions; effective date.

(a) On July 1, 2025, the Department of Arts, Culture, and History, is abolished and its authorities and duties transferred to the Department of Tourism.

(b) On July 1, 2025, the following sections and commissions shall be reorganized under the Department of Tourism:

(1) The Arts Section;

(2) The Archives and History Section;

(3) The Museums Section;

(4) The Historic Preservation Section;

(5) The State Library Section;

(6) The National Coal Heritage Area Commission;

(7) The Administrative Section;

(8) The Educational Broadcasting Commission;

(9) A Commission on the Arts;

(10) A Commission on Archives and History;

(11) A Library Commission; and

(12) An Educational Broadcasting Council.

(c) On and after July 1, 2025, the Secretary of the Department of Tourism shall exercise control and supervision over each section and commission listed in subsection (b) of this section and shall be responsible for the projects, programs, and actions of each of its sections. The purpose and duty of these sections and commissions is to advance, foster, and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark, and care for historical, prehistorical, archaeological, and significant architectural sites, structures, and objects in the state; to encourage the promotion, preservation, and development of significant sites, structures, and objects through the use of economic development activities such as loans, subsidies, grants, and other incentives; to coordinate all cultural, historical, and artistic activities in state government and at state-owned facilities; to acquire, preserve, and classify books, documents, records, and memorabilia of

WV Legislature

historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the arts, humanities, culture, and history of the state.

(d) The Secretary of the Department of Tourism has jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia Science and Culture Center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided in §29-1-14 of this code; and any other sites as may be transferred to or acquired by the department. Notwithstanding any provision of this code to the contrary, beginning on and after July 1, 2018, the department shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the Capitol Building at Charleston.

(e) For the purposes of this article, "department" means the Department of Tourism and "secretary" means the Secretary of the Department of Tourism. On and after July 1, 2025, references throughout this code to the "Commissioner of Culture and History" or the "Curator of the Department of Arts, Culture, and History" mean the " Secretary of the Department of Tourism and references throughout this code to the "Division of Culture and History" or "Department of Arts, Culture, and History," mean the "Department of Tourism".

WV Legislature

§29-1-1a. Transfer of powers and duties; existing contracts and obligations.

(a) Except as otherwise provided in this article, the powers and duties of the West Virginia antiquities commission, the West Virginia arts and humanities council and the department of archives and history are hereby transferred to the Department of Tourism.

(b) All existing assets, equipment, contracts, and records of the Department of Arts, Culture, and History, the West Virginia antiquities commission, the West Virginia arts and humanities council, and the department of archives and history, or relating to the present science and culture center, shall be transferred to the Department of Tourism.

(c) Beginning on July 1, 2025, all employees of any section or commission listed in §29-1-1(b) of this code shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq*. of this code and from the classified civil service system under §29-6-1 *et seq*. of this code except that:

(1) All employees of any section or commission listed in §29-1-1(b) of this code who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of any section or commission listed in §29-1-1(b) of this code who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of any section or commission listed in §29-1-1(b) of this code that leaves his or her position and remains an employee within the Department of Tourism shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq*. of this code.

(d) The secretary shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal regulation, or the requirements for receipt of federal funding or assistance.

(e) Nothing in this article shall prevent a person, at the secretary's discretion, from serving in multiple positions or professions within the sections or commissions listed in §29-1-1(b) of this code.

(f) Subsection (c) of this section shall not apply to any position appointed by the Governor.

(g) Nothing in this section shall exempt any section or commission listed in §29-1-1(b) of this code from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

WV Legislature

§29-1-1b.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§29-1-2. General powers of secretary.

(a) The secretary shall assign and allocate space in all facilities assigned to the department and all space in the building presently known as the West Virginia Science and Culture Center, and any other buildings or sites under the control of the department, and may, in accordance with the provisions of §29A-3-1 *et seq*. of this code, prescribe rules, regulations and fees for the use and occupancy of said facilities, including tours.

(b) The secretary shall coordinate the operations and affairs of the sections and commissions of the department and assign each section or commission responsibilities according to criteria the curator deems most efficient, productive and best calculated to carry out the purposes of this article. The secretary shall provide to the fullest extent possible for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. The secretary may establish such other sections for such purposes as he or she deems necessary, and may appoint directors thereof. The secretary may appoint a director of the West Virginia Science and Culture Center. The secretary shall serve as the state historic preservation officer.

(c) The secretary shall prepare a proposed department budget for submission to the Governor for each fiscal year.

(d) No contract, agreement or undertaking may be entered into by any section of the department or any section thereof which involves the expenditure of funds without the express written approval of the secretary as to fiscal responsibility.

(e) The secretary shall prepare and submit to the Governor an annual report in accordance with the provisions of §5-1-20 of this code, which report shall include a detailed account of the activities of each section and commission of the department.

(f) The secretary shall employ all personnel for the sections, except for persons in the professional positions established within the sections as provided in this article; and shall supply support services to the commissions and to the Governor’s Mansion Advisory Committee.

(g) On and after July 1, 2025, the secretary may grant or withhold written consent to the proposal of any rule, as defined by §29A-1-2 of this code, by any section or commission listed in §29-1-1(b) of this code. Without the secretary’s written consent, no proposal for a rule filed by any section or commission listed in §29-1-1(b) of this code after July 1, 2025, shall have any force or effect.

(h) The secretary may proposal a repeal, pursuant to either §29A-3-1a(b) or §29A-3-8(c) of this code, as appropriate, of any rule promulgated by the Department of Arts, Culture, and History, the Division of Culture and History, or any section or commission listed in §29-1-1(b) of this code.

WV Legislature

§29-1-3. Commission on the Arts.

(a) The Commission on the Arts is continued and shall be composed of 15 appointed voting members, the secretary as an ex officio voting member, the director of the arts section as an ex officio nonvoting member, and the ex officio nonvoting members set forth or authorized for appointment in this section.

(b)(1) The Governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(2) No more than eight appointed voting members may be of the same political party. Appointed voting members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state, and the geographic regions of the state.

(3) The commission shall elect one of its members as chair. It shall meet at the times specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the voting members constitute a quorum for the transaction of business. The director of the arts section shall serve as secretary. The curator or a majority of the members also may call a meeting upon notice as provided in this section.

(4) Each member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that if the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, may not be reimbursed by the state.

(5) Upon recommendation of the secretary, the Governor also may appoint those officers of the state that are appropriate to serve on the commission as ex officio nonvoting members.

(c) The commission may:

(1) Advise the secretary and the director of the arts section concerning the accomplishment of the purposes of that section and establish a state plan with respect to the arts section;

(2) Approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section;

(3) Request, accept, or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit those actions by the secretary or section director, but would permit them to be done by the commission on the arts;

(4) Otherwise encourage and promote the purposes of the arts section.

WV Legislature

(d) A special revenue account in the State Treasury, known as the "Cultural Facilities and Capital Resources Matching Grant Program Fund", is continued. The fund shall consist of moneys received under §29-22A-10 of this code and funds from any other source. The moneys in the fund shall be expended in accordance with the following:

(1) Fifty percent of the moneys deposited in the fund shall be expended by the Commission on the Arts for capital improvements, preservation, and operations of cultural facilities: *Provided*, That the Commission on the Arts may use no more than 25 percent of the funding for operations of cultural facilities pursuant to the rule required by this subdivision. The Commission on the Arts shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to create a matching grant program for cultural facilities and capital resources; and

(2) Fifty percent of the moneys deposited in the fund shall be expended by the Department of Tourism for:

(A) Capital improvements, preservation, and operation of cultural facilities that are managed by the department; and

(B) Capital improvements, preservation, and operation of cultural facilities that are not managed by the department.

WV Legislature

§29-1-4. Arts section; director.

(a) The purposes and duties of the arts section are to stimulate, encourage, assist, promote, foster and develop the performing and creative arts and crafts in the state; and in furtherance thereof to make awards, prizes and grants to individual performers, artists or craftsmen and to public or private corporations or associations in the field of either the performing or creative arts and crafts that would tend to encourage and foster the advancement of such arts and crafts; to support cultural, artistic or craft exhibits or performances at the department's facilities or on tour; and to perform such other duties as may be assigned to said section by the secretary.

(b) The secretary shall appoint a director of the arts section who is qualified, with relevant experience.

(c) With the approval of the secretary, the director shall establish professional positions within the section. The director shall employ the personnel within these professional positions for the section: *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(d) The director may propose rules for legislative promulgation, in accordance with the provisions of §29A-3-1 *et seq*. of this code, concerning the professional policies and functions of the arts section, subject to the approval of the secretary.

WV Legislature

§29-1-5. Archives and history commission.

(a) The archives and history commission which is hereby created shall be composed of thirteen appointed members and six ex officio nonvoting members as provided in this section.

(b) The Governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(c) No more than seven of the appointed members may be of the same political party. Members of the commission should be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state. The archives and history commission shall contain the required professional representation necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended, and shall serve as the "state review board" and shall follow all rules and regulations as specified therein. This representation shall include the following professions: Historian, architectural historian, historical architect, archaeologist specializing in historic and prehistoric archaeology, archivist, librarian and museum specialist.

(d) The commission shall elect one of its members chair. It shall meet at such time as shall be specified by the chair, or in accordance with the provisions of subsection (g) of this section. A majority of the voting members shall constitute a quorum for the transaction of business.

(e) The commission shall be comprised of:

(1) The thirteen appointed, voting members; and

(2) The following six ex officio, nonvoting members:

(A) The Director of the State Geological and Economic Survey;

(B) The President of the West Virginia Preservation Alliance, Inc.;

(C) The State Historic Preservation Officer;

(D) The Director of the Archives and History Section;

(E) The Director of the Historic Preservation Section; and

(F) The Director of the Museums Section.

(f) The Director of the Archives and History Section shall serve as secretary of the commission.

WV Legislature

(g) Notice of each meeting shall be given to each member by the chair in compliance with the open meetings law. The secretary, or a majority of the members, may also call a meeting upon such notice as provided in this section.

(h) Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the commission; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

(i) The commission shall have the following powers:

(1) To advise the commissioner and the directors of the archives and history section, the historic preservation section and the museums section concerning the accomplishment of the purposes of those sections and to establish a state plan with respect thereto;

(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the archives and history section, the historic preservation section and the museums section;

(3) To request, accept or expend federal funds to accomplish the purposes of the archives and history section, the historic preservation section and the museums section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the archives and history commission;

(4) To otherwise encourage and promote the purposes of the archives and history section, the historic preservation section and the museums section;

(5) To approve rules and regulations concerning the professional policies and functions of the archives and history section, the historic preservation section and the museums section as promulgated by the directors of those sections;

(6) To advise and consent to the appointment of the section directors by the commissioner; and

(7) To review and approve nominations to the state and national registers of historic places.

WV Legislature

§29-1-6. Archives and history section; director.

(a) The purposes and duties of the archives and history section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the secretary for acquisition documents and records having historical, evidential, administrative and/or legal value relating to the State of West Virginia and the territory included in the state from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation of the documents and records; to direct, protect, preserve, study and disseminate information on the documents and records; to provide matching grants to political subdivisions of this state to protect and preserve the documents and records; to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards, commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to designate appropriate monuments, tablets or markers for historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of, and maintenance of the monuments, tablets, and markers and to formulate and prepare suitable copy for them; to edit and publish a historical journal devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform any other duties assigned to the section by the commissioner.

(b) The secretary shall appoint a director of the archives and history section, who shall be qualified, with relevant experience. The person serving as the state historian and archivist on the date of enactment of this article is eligible for appointment as the director of the archives and history section. The director of the archives and history section shall serve as the state historian and archivist.

(c) With the approval of the secretary, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications. At the minimum, the following professions shall be represented within the section staff: Historian, archivist, librarian and technical and clerical positions as are required : *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(d) The director shall promulgate rules with the approval of secretary and in accordance with §29A-3-1 *et seq*. of this code concerning: (1) The professional policies and functions of the archives and history section; and (2) any other rules determined necessary to effectuate the purposes of this article.

WV Legislature

§29-1-7. Museums section; director.

(a) The purposes and duties of the museums section are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the secretary for acquisition historic objects worthy of preservation, relating to the State of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such objects; to direct, protect, excavate, preserve, study or develop such objects; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to operate and maintain a state museum, and to coordinate activities with other museums in the state; and to perform such other duties as may be assigned to the section by the secretary.

(b) With the advice and consent of the secretary, in addition to the duties above set forth, the section shall determine the whereabouts of and require the return of furnishings and objects missing from the capitol building and other state-owned or controlled buildings, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except pursuant to the provisions of §5A-3-1 *et seq*. of this code. If furnishings originally designated as capitol building furnishings have been sold or otherwise disposed of without the requisite sale procedures, such furnishings shall be returned to the capitol and, upon presentation of proof of the amount paid, the current owner shall be reimbursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

(c) The secretary shall appoint a director of the museums section, who shall be qualified, with relevant experience.

(d) With the approval of the secretary, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure and section. At the minimum, the following professions shall be represented within the section staff: Curator and such technical and clerical positions as are required: *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(e) The director shall promulgate rules with the approval of the secretary and in accordance with §29A-3-1 *et seq*. of this code concerning: (1) The professional policies and functions of the museums section; and (2) such other rules and regulations as may be deemed necessary to effectuate the purposes of this section.

WV Legislature

§29-1-7a.

Repealed.

Acts, 1991 Reg. Sess., Ch. 42.

WV Legislature

§29-1-8. Historic preservation section; director.

(a) The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the secretary for acquisition historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation, including human skeletal remains, graves, grave artifacts and grave markers, relating to the State of West Virginia and the territory included therein from the earliest times to the present upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of the sites, structures and objects; to direct, protect, excavate, preserve, study or develop the sites and structures; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the section; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the section; to develop and maintain a West Virginia State Register of Historic Places for use as a planning tool for state and local government; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological and prehistoric and historic features under the provisions of §29-1-8a of this code; and to perform any other duties as may be assigned to the section by the secretary.

(b) The secretary shall appoint a director of the historic preservation section who shall be qualified, with relevant experience. The director of the historic preservation section shall serve as the deputy state historic preservation officer.

(c) With the approval of the secretary, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended. At the minimum, the following professions shall be represented within the section staff: Historian, architectural historian, a structural historian who specializes in historical preservation, an archaeologist specializing in historic and prehistoric archaeology and such technical and clerical positions as are required : *Provided*, That nothing in this subsection shall prevent a qualified person from serving in multiple professions within this section or any section listed in §29-1-1(b) of this code.

(d) The director shall promulgate rules with the approval of the secretary and in accordance with §29A-3-1 *et seq*. of this code concerning: (1) The professional policies and functions of the historic preservation section; (2) the review of and, when required, issuance of permits for all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia State Register of Historic Places, including the criteria for eligibility of buildings, structures,

WV Legislature

sites, districts and objects for the state Register and procedures for nominations to the state Register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes and shall coordinate standards with the appropriate regulatory officials for their application; and (6) any other rules as may be considered necessary to effectuate the purposes of this article.

WV Legislature

§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

(a) Legislative findings and purpose. --

The Legislature finds that there is a real and growing threat to the safety and sanctity of unmarked human graves in West Virginia and the existing laws of the state do not provide equal or adequate protection for all such graves. As evident by the numerous incidents in West Virginia which have resulted in the desecration of human remains and vandalism to grave markers, there is an immediate need to protect the graves of earlier West Virginians from such desecration. Therefore, the purpose of this article is to assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

The Legislature also finds that those persons engaged in the scientific study or recovery of artifacts which have been acquired in accordance with the law are engaged in legitimate and worthy scientific and educational activities. Therefore, this legislation is intended to permit the appropriate pursuit of those lawful activities.

Finally, this legislation is not intended to interfere with the normal activities of private property owners, farmers, or those engaged in the development, mining or improvement of real property. (b) Definitions. --

For the purposes of this section:

(1) "Human skeletal remains" means the bones, teeth, hair or tissue of a deceased human body;

(2) "Unmarked grave" means any grave or location where a human body or bodies have been buried or deposited for at least fifty years and the grave or location is not in a publicly or privately maintained cemetery or in the care of a cemetery association, or is located within such cemetery or in such care and is not commonly marked;

(3) "Grave artifact" means any items of human manufacture or use that are associated with the human skeletal remains in a grave;

(4) "Grave marker" means any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with a grave;

(5) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government;

(6) "Disturb" means the excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way of human skeletal remains, unmarked graves, grave artifacts or grave markers;

WV Legislature

(7) "Native American tribe" means any Indian tribe, band, nation, or organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(8) "Cultural affiliation" means the relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day group and an identifiable earlier group;

(9) "Lineal descendants" means any individuals tracing his or her ancestry directly or by proven kinship; and

(10) "Proven kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

(c) Acts prohibited; penalties; exceptions. --

(1) No person may excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the Director of the Historic Preservation Section: Provided, That the supervising archaeologist of an archaeological investigation being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder is not required to obtain such permit, but shall notify the Director of the Historic Preservation Section that such investigation is being undertaken and file reports as are required of persons issued a permit under this section: Provided, however, That projects being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five of this article is not required to obtain such permit for excavation, removal, destruction or disturbance of historic or prehistoric ruins or archaeological sites.

(2) A person who, either by himself or herself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the Director of the Historic Preservation Section, or who fails to comply with the terms and conditions of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, confined in jail for not more than six months, or both fined and confined.

(3) A person who, either by himself or herself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without first having been issued a valid permit by the Director of the Historic Preservation Section, or who fails to comply with the terms and conditions relating to disinterment or displacement of human skeletal remains of such permit, is guilty of the felony of disinterment or displacement of a dead human body or parts thereof under section fourteen, article eight, chapter sixty-one of this code and, upon conviction thereof, shall be imprisoned

WV Legislature

in a state correctional facility not more than five years.

(4) A person who intentionally withholds information about the excavation, removal, destruction, or other disturbance of any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than ten days, or both fined and confined.

(5) A person who, either by himself or herself or through an agent, offers for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or confined in jail not more than one year, or both fined and confined.

(6) Each instance of excavation, removal, destruction, disturbance or offering for sale or exchange under subdivisions (1) through (5) of this subsection shall constitute a separate offense.

(7) It is a complete defense in a prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

(8) This subsection does not apply to actions taken in the performance of official law-enforcement duties.

(d) Notification of discovery of human skeletal remains in unmarked locations. --

Upon the discovery of human skeletal remains, grave artifact or grave marker in an unmarked grave on any publicly or privately owned property, the person making such discovery shall immediately cease any activity which may cause further disturbance, make a reasonable effort to protect the area from further disturbance and notify the county sheriff within forty-eight hours of the discovery and its location. If the human remains, grave artifact or grave marker appear to be from an unmarked grave, the sheriff shall promptly, and prior to any further disturbance or removal of the remains, notify the Director of the Historic Preservation Section. The director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site: Provided, That when the discovery is made by an archaeological investigation permitted under state or federal law, the supervising archaeologist shall notify the Director of the Historic Preservation Section directly.

If the Director of the Historic Preservation Section determines that the site has no archaeological significance, the removal, transfer and disposition of the remains shall be subject to the provisions of article thirteen, chapter thirty-seven of this code, and the

WV Legislature

director shall notify the circuit court of the county wherein the site is located.

If the Director of the Historic Preservation Section determines that the site has a potential for archaeological significance, the director shall take such action as is reasonable, necessary and prudent, including consultation with appropriate private or public organizations, to preserve and advance the culture of the state in accordance with the powers and duties granted to the director, including the issuance of a permit for the archaeological excavation or removal of the remains. If the director determines that the issuance of a permit for the archaeological excavation or removal of the remains is not reasonable, necessary or prudent, the director shall provide written reasons to the applicant for not issuing the permit.

(e) Issuance of permits. --

Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director of historic preservation shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and six or eight members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. In the case of Native American sites, the membership of the committee shall be comprised of the chair and six or eight members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia.

In the case of a site of less then five acres, which is owned by an individual or partnership, the ad hoc committee must be formed within thirty days of application for same by the property owner, must meet within sixty days of such application, and must render a decision within ninety days of such application.

All such permits shall at a minimum address the following conditions: (1) The methods by which lineal descendants of the deceased are notified prior to the disturbance; (2) the respectful manner in which the remains, artifacts or markers are to be removed and handled; (3) scientific analysis of the remains, artifacts or markers and the duration of those studies; (4) the way in which the remains may be reburied in consultation with any lineal descendants, when available; (5) methods for the respectful curation of recovered items; and (6) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceased descendants or sponsors are willing to share or assume the costs. A permit to disturb human skeletal remains, grave artifacts or grave markers will be issued only after alternatives to disturbance and other mitigative measures have been considered.

In addition, a person applying for a permit to excavate or remove human skeletal remains, grave artifacts, grave markers, or any historic or prehistoric features of archaeological

WV Legislature

significance may provide to the ad hoc committee information he or she deems appropriate and shall:

(1) Provide a detailed statement to the Director of the Historic Preservation Section giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work;

(2) Provide data and results of any excavation, study or collection in annual reports to the Director of the Historic Preservation Section and submit a final report to the director upon completion of the excavation;

(3) Obtain the prior written permission of the owner if the site of such proposed excavation is on privately owned land; and

(4) Provide any additional information the ad hoc committee deems necessary in developing the permit conditions.

The permits shall be issued for a period of two years and may be renewed at expiration. The permits are not transferable but other persons who have not been issued a permit may work under the direct supervision of the person holding the permit. The person or persons to whom a permit was issued must carry the permit while exercising the privileges granted and must be present at the site whenever work is being done.

Notwithstanding any other penalties to which a person may be subject under this section for failing to comply with the terms and conditions of a permit, the permit of a person who violates any of the provisions of this subsection shall be revoked.

As permits are issued, the Director of the Historic Preservation Section shall maintain a catalogue of unmarked grave locations throughout the state.

(f) Property tax exemption for unmarked grave sites. --

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the Director of the Historic Preservation Section for a determination as to whether such is the case. Upon making such a determination in the affirmative, the Director of the Historic Preservation Section shall provide written certification to the landowner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the Director of the Historic Preservation Section. Additionally, a property owner may establish protective easements for the location of unmarked graves.

(g) Additional provisions for enforcement; civil penalties; rewards for information. --

(1) The prosecuting attorney of the county in which a violation of any provision of this section is alleged to have occurred may be requested by the Director of the Historic

WV Legislature

Preservation Section to initiate criminal prosecutions or to seek civil damages, injunctive relief and any other appropriate relief. The Director of the Historic Preservation Section shall cooperate with the prosecuting attorney in resolving such allegations.

(2) Persons convicted of any prohibited act involving the excavation, removal, destruction, disturbance or offering for sale or exchange of historic or prehistoric ruins, burial grounds, archaeological site, human skeletal remains, unmarked grave, grave artifact or grave marker under the provisions of subdivisions (1) and (2), subsection (c) of this section shall also be liable for civil damages to be assessed by the prosecuting attorney in consultation with the Director of the Historic Preservation Section.

Civil damages may include:

(i) Forfeiture of any and all equipment used in disturbing the protected unmarked graves or grave markers;

(ii) Any and all costs incurred in cleaning, restoring, analyzing, accessioning and curating the recovered material;

(iii) Any and all costs associated with recovery of data, and analyzing, publishing, accessioning and curating materials when the prohibited activity is so extensive as to preclude the restoration of the unmarked burials or grave markers;

(iv) Any and all costs associated with restoring the land to its original contour or the grave marker to its original condition;

(v) Any and all costs associated with reinterment of the human skeletal remains; and

(vi) Any and all costs associated with the determination and collection of the civil damages.

When civil damages are recovered, the proceeds, less the costs of the prosecuting attorney associated with the determination and collection of such damages, shall be deposited into the Endangered Historic Properties Fund and may be expended by the Commissioner of Culture and History for archaeological programs at the state level, including the payment of rewards for information leading to the arrest and conviction of persons violating the provisions of subdivisions (1) and (2), subsection (c) of this section.

(3) The Commissioner of Culture and History is authorized to offer and pay rewards of up to $1,000 from funds on deposit in the Endangered Historic Properties Fund for information leading to the arrest and conviction of persons who violate the provisions of subdivisions (1) and (2), subsection (c) of this section.

(h) Disposition of remains and artifacts not subject to reburial. --

All human skeletal remains and grave artifacts found in unmarked graves on public or private land, and not subject to reburial, under the provisions of subsection (e) of this

WV Legislature

section, are held in trust for the people of West Virginia by the state and are under the jurisdiction of the Director of Historic Preservation. All materials collected and not reburied through this section shall be maintained with dignity and respect for the people of the state under the care of the West Virginia State Museum.

WV Legislature

§29-1-8b. Protection of historic and prehistoric sites; penalties.

Historic and prehistoric landmarks, sites and districts, identified by the historic preservation section, on lands owned or leased by the state, or on private lands where investigation and development rights have been acquired by the state by lease or contract, shall not be disturbed, or destroyed except as permitted under sections eight and eight-a of this article.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

WV Legislature

§29-1-8c. State Library Section.

(a) There is hereby continued a West Virginia State Library Section under the Department of Tourism.

(b) The State Library Commission is continued as an advisory council to support the West Virginia State Library Section, and shall consist of the secretary as an ex officio voting member and six voting members.

(1) The Governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission each for a term of four years:

(A) No more than three appointed members may reside in the same congressional district; and

(B) The Governor shall make the initial appointment of State Library Commission members for staggered terms as follows: Two members, one from each congressional district, for a term of two years; two members, one from each congressional district, for a term of three years; and two members, one from each congressional district, for a term of four years.

(2) No member of the State Library Commission may receive compensation for services rendered, nor be engaged or interested in the publishing business.

(3) On or before the expiration of the terms for which the members are appointed, the Governor shall appoint their successors.

(c)The secretary shall appoint a library section director, to carry out the duties and functions of the State Library Section outlined in this section. The library section director shall be qualified, with relevant experience. The library section director shall also serve as the Secretary of the State Library Commission for the purpose of board meetings.

(d)The State Library Commission shall advise the Secretary of the Department of Tourism and the library section director on carrying out certain duties and functions of the State Library Section, as provided in this section.

(e) General authority of the State Library Section. —

(1) The State Library Section shall provide assistance, advice, and counsel to all school, state-institutional, free and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering them, selecting and cataloging books, and other details of library management, and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

(2) The State Library Section may:

WV Legislature

(A) Receive gifts of money, books, or other property which may be used or held for the purpose or purposes given; and may purchase and operate traveling libraries under such conditions and rules as the commission deems necessary to protect the interests of the state and best increase the efficiency of the service it is expected to render the public.

(B) Purchase suitable books for traveling libraries and distribute them as needed to those persons and places in the state without adequate public library service.

(C) Collect books and other suitable library matter and distribute the same among state institutions desiring the same.

(D) Issue and offer for sale printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state library commissions and libraries, in order to secure the more economical administration of the work for which it was formed.

(E) Conduct courses of library instruction and hold librarians' institutes in various parts of the state.

(F) Perform such other services on behalf of public libraries as it may consider to be in the best interest of the state.

(f) West Virginia Program for Open Education Resources; material description. —

(1) The State Library Section shall establish and maintain the West Virginia Program for Open Education Resources to encourage and facilitate the use of open education resource materials in both higher education and kindergarten through grade 12 in West Virginia schools.

(2) "Open education resource materials" means teaching, learning, and resource materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits low-cost access, use, adaptation, and redistribution by others with no or limited restrictions.

(3) The State Library Commission may consult with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, and the State Superintendent of Schools, or his or her designee, to:

(A) Ascertain what institutions or faculty are currently using open education resource material;

(B) Identify material currently associated with core general education courses and readily available for use by faculty and institutions;

(C) Identify any statutory or other impediments which interfere with selection and use of open education resource materials by administrators or teachers at all levels of instruction in West Virginia schools;

WVLegislature

(D) Identify sources of potential grants for funding for teachers and institutions to use open education resource materials for classes and courses, and propose a competitive application system to award grant funding for those faculty and institutions seeking to use the open education resource materials;

(E) Establish a digital clearinghouse that will function as a publicly accessible database for open education resource material;

(F) Develop strategies to leverage further open education resource material to benefit higher education institutions and school systems, as well as private and foundation support for the project; and

(G) Report no later than July 1 of each year the program's findings, progress, and recommendations to the State Library Section, the Governor, and the chairs of the Legislature's House and Senate Committees on Education.

(g) State Library Section—disposition of monetary gifts. —

(1) If any sums of money are received by the State Library Section as gifts, they shall be paid into the State Treasury and used exclusively for carrying out the provisions of this section, and paying expenses of the State Library Section and the State Library Commission.

(2) The State Library Section shall expend no sums unless they are available by gift, appropriation, or otherwise.

(h) Regional libraries and library areas — establishment and location. —

(1) The State Library Commission is hereby authorized to develop a plan for the establishment and location of regional libraries, and library areas throughout the state, based on a detailed survey to be made by the State Library Commission of the needs of the various localities of the state. A region shall include two or more counties.

(2) On completion of such survey of any proposed region, the State Library Commission shall report their findings to the State Library Section and the state library director, who may refer the proposal to the county commissions or councils of all the counties included in such proposed region. The county commissions or councils may act upon such proposal by resolution, and the votes of a majority of each of the county commissions or councils of the counties included in the proposed region shall be necessary for the adoption of such proposal. The proposal may be amended and resubmitted as necessary.

(3) The State Library Section may, with advice and input from the State Library Commission, and as the state library director may consider necessary or beneficial:

(A) Establish, maintain, and operate a public library for the region;

(B) Appoint a librarian and the necessary assistants, and fix their compensation, such

WV Legislature

appointments to be based upon merit and efficiency as determined by the state library section director. The librarian shall hold a certificate from an approved school of library science and shall have had not less than three years of practical experience in library work. The state library section director may also remove said librarian and other assistants;

(C) Purchase books, periodicals, equipment, and supplies;

(D) Purchase sites and erect buildings, or lease suitable quarters, and have supervision and control of that property;

(E) Borrow books from and lend books to other libraries;

(F) Enter into contracts to receive service from, or give service to, libraries within or without the region and give service to municipalities without the region that have no libraries, or cooperate with and aid generally, without such contracts, public school, institutional, and other libraries;

(G) Make such bylaws, rules, and regulations not inconsistent with this article as may be expedient for the government of regional library areas and the regional libraries therein, and for the purpose of carrying out the provisions of this article; and

(H) Accept for the State of West Virginia any appropriations of money that may hereafter be made out of the federal treasury by an act or acts of Congress and to disburse such funds for the purpose of carrying out the provisions of this article, in accordance with §18-10-11 and §18-10-12 of this code.

(i) Aid to libraries by State Library Section.—

(1) The State Library Section may render such aid and assistance, financial, advisory or otherwise, to public, school, county, or regional libraries, whether established or maintained by the State Library Section or not, under such conditions and rules and regulations as the State Library Section may determine necessary to further the interests of the state and best increase the efficiency of the service it is expected to render the public.

(2) The State Library Commission may review and analyze the status of libraries across the state and advise the State Library Section on projects and libraries for which it has determined the development and support of will further the education of the people of the state as a whole and will thereby aid in the discharge of the responsibility of the state to encourage and foster education. The State Library Section may pay over and contribute to any board of library directors created and maintained pursuant to the provisions of this section or any special act of the Legislature such sum or sums of money as may be available from funds included in appropriations made for the State Library Section for that purpose.

(j) Collection and preservation of library data; surveys; employment of personnel; use of data. —

WV Legislature

(1) The State Library Section may collect and preserve statistics and other data, concerning libraries of any sort located within this state; to make surveys relating to the needs or conditions of such libraries or the library conditions of any city, town, county, regional library area, or other subdivision of this state; and to publish the results and findings thereof in accordance with the provisions of this section.

(2) The State Library Section may employ necessary personnel for any of these purposes.

(3) Such data, surveys, and findings of the State Library Section shall be available to all school, public, institutional, regional, and other libraries within this state, whether proposed or established.

(k)Confidential nature of certain library records. —

(1) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

(A) To members of the library staff in the ordinary course of business, including paid employees and unpaid volunteers upon completing a written confidentiality agreement which shall prevent disclosure of circulation records, personal information, and similar records of any public library except to the extent allowed under this subsection and obtaining written permission from the library director of the library system wherein he or she will be working;

(B) Upon written consent of the user of the library materials or the user’s parents or guardian if the user is a minor or ward; or

(C) Upon appropriate court order or subpoena.

(2) Any disclosure authorized by subdivision (1) of this subsection, or any unauthorized disclosure of materials made confidential by subdivision (1), does not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subdivision (1) of this subsection is not liable therefor.

(l) Library Facilities Improvement Fund.—

(1) There is continued in the State Treasury a special fund known as the Library Facilities Fund. Expenditures from the fund shall be for the purposes set forth in this section. The fund shall be administered by the State Library Section.

(2) The fund shall consist of moneys received from the following sources:

(A) All appropriations made by the Legislature to the fund;

WV Legislature

(B) Any moneys available from sources outside the State Library Section;

(C) Repayment of loans made by the State Library Section pursuant to this section; and

(D) All interest and other income earned from investment of moneys in the fund.

(3) The State Library Section shall utilize moneys in the fund to support public library facilities construction, renovation, maintenance, and improvement projects. The State Library Section shall evaluate potential recipient projects of funds from the fund on a competitive basis.

(A) The State Library Section may provide loans to public libraries to support energy savings and critical maintenance projects with moneys in the fund.

(B) With the exception of loans made under this section, the State Library Section may not expend any money from the fund toward a particular project unless the proposed expenditure is matched on a dollar-for-dollar basis by other sources.

(4) The State Library Section shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement the provisions of this section. The rule shall contain at least the following:

(A) A process for submitting and reviewing proposals;

(B) The content of proposals;

(C) Criteria for evaluating proposals; and

(D) Other provisions the State Library Section considers necessary to administer the program in accordance with this section.

(5) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year will not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(6) In any calendar year, the State Library Section may not allocate an amount in excess of four percent of the balance of the fund on December 31 of the immediately preceding calendar year for administrative expenses.

(7) The State Library Section may invest any or all of the balance of the fund with the state's Consolidated Investment Fund.

(m) Any rules promulgated by the Library Commission will remain in full force and effect until amended, repealed, or superseded by another rule promulgated by the Library Commission or State Library Section.

WV Legislature

§29-1-8d. National Coal Heritage Area Commission.

(a)(1) The National Coal Heritage Area originally was a partnership project of the National Park Service and the State of West Virginia as represented by the Division of Tourism and the Division of Culture and History. In January 1999, the Governor of West Virginia appointed 28 experts from the state and the region to the National Coal Heritage Area Steering Committee to provide guidance in the development of the National Coal Heritage Area, and in 2002 the West Virginia Legislature created the National Coal Heritage Area Authority, a state agency with an independent board, to serve as the management entity for the National Coal Heritage Area.

(2) The West Virginia Legislature finds that there continues to be a significant need for a public body to promote and enhance historic preservation, tourism, and economic development activities that relate to the state's history as a coal-producing state within the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, Marion, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

(3) The Legislature additionally finds that the state entity previously known as the National Coal Heritage Area Authority may more effectively serve the people of West Virginia through the Department of Arts, Culture, and History as the National Coal Heritage Area Commission, where it will continue to work with the landowners, county officials, and community leaders, state and federal government agencies, and other interested parties to enable and facilitate the development of the National Coal Heritage Area will greatly assist in the realization of these potential benefits.

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

(1) "Commission" means the National Coal Heritage Area Commission;

(2) "Department" means the Department of Tourism; and

(3) "National Coal Heritage Area" means and comprises the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

(c) Creation; appointment of commission; terms; expenses; executive director:

(1) There is hereby created the National Coal Heritage Area Commission which is a section of the Department of Tourism, existing for the purposes of providing direction to and assistance with state and federal historic preservation, economic development, and tourism projects in the National Coal Heritage Area and aiding in the development and implementation of integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, waters, and structures in the National Coal Heritage Area.

WV Legislature

(2) The commission shall be composed of, at a minimum, 19 members as follows:

(A) The following six persons shall be nonvoting members, and shall serve by virtue of their offices, and may be represented at meetings of the commission by designees:

(i) The secretary, or his or her designee;

(ii) The Secretary of the Department of Environmental Protection, or his or her designee;

(iii) The Executive Director of the Division of Economic Development, or his or her designee;

(iv) The State Superintendent of Schools, or his or her designee; and

(v) The Director of the Division of Natural Resources, or his or her designee;

(B) The remaining 13 members shall be appointed for terms of four years by the Governor with the advice and consent of the Senate. The county commission of each county within the National Coal Heritage Area may submit to the Governor a list of three candidates to be considered for board appointment. Of the 13 members appointed by the Governor, each candidate must live or work within the subject county and the appointees shall be representative of the tourism industry, the coal industry, the United Mine Workers of America, economic development activity, historic preservation activity, or higher education. Additional counties may submit names of individuals fitting the above criteria for consideration as ex-officio, non-voting, board membership;

(C) The terms of office shall be four years and shall expire on June 30. No appointed member may serve more than two consecutive full terms. A member shall continue to serve until his or her successor has been appointed and qualified;

(D) If an appointed member is unable to complete a term, the Governor shall appoint a person to complete the unexpired term. Each vacancy occurring on the board must be filled within 60 days after the vacancy is created;

(E) Any appointed member of the board shall immediately and automatically forfeit his or her membership on the board if he or she becomes a nonresident of the county, or ceases to be employed in the county, from which he or she was appointed;

(F) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law: *Provided*, That no member may be reimbursed for expenses paid by a third party.

(3) The secretary shall appoint a director to carry out the actions of the board, which appointment may be in addition to other duties, to serve at the will and pleasure of the

WV Legislature

secretary. The director may employ necessary personnel and retain such temporary consultants or technicians as may be necessary for any special study or survey consistent with the provisions of this section. The director shall carry out plans to implement the provisions of this section and to exercise those powers. The director shall prepare annually, in consultation with the board, a budget for the commission.

(d) Board; quorum; chairperson; bylaws. —

(1) The board is the governing body of the National Coal Heritage Area Commission, and may exercise all the powers given the commission in this section.

(2) The director shall serve as the board chairperson. The board shall meet at such times as shall be specified by the chairperson, but in no case less than quarterly. A majority of seven appointed members shall constitute a quorum for the transaction of business.

(3) There shall be a standing committee of the National Coal Heritage Area Commission known as the Coal Heritage Trail Committee composed of the chairperson and members of the National Coal Heritage Area from the counties through which the Coal Heritage Trail passes. These counties are Mercer, McDowell, Wyoming, Raleigh, and Fayette. This standing committee shall be responsible for making recommendations to the full board regarding development and promotion of the Coal Heritage Trail, a national scenic byway.

(4) The board shall keep a record of its proceedings,

(e) Powers of commission. —

The commission may exercise all powers necessary or appropriate to carry out the purposes of this section, including, but not limited to, the power:

(1) To assist in the development and implementation of integrated cultural, historical, and land resource management policies and programs in the National Coal Heritage Area;

(2) To advise the executive director of the National Coal Heritage Commission in retaining, enhancing, and interpreting the significant values of the lands, waters, and structures of the area;

(3) To enter into partnerships with various preservation groups, landmark commissions, certified local governments, county commissions, and other entities to undertake the preservation, restoration, maintenance, operation, development, interpretation, and promotion of lands and structures that possess unique and significant historic, architectural, and cultural value associated with the coal mining heritage of the national coal heritage area;

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

WV Legislature

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

(6) To execute contracts 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;

(7) 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;

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

(9) To accept gifts or grants of property, funds, money, materials, labor, supplies, or services from the federal government or from any governmental unit, or any person, firm, or corporation;

(10) To construct, reconstruct, improve, maintain, repair, operate, and manage certain facilities in the National Coal Heritage Area as may be determined by the commission;

(11) 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 public recreation or growing out of the public activities operated or managed by the commission 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; and

(12) To assess and collect a reasonable fee from those persons who use the designated facilities which are part of the national coal heritage area, and to retain and utilize that revenue for any purposes consistent with this article.

(f) Continuation of legal obligations. —

Nothing in this section may be considered as superseding, amending, modifying, or repealing any contract or agreement entered into for the benefit of the National Coal Heritage Area prior to the date of enactment of this section. All obligations, contracts, grants, and assets currently belonging to the Coal Heritage Highway Authority and the National Coal Heritage Area Authority shall be transferred to and become the responsibility and property of the National Coal Heritage Area Commission.

WVLegislature

§29-1-9. Administrative section; director.

The purposes and duties of the administrative section are to provide centralized support to the division in all areas of operations.

The secretary shall appoint a director of the administrative section, to serve at the will and pleasure of the secretary, who is qualified, with relevant experience.

With approval of the secretary, the director of the administrative section shall establish professional positions within the section.

WV Legislature

§29-1-10. Division employees classified by civil service; exceptions.

[Repealed.]

WV Legislature

§29-1-11. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

(a) The secretary may, in the name of the State of West Virginia, accept and receive grants, appropriations, gifts, bequests and funds from any public or private source for the purpose of carrying out the duties and purposes of this article.

(b) The secretary may, through the, apply for grants from the federal government, private foundations and any other source for the purposes of this article.

(c) All funds received from any source shall be paid into the Treasury of the state and disbursed upon warrant by the State Auditor following requisition by the division. The requisitions shall be signed by the secretary or by another person as the secretary may authorize by written document deposited with the Auditor or, in the event of emergency, by the Governor or the Governor's designee.

(d) No funds or gifts received from any source shall be expended or used for any purpose other than that intended as evidenced by a positive and affirmative declaration or by a negative restriction or limitation.

(e) The department may assist in the promotion and operation of an annual state fair and other regional or local fairs and festivals entitled to aid when funds are available and to expend those funds for the support and development of fairs and festivals.

(f) All federal or state funds received to provide grants-in-aid or awards to further the purposes of this article shall be approved and distributed by the secretary.

WV Legislature

§29-1-12. Publication of materials; agreements.

The department shall have the power, responsibility and duty to publish or republish material of prehistorical, historical, archaeological, architectural or cultural interest. The department may sell such publications as well as postcards and other items of such interest at the state museum or any other site or property administered by the state or at any special event sponsored by the state. The department shall have the right to enter into agreements with responsible individuals, private historical, archaeological, architectural or cultural associations, foundations or similar organizations or any agency of the federal, state or local government for the purpose of carrying out its purposes or for raising money to fund the functions of the department under this article.

WV Legislature

§29-1-13. Land; control and disposal; rules and regulations.

All land owned or leased by the department pursuant to this article shall be titled in the name of the public land corporation of West Virginia but shall be controlled, administered and supervised by the department. The secretary may sell or dispose of any real or personal property which, in his or her opinion, does not have sufficient prehistorical, historical, archaeological, architectural or cultural value to justify its retention.

The secretary shall have the power to make and promulgate rules and regulations relating to the general management and administration of this article.

WV Legislature

§29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

Washington-Carver Camp in Fayette County, heretofore transferred to the public land corporation under the control, administration, and supervision of the department, shall continue under the department’s control, administration and supervision.

The department shall undertake to develop such cultural and multicultural, artistic, humanistic and educational programs at the camp as will serve and benefit the citizens of the state and the many cultures represented therein. In order to ensure the maximum reasonable utilization of that portion of the camp under its jurisdiction, the department shall, during times the camp is not being used for the department’s purposes, make the camp available, under such terms as the department deems proper, to any other agency of government or nonprofit group desiring to use the camp. The camp shall retain the name "Camp Washington-Carver" as indicative of its heritage of serving the black citizens of the state. The department is authorized to provide necessary and suitable equipment and other resources for implementing the provisions of this section.

No minerals may be assigned, leased or otherwise encumbered, sold, mined, or removed with respect to the property heretofore transferred or the mineral rights retained without specific authorization by the Legislature.

WV Legislature

§29-1-15. Development or improvement on land; State Historic Preservation Office; rules and regulations.

All development or improvement on land, including any disturbance in a right-of-way, construction project, or infrastructure project, subject to review by the State Historic Preservation Office or by any other section or commission listed in §29-1-1(b) of this code for prehistorical, historical, archaeological, architectural, or cultural value shall be conducted in the most expedient manner possible. The department shall not add any additional impediment to such review beyond those required by applicable Federal laws, rules, and regulations and shall have no authority to comment, regulate, or otherwise cause another governmental entity to comment upon or regulate, that activity, except in consideration for primacy or continued federal funding.

The secretary shall have the power to make and promulgate rules in in conformity with this section, and the secretary shall modify, upon the effective date of this legislation, any active rule in conflict with the provisions of this section.

WV Legislature