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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Com. Sub. for Com. Sub. for
SENATE BILL NO. 280

(By Senators *Brackmire & Sullivan*)

PASSED March 7, 1992

In Effect May 2, 1992 Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 280

(SENATORS BRACKENRICH AND HOLLIDAY, *original sponsors*)

[Passed March 7, 1992; to take effect May 2, 1992.]

AN ACT to amend and reenact section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections twenty-three-b, twenty-three-c and twenty-three-d, relating to creating a whitewater commission within the division of natural resources; powers and duties; providing minimum use allocations for whitewater outfitters; providing civil and criminal penalties for violations; determinations based on prior enactments to remain in effect until amended; creating special revenue accounts; dedicating certain fees for whitewater purposes; bonds; revocation of licenses; and license carrying requirements.

Be it enacted by the Legislature of West Virginia:

That section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections twenty-three-b, twenty-three-c and twenty-three-d, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

1 (a) There is hereby created a whitewater commis-
2 sion within the division of natural resources. The
3 commission shall consist of the director of the division
4 of natural resources or his or her designee; the
5 director of the division of parks and tourism or his or
6 her designee; three representatives of private river
7 users who have no affiliation with any commercial
8 river enterprise to be appointed by the governor:
9 *Provided*, That no more than one representative of the
10 private river users may be from each whitewater
11 zone; and four persons representing four different
12 licensed commercial whitewater outfitters currently
13 operating within the state to be appointed by the
14 governor. The superintendent of the New River Gorge
15 national park or his or her designee, shall be a
16 nonvoting member of the commission. All appointed
17 members of the commission shall be citizens and
18 residents of West Virginia. Of the four representatives
19 of commercial outfitters, two persons shall represent
20 the small commercial whitewater outfitters in West
21 Virginia who have a single license. The director of the
22 division of natural resources shall serve as chairperson
23 of the commission. Of the seven members of the
24 commission first appointed by the governor, two shall
25 be appointed for a term of one year, two for a term of
26 two years and three for a term of three years. There-
27 after, the terms of all appointed members of the
28 commission are for three years. Members shall serve
29 until their successors have been appointed and any
30 vacancy in the office of a member shall be filled by
31 appointment for the unexpired term. Members repre-
32 senting commercial outfitters who have served at least

33 two years on the commission are not eligible for
34 reappointment to a successive term.

35 (b) The commission has the following powers and
36 duties:

37 (1) To investigate and study commercial whitewater
38 rafting, outfitting and activities related thereto which
39 take place along the rivers or waters of the state;

40 (2) To designate any such rivers or waters or any
41 portions thereof as "whitewater zones" for which
42 commercial whitewater rafting, outfitting and activi-
43 ties are to be investigated and studied, and to deter-
44 mine the order and the periods of time within which
45 the investigations and studies are to be conducted. The
46 commission shall first investigate and study those
47 whitewater zones which it finds to present serious
48 problems requiring immediate regulation, including
49 without limitation, safety hazards and problems of
50 overcrowding or environmental misuse;

51 (3) To restrict, deny or postpone the issuance of
52 licenses to additional commercial whitewater outfitters
53 seeking to operate in areas and portions of rivers and
54 waters in this state designated whitewater zones by
55 action of the director of the division of natural
56 resources as authorized under prior enactment of this
57 section and so designated by the filing of a written
58 notice entered upon the records of the division con-
59 taining the designation and reasonable description of
60 the whitewater zone;

61 (4) To commission a three-year study to determine
62 the physical carrying capacity for the New, Gauley,
63 Cheat, Shenandoah and Tygart rivers and how each
64 relates to the overall economic impact of the state and
65 the safety of the general public: *Provided*, That if,
66 during the three-year study period, the commission
67 deems that overcrowding is not a problem on any
68 whitewater zone, then it may issue a license;

69 (5) Based on the findings of the three-year study of
70 carrying capacity, to formulate rational criteria for an
71 allocation methodology including, but not limited to, a

72 minimum allocation for each river studied;

73 (6) To implement the allocation methodology, which
74 shall be implemented by the commission at the
75 conclusion of the three-year study period and not later
76 than the first day of July, one thousand nine hundred
77 ninety-five, by rules promulgated pursuant to chapter
78 twenty-nine-a of this code;

79 (7) To determine administrative policies relating to
80 regulation of the whitewater industry and to adminis-
81 ter such policies, except that the commission shall
82 delegate to the director of the division of natural
83 resources or his or her designee the authority to
84 administer the day-to-day responsibilities of the
85 commission pursuant to this section and may vest in
86 the director of the division of natural resources or his
87 or her designee the authority to make determinations
88 with respect to which it is not practicable to convene
89 or to poll the commission, within guidelines estab-
90 lished by the commission;

91 (8) To review all contracts or agreements with
92 governmental agencies related to whitewater studies
93 or regulation, and any negotiations related thereto;

94 (9) To verify reports by outfitters of numbers of
95 river users and guides and to establish a system for
96 reporting, prior to the departure of any craft, the
97 number of river users and guides on each whitewater
98 expedition;

99 (10) To regulate the issuance, transfer, and renewal
100 of licenses. However, licenses issued to commercial
101 whitewater outfitters or use allocations or other
102 privileges conferred by a license may be transferred,
103 sold, offered as security to financial institutions or
104 otherwise encumbered, upon notice in writing to the
105 commission and the director of the division of natural
106 resources, subject to the following limitations: (i) The
107 commission may refuse a transfer upon a finding that
108 there is reasonable cause to believe that the safety of
109 members of the public may be adversely affected by
110 the transfer; and (ii) the commission shall require that
111 taxes, workers' compensation and other obligations

112 due the state be paid prior to any transfer;

113 (11) To collect, for the study period established in
114 subdivision (4) of this subsection, an annual license fee
115 of five hundred dollars for each river on which a
116 commercial whitewater outfitter operates. The annual
117 per river license fee is limited to the Cheat, Gauley,
118 New, Shenandoah and Tygart rivers. The annual
119 license fee for a commercial whitewater outfitter
120 operating on a river not so designated is five hundred
121 dollars regardless of the number of rivers operated on.
122 A commercial whitewater outfitter who is operating
123 on a river designated in this subdivision and who has
124 paid the annual per river license fee may not be
125 required to pay an additional annual license fee to
126 operate on a nondesignated river. The commercial
127 whitewater outfitter license shall be issued by the
128 commission and is for a period of ten years: *Provided*,
129 That an outfitter pays the required annual license fee.
130 If an outfitter fails to pay the license fee, then the
131 license shall be suspended until the license fee is paid.
132 Licenses are subject to the bonding provisions set forth
133 in section twenty-three-d of this article and the
134 revocation provisions set forth in the rules promul-
135 gated by the director of the division of natural resour-
136 ces. License fees shall be used by the division of
137 natural resources for the purpose of enforcing and
138 administering the provisions of this section;

139 (12) To establish a special study and improvement
140 fee to be paid by outfitters and to establish procedures
141 for the collection and enforcement of the special study
142 and improvement fee;

143 (13) To establish a procedure for hearings on viola-
144 tions of this section and rules promulgated thereunder
145 and to establish civil penalties for violations of this
146 section and rules promulgated thereunder; and

147 (14) To approve rules promulgated by the director of
148 the division of natural resources pursuant to chapter
149 twenty-nine-a of this code, with respect to commercial
150 whitewater outfitters operating upon the waters of the
151 state, whether or not such waters have been desig-

152 nated whitewater zones, which relate to: (i) Minimum
153 safety requirements for equipment; (ii) standards for
154 the size of rafts and number of persons which may be
155 transported in any one raft; (iii) qualifications of
156 commercial whitewater guides; and, with respect to
157 waters designated whitewater zones, (iv) standards for
158 the numbers of rafts and number of persons trans-
159 ported in rafts.

160 (c) The commission shall meet upon the call of the
161 chairperson or a majority of the members of the
162 commission. However, the commission shall meet at
163 least quarterly and shall conduct business when a
164 majority of the members are present. At the meetings,
165 the commission shall review all data, materials and
166 relevant findings compiled relating to any investiga-
167 tion and study then under consideration and, as soon
168 as practicable thereafter, the commission shall recom-
169 mend rules to govern and apply to the designated
170 whitewater zone(s). At least annually, the commission
171 shall meet for the purpose of considering and adjust-
172 ing allocations. At least annually, the commission shall
173 review fees and proposed expenditures. The commis-
174 sion may not limit the number of commercial white-
175 water outfitters operating on rivers not designated as
176 whitewater zones, nor may the commission limit the
177 number of rafts or total number of persons trans-
178 ported in rafts by commercial whitewater outfitters on
179 rivers not designated as whitewater zones. Commis-
180 sion members shall be reimbursed all reasonable and
181 necessary expenses incurred in the exercise of their
182 duties.

183 (d) For the portions of the Gauley and New rivers
184 designated as whitewater zones, the minimum use
185 allocation conferred by a license, for the study period
186 established pursuant to subdivision (4), subsection (b)
187 of this section, is one hundred twenty for the Gauley
188 and one hundred fifty for the New, or an increased
189 minimum allocation established by the board. The
190 commission may permit additional allocations or
191 licenses for whitewater outfitters which are nonprofit
192 entities operating upon the waters of the state upon

193 the effective date of this section. For other waters
194 designated whitewater zones, the commission may
195 increase but not decrease allocations from those in
196 effect on the effective date of this section.

197 (e) Violation of this section or any rule promulgated
198 pursuant to this section constitutes a misdemeanor
199 punishable by the penalties set forth in section
200 twenty-three-d of this article.

201 (f) The director of the division of natural resources
202 shall promulgate, pursuant to the provisions of chapter
203 twenty-nine-a of this code, all rules necessary to
204 effectuate the purposes of this section and these rules
205 must be approved by the commission. The division of
206 natural resources shall enforce the provisions of this
207 section and rules promulgated pursuant to this section,
208 and shall provide necessary staff and support services
209 to the commission to effectuate the purposes of this
210 section.

211 (g) All orders, determinations, rules, permits, grants,
212 contracts, certificates, licenses, waivers, bonds, author-
213 izations and privileges which have been issued, made,
214 granted or allowed to become effective pursuant to
215 any prior enactments of this section by the governor,
216 the secretary of the department of commerce, labor
217 and environmental resources, the director of the
218 division of natural resources, the whitewater advisory
219 board or by a court of competent jurisdiction, and
220 which are in effect on the effective date of this section,
221 shall continue in effect according to their terms until
222 modified, terminated, superseded, set aside or revoked
223 by the governor, secretary, director or commission
224 pursuant to this section, by a court of competent
225 jurisdiction, or by operation of law.

§20-2-23b. Whitewater study and improvement fund.

1 There is hereby created in the state treasury a
2 special revenue account, which shall be an appro-
3 priated, interest-bearing account, designated as the
4 whitewater study and improvement fund. All proceeds
5 from this fund shall be used exclusively for the
6 purposes of the administration, regulation, promotion

7 and study of the whitewater industry.

8 The special study and assessment fee collected by
9 the commission pursuant to the provisions of section
10 twenty-three-a of this article shall be deposited, within
11 fifteen days after receipt, to the whitewater study and
12 improvement fund and dedicated to the purposes of
13 this section.

§20-2-23c. Voluntary contributions to whitewater advertising and promotion fund.

1 There is hereby created in the state treasury a
2 special revenue account, which shall be an appro-
3 priated, interest-bearing account designated as the
4 whitewater advertising and promotion fund. Each
5 whitewater license holder may contribute any sum
6 desired to this fund which fund shall be used for the
7 purpose of advertising and promoting whitewater in
8 West Virginia.

§20-2-23d. Bond; revocation of license; licensing carrying requirement; criminal penalties.

1 (a) Immediately upon the issuance of a whitewater
2 outfitter's license and before any whitewater outfit-
3 ter's services are offered or rendered thereunder, the
4 licensee shall execute a surety bond in the penal sum
5 of one thousand dollars payable to the state of West
6 Virginia and conditioned upon the faithful and reliable
7 discharge of his or her services under and pursuant to
8 the license. The bond shall be approved as to form by
9 the attorney general and as to surety by the director,
10 and when so executed and approved, shall be filed in
11 the office of the director of the division of natural
12 resources. The bond shall be for the life of the license.

13 (b) The whitewater commission is hereby authorized
14 to revoke and cancel any whitewater outfitter's license
15 for failure of the licensee to give the bond required by
16 this section, for a licensee's violation or disregard of
17 any of the provisions of this chapter, upon a licensee's
18 conviction of a crime, or for any other reason or cause
19 justifying refusal of the whitewater outfitter's license
20 to the licensee upon a new application therefor. The

21 commission shall afford a licensee an opportunity to be
22 heard upon the revocation and cancellation of the
23 license.

24 (c) No person shall act or serve as a whitewater
25 outfitter, as defined in this article, without procuring
26 and having on his or her person at the time a valid
27 whitewater outfitter's license from the commission
28 authorizing them to do so.

29 (d) Any person who violates any of the provisions of
30 this section or of section twenty-three-a of this article,
31 or any rule promulgated by the director of the division
32 of natural resources or who misrepresents any mate-
33 rial fact in an application, record, report or other
34 document filed or required to be maintained under
35 the provisions of this article, or any rules promulgated
36 hereunder by the director of the division of natural
37 resources, is guilty of a misdemeanor, and upon
38 conviction thereof, shall be punished by a fine of not
39 less than five hundred dollars per violation not to
40 exceed a total penalty of seventy-five hundred dollars
41 or by imprisonment in the county jail not exceeding
42 six months, or both fined and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Beck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

To take effect May 2, 1992.

Parrel Edelman
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Paul Boudette
.....
President of the Senate

Stewart
.....
Speaker House of Delegates

The within *as approved* this the *18*
day of *April*, 1992.

Wanton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 4:50 pm