ENROLLED

Senate Bill No. 280

(By Senators Brackenridge & Hildreth)

PASSED March 7, 1992
In 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
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.

(a) There is hereby created a whitewater commission within the division of natural resources. The commission shall consist of the director of the division of natural resources or his or her designee; the director of the division of parks and tourism or his or her designee; three representatives of private river users who have no affiliation with any commercial river enterprise to be appointed by the governor: Provided, That no more than one representative of the private river users may be from each whitewater zone; and four persons representing four different licensed commercial whitewater outfitters currently operating within the state to be appointed by the governor. The superintendent of the New River Gorge national park or his or her designee, shall be a nonvoting member of the commission. All appointed members of the commission shall be citizens and residents of West Virginia. Of the four representatives of commercial outfitters, two persons shall represent the small commercial whitewater outfitters in West Virginia who have a single license. The director of the division of natural resources shall serve as chairperson of the commission. Of the seven members of the commission first appointed by the governor, two shall be appointed for a term of one year, two for a term of two years and three for a term of three years. Thereafter, the terms of all appointed members of the commission are for three years. Members shall serve until their successors have been appointed and any vacancy in the office of a member shall be filled by appointment for the unexpired term. Members representing commercial outfitters who have served at least
two years on the commission are not eligible for reappointment to a successive term.

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

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

(2) To designate any such rivers or waters or any portions thereof as "whitewater zones" for which commercial whitewater rafting, outfitting and activities are to be investigated and studied, and to determine the order and the periods of time within which the investigations and studies are to be conducted. The commission shall first investigate and study those whitewater zones which it finds to present serious problems requiring immediate regulation, including without limitation, safety hazards and problems of overcrowding or environmental misuse;

(3) To restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in areas and portions of rivers and waters in this state designated whitewater zones by action of the director of the division of natural resources as authorized under prior enactment of this section and so designated by the filing of a written notice entered upon the records of the division containing the designation and reasonable description of the whitewater zone;

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

(5) Based on the findings of the three-year study of carrying capacity, to formulate rational criteria for an allocation methodology including, but not limited to, a
minimum allocation for each river studied;

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

(7) To determine administrative policies relating to regulation of the whitewater industry and to administer such policies, except that the commission shall delegate to the director of the division of natural resources or his or her designee the authority to administer the day-to-day responsibilities of the commission pursuant to this section and may vest in the director of the division of natural resources or his or her designee the authority to make determinations with respect to which it is not practicable to convene or to poll the commission, within guidelines established by the commission;

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

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

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

(11) To collect, for the study period established in subdivision (4) of this subsection, an annual license fee of five hundred dollars for each river on which a commercial whitewater outfitter operates. The annual per river license fee is limited to the Cheat, Gauley, New, Shenandoah and Tygart rivers. The annual license fee for a commercial whitewater outfitter operating on a river not so designated is five hundred dollars regardless of the number of rivers operated on. A commercial whitewater outfitter who is operating on a river designated in this subdivision and who has paid the annual per river license fee may not be required to pay an additional annual license fee to operate on a nondesignated river. The commercial whitewater outfitter license shall be issued by the commission and is for a period of ten years: Provided, That an outfitter pays the required annual license fee. If an outfitter fails to pay the license fee, then the license shall be suspended until the license fee is paid. Licenses are subject to the bonding provisions set forth in section twenty-three-d of this article and the revocation provisions set forth in the rules promulgated by the director of the division of natural resources. License fees shall be used by the division of natural resources for the purpose of enforcing and administering the provisions of this section;

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

(13) To establish a procedure for hearings on violations of this section and rules promulgated thereunder and to establish civil penalties for violations of this section and rules promulgated thereunder; and

(14) To approve rules promulgated by the director of the division of natural resources pursuant to chapter twenty-nine-a of this code, with respect to commercial whitewater outfitters operating upon the waters of the state, whether or not such waters have been desig-
nated whitewater zones, which relate to: (i) Minimum safety requirements for equipment; (ii) standards for the size of rafts and number of persons which may be transported in any one raft; (iii) qualifications of commercial whitewater guides; and, with respect to waters designated whitewater zones, (iv) standards for the numbers of rafts and number of persons transported in rafts.

(c) The commission shall meet upon the call of the chairperson or a majority of the members of the commission. However, the commission shall meet at least quarterly and shall conduct business when a majority of the members are present. At the meetings, the commission shall review all data, materials and relevant findings compiled relating to any investigation and study then under consideration and, as soon as practicable thereafter, the commission shall recommend rules to govern and apply to the designated whitewater zone(s). At least annually, the commission shall meet for the purpose of considering and adjusting allocations. At least annually, the commission shall review fees and proposed expenditures. The commission may not limit the number of commercial whitewater outfitters operating on rivers not designated as whitewater zones, nor may the commission limit the number of rafts or total number of persons transported in rafts by commercial whitewater outfitters on rivers not designated as whitewater zones. Commission members shall be reimbursed all reasonable and necessary expenses incurred in the exercise of their duties.

(d) For the portions of the Gauley and New rivers designated as whitewater zones, the minimum use allocation conferred by a license, for the study period established pursuant to subdivision (4), subsection (b) of this section, is one hundred twenty for the Gauley and one hundred fifty for the New, or an increased minimum allocation established by the board. The commission may permit additional allocations or licenses for whitewater outfitters which are nonprofit entities operating upon the waters of the state upon
the effective date of this section. For other waters
designated whitewater zones, the commission may
increase but not decrease allocations from those in
effect on the effective date of this section.

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

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

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

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

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

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

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

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

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

(a) Immediately upon the issuance of a whitewater outfitter’s license and before any whitewater outfitter’s services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of one thousand dollars payable to the state of West Virginia and conditioned upon the faithful and reliable discharge of his or her services under and pursuant to the license. The bond shall be approved as to form by the attorney general and as to surety by the director, and when so executed and approved, shall be filed in the office of the director of the division of natural resources. The bond shall be for the life of the license.

(b) The whitewater commission is hereby authorized to revoke and cancel any whitewater outfitter’s license for failure of the licensee to give the bond required by this section, for a licensee’s violation or disregard of any of the provisions of this chapter, upon a licensee’s conviction of a crime, or for any other reason or cause justifying refusal of the whitewater outfitter’s license to the licensee upon a new application therefor. The
compliance shall afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

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

(d) Any person who violates any of the provisions of this section or of section twenty-three-a of this article, or any rule promulgated by the director of the division of natural resources or who misrepresents any material fact in an application, record, report or other document filed or required to be maintained under the provisions of this article, or any rules promulgated hereunder by the director of the division of natural resources, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars per violation not to exceed a total penalty of seventy-five hundred dollars or by imprisonment in the county jail not exceeding six months, or both fined and imprisoned.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect May 2, 1992.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... was passed this the ............... day of .......... 1992.

Governor