

56 0033

RECEIVED

1995 M.R. 23 PM 5:17

OFFICE OF THE CLERK
WEST VIRGINIA
STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 33

(By Senators *Toussaint, Mr. President AND*
Boley, BY REQUEST OF THE EXECUTIVE)



PASSED March 11, 1995

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 33

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 11, 1995; in effect from passage.]

AN ACT to repeal article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, four and five, article one-a of said chapter; to amend and reenact section two, article two of said chapter; to further amend said article by adding thereto six new sections, designated sections eight through thirteen, inclusive; and to amend chapter twenty of said code by adding thereto a new article, designated article five, all relating to recodifying the laws relating to the tourism functions of the former division of tourism and parks and the transfer by executive order of state parks, state recreation areas and wildlife recreation areas to the division of natural resources; transferring responsibility for development of any additional rails to trails to the state rail authority; changing composition of the council for community and

economic development and clarifying office of director; continuing the tourism functions of the former division of tourism and parks within the West Virginia development office; creating a new tourism commission, composed of both private-sector and public-sector members, to govern the activities of the division of tourism; authorizing the formation of a nonprofit private corporation whose directors may include members of the tourism commission; authorizing the combining of public and private funds for use in the promotion and development of tourism in West Virginia; requiring the tourism commission to develop a comprehensive tourism promotion and development strategy and to consider various tourism initiatives and to make recommendations on the same; requiring legislative rules and permitting procedural rules for application forms and instructions; providing for expenditure of the tourism promotion fund for advertising and promotion; recodifying provisions relating to state parks and recreation areas within the division of natural resources; jurisdiction of section of parks and recreation and appointment of chief; continuation of contracts and ratification of funds transfer; the powers of the director; procedures for land acquisitions, sales, exchanges, transfers and contracts and authority of the director relating thereto; authorizing director to approve expenditures for advertising of state facilities; allowing waiver of certain fees; providing market for West Virginia products; continuing telemarketing functions within the division of natural resources; continuation of operation and protection of various parks and recreation areas within the parks and recreation section, including the Greenbrier river trail and the North Bend rail trail; continuation of bonding authority as a power of the director; tax exemption; authorizing director to enter into contracts of twenty-five years for recreational facilities in certain parks and limitations on that authority; and continuation of discounts.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-b of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, be repealed; that sections two, four and five, article one-a of said chapter be amended and reenacted; that section two, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections eight through thirteen, inclusive; and that chapter twenty of said code be amended by adding thereto a new article, designated article five, all to read as follows:

**CHAPTER 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.**

ARTICLE 1A. WEST VIRGINIA RAILS TO TRAILS PROGRAM.

§5B-1A-2. Rails to trails program.

1 There is continued within the state rail authority
2 provided for in article eighteen, chapter twenty-nine of
3 this code the "West Virginia Rails to Trails Program",
4 the purpose of which is to acquire or assist with the
5 acquisition of, and to develop or assist with the develop-
6 ment of, abandoned railroad rights-of-way for interim
7 use as public nonmotorized recreational trails.

§5B-1A-4. Powers and duties of the authority.

1 The state rail authority is authorized to:

2 (1) Enter into agreements with any person on behalf of
3 the state to acquire an interest in any abandoned rail-
4 road right-of-way, to develop, maintain or promote any
5 rail trails created pursuant to the provisions of this
6 article and, with the consent of the director of the
7 division of natural resources, to transfer the mainte-
8 nance and operation of rail trails created and developed
9 to the division of natural resources.

10 (2) Assist any political subdivision or any person in
11 acquiring an interest in any abandoned railroad right-
12 of-way and in developing, maintaining or promoting rail
13 trails.

14 (3) Evaluate existing and potential abandoned railroad
15 rights-of-way so as to identify such lands as may be

16 suitable for nonmotorized recreational trail use.

17 (4) Establish state rail trails, subject to the limitations
18 on acquisition of land for state recreational facilities as
19 set forth in section twenty, article one, chapter twenty of
20 this code.

§5B-1A-5. Powers to hold and acquire real property.

1 (a) The state rail authority shall hold fee simple title or
2 any lesser interest in land, including easements and
3 leaseholds, on all abandoned railroad rights-of-way
4 acquired by the state and utilized for interim non-
5 motorized recreational trail use pursuant to the provi-
6 sions of this article. The state rail authority may, at the
7 option of a political subdivision of this state, hold fee
8 simple title or any lesser interest in land, including
9 easements and leaseholds, on all abandoned railroad
10 rights-of-way acquired by such political subdivision and
11 utilized for interim nonmotorized recreational trail use.
12 Any provision of article one-a, chapter twenty of this
13 code to the contrary notwithstanding, the public land
14 corporation shall not be vested with title to any aban-
15 doned railroad right-of-way which becomes vested in the
16 state pursuant to the provisions of this article.

17 (b) The state rail authority may acquire an interest in
18 an abandoned railroad right-of-way to be used as a rail
19 trail, in accordance with the provisions of section six,
20 article eighteen, chapter twenty-nine of this code.

21 (c) The state rail authority shall issue a rail bank
22 certificate for each abandoned railroad right-of-way
23 held by the state rail authority for interim nonmotorized
24 recreational purposes in accordance with the provisions
25 of section six of this article.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

**§5B-2-2. Council for community and economic development
created; members, appointment and expenses;
meetings; appointment and compensation of
director.**

1 (a) There is hereby continued within the West Virginia
2 development office a council for community and eco-
3 nomic development, which is a body corporate and
4 politic, constituting a public corporation and govern-
5 ment instrumentality. Membership on the council shall
6 consist of:

7 (1) Nine members to be appointed by the governor,
8 with the advice and consent of the Senate, representing
9 community or regional interests, including economic
10 development, commerce, banking, manufacturing, the
11 utility industry, the mining industry, the telecommunica-
12 tions/data processing industry, small business, labor,
13 tourism or agriculture: *Provided*, That one member
14 appointed pursuant to this subsection shall be a member
15 of a regional planning and development council. Of the
16 nine members representing community or regional
17 interests, three members shall be from each congressio-
18 nal district of the state and shall be appointed in such a
19 manner as to provide a broad geographical distribution
20 of members of the council;

21 (2) Two at-large members to be appointed by the
22 governor with the advice and consent of the Senate;

23 (3) One member to be appointed by the governor from
24 a list of two persons recommended by the speaker of the
25 House of Delegates;

26 (4) One member to be appointed by the governor from
27 a list of two persons recommended by the president of
28 the Senate;

29 (5) The president of the West Virginia economic
30 development council; and

31 (6) The chair of the tourism commission created
32 pursuant to the provisions of section eight of this article.

33 (b) Not later than the first day of July, one thousand
34 nine hundred ninety-two, the governor shall appoint the
35 thirteen appointed members of the council for staggered
36 terms. The terms of the board members first taking

37 office on or after the effective date of this legislation
38 shall expire as designated by the governor at the time of
39 the nomination, three at the end of the first year, three at
40 the end of the second year, three at the end of the third
41 year and four at the end of the fourth year, after the first
42 day of July, one thousand nine hundred ninety-two. As
43 these original appointments expire, each subsequent
44 appointment shall be for a full four-year term. Any
45 member whose term has expired shall serve until his
46 successor has been duly appointed and qualified. Any
47 person appointed to fill a vacancy shall serve only for the
48 unexpired term. Any member shall be eligible for
49 reappointment. In cases of any vacancy in the office of
50 a member, such vacancy shall be filled by the governor
51 in the same manner as the original appointment.

52 (c) Members of the council shall not be entitled to
53 compensation for services performed as members, but
54 shall be entitled to reimbursement for all reasonable and
55 necessary expenses actually incurred in the performance
56 of their duties. A majority of the members shall consti-
57 tute a quorum for the purpose of conducting business.
58 The council shall elect its chair for a term to run concur-
59 rent with the term of office of the member elected as
60 chair. The chair is eligible for successive terms in that
61 position.

62 (d) The council shall employ an executive director of
63 the West Virginia development office by reason of
64 extensive education and experience in the field of
65 professional economic development to serve at the will
66 and pleasure of the council. The salary of the director
67 shall be fixed by the council. The director shall have
68 overall management responsibility and administrative
69 control and supervision within the West Virginia devel-
70 opment office. It is the intention of the Legislature that
71 the director shall provide professional and technical
72 expertise in the field of professional economic and
73 tourism development in order to support the policy-
74 making functions of the council, but that the director is
75 not a public officer, agent, servant or contractor within

76 the meaning of section thirty-eight, article VI of the
77 constitution of the state and is not a statutory officer
78 within the meaning of section one, article two, chapter
79 five-f of this code. Subject to the provisions of the
80 contract provided for in section four of this article, the
81 director is authorized to hire and fire economic develop-
82 ment representatives employed pursuant to the provi-
83 sions of section five of this article.

**§5B-2-8. Tourism commission created; members, appointed
and expenses.**

1 (a) There is hereby created within the West Virginia
2 development office an independent tourism commission,
3 which is a body corporate and politic, constituting a
4 public corporation and government instrumentality.
5 Membership on the council shall consist of nine mem-
6 bers:

7 (1) Six members to be appointed by the governor, with
8 the advice and consent of the Senate, representing
9 private-sector participants in the state's tourism indus-
10 try. Of the six members so appointed, one shall represent
11 a convention and visitors bureau and another shall be a
12 member of a convention and visitors bureau. In making
13 the private-sector appointments the governor may select
14 from a list provided by the West Virginia hospitality and
15 travel association of qualified applicants. Of the six
16 private-sector members so appointed, no more than two
17 shall be from each congressional district within the state
18 and shall be appointed to provide the broadest geo-
19 graphic distribution which is feasible;

20 (2) One member to be appointed by the governor from
21 the membership of the council for community and
22 economic development created pursuant to the provi-
23 sions of section two of this article;

24 (3) One member to be appointed by the governor to
25 represent public sector nonstate participants in the
26 tourism industry within the state; and

27 (4) The secretary of transportation or his or her de-

28 signee, ex officio.

29 (b) Not later than thirty days from the date of enact-
30 ment of this article, the governor shall appoint the eight
31 appointed members of the commission to terms of four
32 years, to assume the duties of the office and to meet at
33 the call of the chair not later than the first day of July,
34 one thousand nine hundred ninety-five. The terms of the
35 initial members of the commission shall be staggered
36 such that the governor shall designate three members
37 who shall serve for a term of two years, three members
38 who shall serve for a term of three years and two mem-
39 bers who shall serve for a full term of four years. Each
40 subsequent appointment of a member upon the expira-
41 tion of the designated terms shall serve a term of four
42 years. Any member whose term has expired shall serve
43 until his or her successor has been appointed. Any
44 person appointed to fill a vacancy shall serve only for the
45 unexpired term. Any member shall be eligible for
46 reappointment. In cases of vacancy in the office of
47 member, such vacancy shall be filled by the governor in
48 the same manner as the original appointment.

49 (c) Members of the commission shall not be entitled to
50 compensation for services performed as members. A
51 majority of these members shall constitute a quorum for
52 the purpose of conducting business. The governor shall
53 appoint a chair of the commission for a term to run
54 concurrent with the term of the office of the member
55 appointed to be the chair. The chair is eligible for
56 successive terms in that position.

§5B-2-9. Powers and duties of tourism commission.

1 (a) The commission shall develop a comprehensive
2 tourism promotion and development strategy for West
3 Virginia. "Comprehensive tourism promotion and
4 development strategy" means a plan that outlines
5 strategies and activities designed to continue, diversify
6 or expand the tourism base of the state as a whole; create
7 tourism jobs; develop a highly skilled tourism work
8 force; facilitate business access to capital for tourism;

9 advertise and market the resources offered by the state
10 with respect to tourism promotion and development;
11 facilitate cooperation among local, regional and private
12 tourism enterprises; improve infrastructure on a state,
13 regional and community level in order to facilitate
14 tourism development; improve the tourism business
15 climate generally; and leverage funding from sources
16 other than the state, including local, federal and private
17 sources.

18 (b) In developing its strategies, the commission shall
19 consider the following:

20 (1) Improvement and expansion of existing tourism
21 marketing and promotion activities;

22 (2) Promotion of cooperation among municipalities,
23 counties, and the West Virginia infrastructure and jobs
24 development council in funding physical infrastructure
25 to enhance the potential for tourism development.

26 (c) The tourism commission shall have the power and
27 duty:

28 (1) To acquire for the state in the name of the commis-
29 sion by purchase, lease or agreement, or accept or reject
30 for the state, in the name of the commission, gifts,
31 donations, contributions, bequests or devises of money,
32 security or property, both real and personal, and any
33 interest in such property, to effectuate or support the
34 purposes of this article;

35 (2) To make recommendations to the governor and the
36 Legislature of any legislation deemed necessary to
37 facilitate the carrying out of any of the foregoing powers
38 and duties and to exercise any other power that may be
39 necessary or proper for the orderly conduct of the
40 business of the commission and the effective discharge of
41 the duties of the commission;

42 (3) To cooperate and assist in the production of motion
43 pictures and television and other communications;

44 (4) To purchase advertising time or space in or upon

45 any medium generally engaged or employed for said
46 purpose to advertise and market the resources of the
47 state or to inform the public at large or any specifically
48 targeted group or industry about the benefits of living in,
49 investing in, producing in, buying from, contracting
50 with, or in any other way related to, the state of West
51 Virginia or any business, industry, agency, institution or
52 other entity therein: *Provided*, That of any funds appro-
53 priated and allocated for purposes of advertising and
54 marketing expenses for the promotion and development
55 of tourism, not less than twenty percent of the funds
56 shall be expended with the approval of the director of
57 the division of natural resources to advertise, promote
58 and market state parks, state forests, state recreation
59 areas and wildlife recreational resources; and

60 (5) To take such additional actions as may be necessary
61 to carry out the duties and programs described in this
62 article.

63 (d) The commission shall submit a report annually to
64 the council for community and economic development
65 about the development of the tourism industry in the
66 state and the necessary funding required by the state to
67 continue the development of the tourism industry.

68 (e) The executive director of the West Virginia develop-
69 ment office shall assist the commission in the perfor-
70 mance of its powers and duties and the executive direc-
71 tor is hereby authorized in providing this assistance to
72 employ necessary personnel, contract with professional
73 or technical experts or consultants and to purchase or
74 contract for the necessary equipment or supplies.

75 (f) The commission shall promulgate legislative rules
76 pursuant to the provisions of chapter twenty-nine-a of
77 this code to carry out its purposes and programs, to
78 include generally the programs available, the procedure
79 and eligibility of applications relating to assistance
80 under such programs and the staff structure necessary to
81 support such programs, which structure shall include the
82 qualifications for a professional staff person qualified by

83 reason of exceptional training and experience in the field
84 of advertising to supervise the advertising and promotion
85 functions of the commission, and shall further include
86 provision for the management of West Virginia welcome
87 centers. The commission is further authorized to pro-
88 mulgate procedural rules pursuant to said chapter to
89 include instructions and forms for applications relating
90 to assistance.

**§5B-2-10. Program and policy action statement; submission
to joint committee on government and finance.**

1 The tourism commission, the West Virginia develop-
2 ment office and any other authorities, boards, commis-
3 sions, corporations or other entities created or amended
4 under this chapter and article eleven, chapter eighteen-b
5 of this code, shall prepare and submit to the joint
6 committee on government and finance on or before the
7 first day of December, one thousand nine hundred
8 ninety-five, and each year thereafter, a program and
9 policy action statement which shall outline in specific
10 detail according to the purpose, powers and duties of the
11 office or section, its procedure, plan and program to be
12 used in accomplishing its goals and duties as required
13 under this article.

§5B-2-11. Public private partnerships.

1 (a) The commission is authorized to enter into contrac-
2 tual or joint venture agreements with a nonprofit corpo-
3 ration organized pursuant to the corporate laws of the
4 state, organized to permit qualification pursuant to
5 Section 501(c) of the Internal Revenue Code and orga-
6 nized for purposes of the promotion and development of
7 tourism in West Virginia, and funded from sources other
8 than the state. Members of the commission are autho-
9 rized to sit on the board of directors of the private
10 nonprofit corporation.

11 (b) From time to time the commission may enter into
12 joint ventures wherein the West Virginia development
13 office and the nonprofit corporation share in the devel-

14 opment and funding of tourism promotion or develop-
15 ment programs.

16 (c) All contracts and joint venture agreements must be
17 approved by recorded vote of the commission. Contracts
18 entered into pursuant to this section for longer than one
19 fiscal year shall contain, in substance, a provision that
20 the contract shall be considered canceled without further
21 obligation on the part of the state if the Legislature or,
22 where appropriate, the federal government shall fail to
23 appropriate sufficient funds therefor or shall act to
24 impair the contract or cause it to be canceled.

§5B-2-12. Tourism promotion fund created; use of funds.

1 There is continued in the state treasury the special
2 revenue fund known as the "tourism promotion fund"
3 created under prior enactment of section nine, article
4 one of this chapter.

5 (a) A minimum of five percent of the moneys deposited
6 in the fund each year shall be used solely for direct
7 advertising for West Virginia travel and tourism: *Pro-*
8 *vided*, That no less than twenty percent of these funds be
9 expended with the approval of the director of the
10 division of natural resources to effectively promote and
11 market the state's parks, state forests, state recreation
12 areas and wildlife recreational resources. Direct adver-
13 tising means advertising which is limited to television,
14 radio, mailings, newspaper, magazines and outdoor
15 billboards, or any combination thereof;

16 (b) The balance of the moneys deposited in the fund
17 shall be used for direct advertising within the state's
18 travel regions as defined by the commission. The funds
19 shall be made available to these districts beginning the
20 first day of July, one thousand nine hundred ninety-five,
21 according to legislative rules promulgated by the tourism
22 commission: *Provided*, That emergency rules for the
23 distribution of funds for the fiscal year ending the
24 thirtieth day of June, one thousand nine hundred ninety-
25 six, are specifically authorized; and

26 (c) All advertising expenditures over twenty-five
27 thousand dollars from the tourism promotion fund
28 require prior approval by recorded vote of the commis-
29 sion.

§5B-2-13. Sunset provision.

1 Unless sooner terminated by law, the tourism commis-
2 sion shall terminate on the first day of July, one thou-
3 sand nine hundred ninety-seven, in accordance with the
4 provisions of article ten, chapter four of this code.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5. PARKS AND RECREATION.

**§20-5-1. Section of parks and recreation; chief of section;
existing obligation; appropriations.**

1 (a) The section of parks and recreation of the division
2 of natural resources shall have within its jurisdiction
3 and supervision the parks functions of the former
4 division of tourism and parks, transferred to the division
5 of natural resources pursuant to the provisions of section
6 twelve, article one, chapter five-b of this code enacted in
7 the year one thousand nine hundred ninety-four. The
8 section of parks and recreation shall be under the control
9 of a chief, to be appointed by and to serve at the will and
10 pleasure of the director, who shall be qualified by reason
11 of exceptional training and experience in the field of
12 public recreation administration or natural resource
13 management.

14 (b) The division of natural resources shall have the
15 duty and authority to administer those properties which
16 are a part of the state parks and public recreation
17 system, to which legal title has remained with the
18 division of natural resources, while the section of parks
19 and recreation was part of the former division of tourism
20 and parks.

21 (c) All existing contracts and obligations of the section
22 of parks and recreation, including those in the name of
23 the division of tourism and parks administered on behalf

24 of the section of parks and recreation, shall remain in
25 full force and effect and any existing contracts and
26 obligations relating to parks and recreation shall be
27 performed by the division of natural resources.

28 (d) The transfer, made pursuant to executive order, to
29 the division of natural resources of the unexpended
30 balance existing on the thirtieth day of June, one thou-
31 sand nine hundred ninety-five, in any appropriation
32 originally made to the division of tourism and parks is
33 hereby ratified.

**§20-5-2. Powers of the director with respect to the section of
parks and recreation.**

1 The director of the division of natural resources shall
2 be responsible for the execution and administration of
3 the provisions herein as an integral part of the parks and
4 recreation program of the state and shall organize and
5 staff the section of parks and recreation for the orderly,
6 efficient and economical accomplishment of these ends.
7 The authority granted in the year one thousand nine
8 hundred ninety-four to the director of the division of
9 natural resources to employ up to six additional unclas-
10 sified personnel to carry out the parks functions of the
11 division of natural resources is continued.

12 The director of the division of natural resources shall
13 further have the authority, power and duty to:

14 (a) Establish, manage and maintain the state's parks
15 and recreation system for the benefit of the people of this
16 state and do all things necessary and incidental to the
17 development and administration thereof;

18 (b) Acquire property for the state in the name of the
19 division of natural resources by purchase, lease or
20 agreement; retain, employ and contract with legal
21 advisors and consultants; or accept or reject for the state,
22 in the name of the division, gifts, donations, contribu-
23 tions, bequests or devises of money, security or property,
24 both real and personal, and any interest in such prop-
25 erty, including lands and waters, for state park or

26 recreational areas for the purpose of providing public
27 recreation: *Provided*, That the provisions of section
28 twenty, article one of this chapter are specifically made
29 applicable to any acquisitions of land: *Provided, how-*
30 *ever*, That any sale, exchange or transfer of property for
31 the purposes of completing land acquisitions or provid-
32 ing improved recreational opportunities to the citizens of
33 the state shall be subject to the procedures of article
34 one-a of this chapter: *Provided further*, That no sale of
35 any park or recreational area property, including lands
36 and waters, used for purposes of providing public
37 recreation on the effective date of this article and no
38 privatization of any park may occur without statutory
39 authority;

40 (c) Approve and direct the use of all revenue derived
41 from the operation of the state parks and public recre-
42 ation system for the operation, maintenance and im-
43 provement of the system, individual projects of the
44 system or for the retirement of park development reve-
45 nue bonds;

46 (d) Approve the use of no less than twenty percent of
47 the: (i) Funds appropriated for purposes of advertising
48 and marketing expenses related to the promotion and
49 development of tourism, pursuant to subsection (j),
50 section eighteen, article twenty-two, chapter twenty-
51 nine of this code; and (ii) funds authorized for expendi-
52 ture from the tourism promotion fund for purposes of
53 direct advertising, pursuant to section twelve, article
54 two, chapter five-b of this code and section ten, article
55 twenty-two-a, chapter twenty-nine of this code, to
56 effectively promote and market the state's parks, state
57 forests, state recreation areas and wildlife recreational
58 resources;

59 (e) Issue park development revenue bonds as provided
60 in this article;

61 (f) Provide for the construction and operation of
62 cabins, lodges, resorts, restaurants and other developed
63 recreational service facilities, subject to the provisions of

64 section fifteen of this article and section twenty, article
65 one of this chapter;

66 (g) Promulgate rules to control uses of the parks,
67 subject to the provisions of chapter twenty-nine-a of this
68 code: *Provided*, That the director shall not permit public
69 hunting, the exploitation of minerals or the harvesting of
70 timber for commercial purposes in any state park;

71 (h) Notwithstanding any provision of this code to the
72 contrary, the director may, for amounts less than two
73 hundred fifty dollars, exempt designated state parks
74 from the requirement that all payments must be depos-
75 ited in a bank within twenty-four hours;

76 (i) The director of the division of natural resources
77 shall waive the use fee normally charged to an individual
78 or group for one day's use of a picnic shelter or one
79 week's use of a cabin in a state recreation area when the
80 individual or group donates the materials and labor for
81 the construction of the picnic shelter or cabin: *Provided*,
82 That the individual or group was authorized by the
83 director to construct the picnic shelter or cabin and that
84 it was constructed in accordance with the authorization
85 granted and the standards and requirements of the
86 division pertaining to such construction. The individual
87 or group to whom the waiver is granted may use the
88 picnic shelter for one reserved day or the cabin for one
89 reserved week during each calendar year until the
90 amount of the donation equals the amount of the loss of
91 revenue from the waiver or until the individual dies or
92 the group ceases to exist, whichever first occurs. The
93 waiver is not transferable. The director shall permit free
94 use of picnic shelters or cabins to individuals or groups
95 who have contributed materials and labor for construc-
96 tion of picnic shelters or cabins prior to the effective
97 date of this section. The director shall promulgate a
98 legislative rule in accordance with the provisions of
99 chapter twenty-nine-a of this code governing the free use
100 of picnic shelters or cabins provided for in this section,
101 the eligibility for free use, determining the value of the

102 donations of labor and materials, the appropriate
103 definitions of a group and the maximum time limit for
104 such use;

105 (j) Provide within the parks a market for West Virginia
106 arts, crafts and products, which shall permit gift shops
107 within the parks to offer for sale items purchased on the
108 open market from local artists, artisans, craftsmen and
109 suppliers and local or regional crafts cooperatives; and

110 (k) Promote and disseminate information related to the
111 attractions of the state through the continued operation
112 of the state's telemarketing initiative, which is hereby
113 transferred to the division of natural resources effective
114 the first day of July, one thousand nine hundred ninety-
115 six, which telemarketing initiative shall include a
116 centralized reservation and information system for state
117 parks and recreational facilities.

**§20-5-3. Section of parks and recreation; purpose; powers
and duties generally.**

1 The purposes of the section of parks and recreation
2 shall be to promote conservation by preserving and
3 protecting natural areas of unique or exceptional scenic,
4 scientific, cultural, archaeological or historic signifi-
5 cance and to provide outdoor recreational opportunities
6 for the citizens of this state and its visitors. It shall be
7 the duty of the section of parks and recreation to have
8 within its jurisdiction and supervision:

9 (a) All state parks and recreation areas, including all
10 lodges, cabins, swimming pools, motorboating and all
11 other recreational facilities therein, except the roads
12 heretofore transferred pursuant to section one, article
13 four, chapter seventeen of this code to the state road
14 system and to the responsibility of the commissioner of
15 highways with respect to the construction, reconstruc-
16 tion and maintenance of the roads or any future roads
17 for public usage on publicly owned lands for future state
18 parks, state forests and public hunting and fishing areas;

19 (b) The authority and responsibility to do the necessary

20 cutting and planting of vegetation along road rights-of-
21 way in state parks and recreational areas;

22 (c) The administration of all laws and regulations
23 relating to the establishment, development, protection,
24 use and enjoyment of all state parks and state recre-
25 ational facilities consistent with the provisions of this
26 article;

27 (d) The continued operation and maintenance of the
28 Berkeley Springs historical state park, in Morgan
29 county, as a state recreational facility, designated the
30 Berkeley Springs sanitarium under prior enactment of
31 this code;

32 (e) The continued operation and maintenance of that
33 portion of Washington Carver camp in Fayette county
34 formerly incorporated within the boundaries of Babcock
35 state park;

36 (f) The continued operation and maintenance of Camp
37 Creek state park as a state recreational facility, formerly
38 delineated according to section three, article one-a,
39 chapter nineteen of this code;

40 (g) The continued operation and maintenance of
41 Moncove Lake state park as a state recreational facility,
42 formerly delineated pursuant to enactment of section
43 thirteen, article one, chapter five-b of this code in the
44 year one thousand nine hundred ninety;

45 (h) The continued protection, operation and mainte-
46 nance of approximately seventy-five miles of right-of-
47 way along the former Greenbrier subdivision of the
48 Chessie railroad system between Caldwell in Greenbrier
49 county and Cass in Pocahontas county, designated the
50 Greenbrier river trail, including the protection of the
51 trail from motorized vehicular traffic and operation for
52 the protection of adjacent public and private property;
53 and

54 (i) The continued protection, operation and mainte-
55 nance of approximately sixty and fifty-seven one-

56 hundredths miles of right-of-way of the CSX railway
57 system between Walker in Wood county and Wilsonburg
58 in Harrison county, designated the North Bend rail trail,
59 including the protection of the trail from motorized
60 vehicular traffic and operation for the protection of
61 adjacent public and private property.

§20-5-4. Definitions; state parks and recreation system.

1 As used in this article, unless the context clearly
2 requires otherwise:

3 “Bonds” shall mean bonds issued by the director.

4 “Cost of project” shall embrace the cost of construc-
5 tion, the cost of all land, property, material and labor
6 which are deemed essential thereto, cost of improve-
7 ments, financing charges, interest during construction
8 and all other expenses, including legal fees, trustees’,
9 engineers’ and architects’ fees which are necessary or
10 properly incidental to the project.

11 “Project” shall be deemed to mean collectively the
12 acquisition of land, the construction of any buildings or
13 other works, together with incidental approaches,
14 structures and facilities, reasonably necessary and useful
15 in order to provide new or improved recreational facili-
16 ties.

17 “Recreational facilities” shall mean and embrace
18 cabins, lodges, swimming pools, golf courses, restau-
19 rants, commissaries and other revenue producing facili-
20 ties in any state park.

21 “Rent or rental” shall include all moneys received for
22 the use of any recreational facility.

§20-5-5. Authority of director to issue park development revenue bonds; grants and gifts.

1 The director, with the approval of the governor, is
2 hereby empowered to raise the cost of any project, as
3 defined in this article, by the issuance of park develop-
4 ment revenue bonds of the state, the principal of and

5 interest on the bonds shall be payable solely from the
6 special fund herein provided for the payment. The bonds
7 shall be authorized by order of the director, approved by
8 the governor, which shall recite an estimate by the
9 director of the cost of the project, and shall provide for
10 the issuance of bonds in an amount sufficient, when sold
11 as hereinafter provided, to produce the cost, less the
12 amount of any grant or grants, gift or gifts received, or in
13 the opinion of the director expected to be received from
14 the United States of America or from any other source.
15 The acceptance by the director of any and all grants and
16 gifts, whether in money or in land, labor or materials, is
17 hereby expressly authorized. All bonds shall have and
18 are hereby declared to have all the qualities of negotia-
19 ble instruments under the provisions of article eight,
20 chapter forty-six of this code. The director shall have
21 the power:

22 (a) To issue negotiable bonds, security interests or
23 notes and to provide for and secure the payment thereof
24 and to provide for the rights of the holders thereof and
25 to purchase, hold and dispose of any of its bonds, secu-
26 rity interests or notes.

27 (b) To sell, at public or private sale, any bond or other
28 negotiable instrument, security interests or obligation of
29 the director in any manner and upon such terms as the
30 director deems would best serve the purposes set forth
31 herein.

32 (c) To issue its bonds, security interests and notes
33 payable solely from the revenues or funds available to
34 the director therefor; and the director may issue its
35 bonds, security interests or notes in such principal
36 amounts as it shall deem necessary to provide funds for
37 any purposes herein including:

38 (i) The payment, funding or refunding of the principal
39 of, interest on or redemption premiums on any bonds,
40 security interests or notes issued by it whether the
41 bonds, security interests, notes or interest to be funded
42 or refunded have or have not become due.

43 (ii) The establishment or increase of reserves to secure
44 or to pay bonds, security interests, notes or the interest
45 thereon and all other costs or expenses of the director
46 incident to and necessary or convenient to carry out its
47 purposes and powers. Any bonds, security interests or
48 notes may be additionally secured by a pledge of any
49 revenues, funds, assets or moneys of the special fund
50 herein provided.

51 (d) To issue renewal notes, or security interests, to
52 issue bonds to pay notes or security interests and,
53 whenever it deems refunding expedient, to refund any
54 bonds by the issuance of new bonds, whether the bonds
55 to be refunded have or have not matured except that no
56 such renewal notes shall be issued to mature more than
57 ten years from date of issuance of the notes renewed, and
58 no such refunding bonds shall be issued to mature more
59 than twenty-five years from the date of original issu-
60 ance.

61 (e) To apply the proceeds from the sale of renewal
62 notes, security interests or refunding bonds to the
63 purchase, redemption or payment of the notes, security
64 interests or bonds to be refunded.

65 (f) To accept gifts or grants or property, funds, security
66 interests, money materials, labor, supplies or services
67 from the United States of America or from any govern-
68 mental unit or any person, firm or corporation and to
69 carry out the terms or provisions of, or make agreements
70 with respect to, or pledge, any gifts or grants and to do
71 any and all things necessary, useful, desirable or conve-
72 nient in connection with the procuring, acceptance or
73 disposition of gifts or grants.

74 (g) To the extent permitted under its contracts with the
75 holders of bonds, security interests or notes of the
76 authority, to consent to any modification of the rate of
77 interest, time of payment of any installment of principal
78 or interest, security or any other term of any bond,
79 security interest, note or contract or agreement of any
80 kind to which the director is a party.

81 (h) The director shall determine the form of the bonds,
82 including coupons to be attached thereto to evidence the
83 right of interest payments, which bonds shall be signed
84 by the director, under the great seal of the state, attested
85 by the secretary of state and the coupons attached
86 thereto shall bear the facsimile signature of the director.
87 In case any of the officers whose signatures appear on
88 bonds or coupons shall cease to be officers before the
89 delivery of the bonds, the signatures shall nevertheless
90 be valid and sufficient for all purposes the same as if
91 they had remained in office until such delivery.

92 (i) The director shall fix the denominations of the
93 bonds, the principal and interest of which shall be
94 payable at the office of the treasurer of the state of West
95 Virginia, at the capitol of the state or, at the option of the
96 holder, at such other place to be named in the bonds in
97 such medium as may be determined by the director.

98 (j) The director may provide for the registration of the
99 bonds in the name of the owner as to principal alone, and
100 as to both principal and interest under such terms and
101 conditions as the director may determine, and shall sell
102 the bonds in such manner as he or she may determine to
103 be for the best interest of the state, taking into consider-
104 ation the financial responsibility of the purchaser and
105 the terms and conditions of the purchase and especially
106 the availability of the proceeds of the bonds when
107 required for payment of the cost of the project.

108 (k) The proceeds of the bonds shall be used solely for
109 the payment of the cost of the project and shall be
110 deposited and withdrawn as provided by section
111 thirteen-g of this article, and under such further restric-
112 tions, if any, as the director may provide.

113 (l) If the proceeds of such bonds, by error in calculation
114 or otherwise, shall be less than the cost of the project,
115 additional bonds may in like manner be issued to provide
116 the amount of the deficiency and, unless otherwise
117 provided for in the trust agreement hereinafter men-
118 tioned, shall be deemed to be of the same issue and shall

119 be entitled to payment from the same fund without
120 preference or priority as the bonds before issued.

121 (m) If the proceeds of bonds issued for the project shall
122 exceed the cost thereof, the surplus shall be paid into a
123 special fund to be established for payment of the princi-
124 pal and interest of the bonds as specified in the trust
125 agreement provided for in the following section. The
126 fund may be used for the purchase of any of the out-
127 standing bonds payable from such fund at the market
128 price, but not exceeding the price, if any, which bonds
129 shall in the same year be redeemable, and all bonds
130 redeemed or purchased shall forthwith be canceled and
131 shall not again be issued. Prior to the preparation of
132 definitive bonds, the director may, under like restric-
133 tions, issue temporary bonds with or without coupons
134 exchangeable for definitive bonds upon the issuance of
135 the latter. The revenue bonds may be issued without any
136 other proceedings or the happening of any other condi-
137 tions or things than those proceedings, conditions and
138 things which are specified and required herein or by the
139 constitution of the state.

§20-5-6. Tax exemption.

1 The exercise of the powers granted to the director
2 herein will be in all respects for the benefit of the people
3 of the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of
5 their recreational opportunities and is a public purpose.
6 As the operation and maintenance of park development
7 projects will constitute the performance of essential
8 government functions, the director shall not be required
9 to pay any taxes or assessments upon any park develop-
10 ment projects or upon any property acquired or used by
11 the director or upon the income therefrom, other than
12 taxes collected from the consumer pursuant to article
13 fifteen, chapter eleven of this code. The bonds and notes
14 and all interest and income thereon shall be exempt from
15 all taxation by this state or any county, municipality,
16 political subdivision or agency thereof, except inheri-

17 tance taxes.

§20-5-7. Investment in notes, bonds and security interests.

1 The notes, bonds and security interests of the director
2 are hereby made securities in which the state board of
3 investments, all insurance businesses, all banking
4 institutions, trust companies, building and loan associa-
5 tions, savings and loan associations may invest and upon
6 which notes, security interests or bonds become subject
7 to redemption plus accrued interest to such date. Upon
8 the purchase, the notes, security interests or bonds shall
9 be canceled.

§20-5-8. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of indebt-
3 edness of the director and the notes, security interests of
4 bonds or other evidence of indebtedness shall not be a
5 debt of the state of West Virginia and the notes, security
6 interests or bonds or other evidence of indebtedness shall
7 contain on the face thereof a statement to such effect.

§20-5-9. Trustee for holders of park development revenue bonds.

1 The director may enter into an agreement or agree-
2 ments with any trust company, or with any bank having
3 the powers of a trust company, either within or outside
4 the state, as trustee for the holders of bonds issued
5 hereunder, setting forth therein the duties of the state
6 and of the director in respect to acquisition, construc-
7 tion, improvement, maintenance, operation, repair and
8 insurance of the project, the conservation and applica-
9 tion of all moneys, the insurance of moneys on hand or
10 on deposit and the rights and remedies of the trustee and
11 the holders of the bonds, as may be agreed upon with the
12 original purchasers of the bonds, and including therein
13 provisions restricting the individual right of action of
14 bondholders as is customary in trust agreements respect-
15 ing bonds and debentures of corporations, protecting and
16 enforcing the rights and remedies of the trustee and the

17 bondholders and providing for approval by the original
18 purchaser of the bonds of the appointment of consulting
19 architects, and of the security given by those who
20 contract to construct the project, and by any bank or
21 trust company in which the proceeds of bonds or rentals
22 shall be deposited, and for approval by the consulting
23 architects of all contracts for construction. All expenses
24 incurred in carrying out the agreement may be treated as
25 a part of the cost of maintenance, operation and repair
26 of the project.

**§20-5-10. Proceeds of park development revenue bonds,
grants and gifts.**

1 The proceeds of all bonds sold for any park develop-
2 ment project and the proceeds of any grant or gift
3 received by the director for any project financed by the
4 issuance of park development revenue bonds shall be
5 paid to the treasurer of the state of West Virginia, who
6 shall not commingle the funds with any other moneys,
7 but shall deposit them in a separate bank account or
8 accounts. The moneys in the accounts shall be paid by
9 the treasurer on requisition of the director or any other
10 person as the director may authorize to make such
11 requisition. All deposits of the moneys shall, if required
12 by the treasurer or the director, be secured by obligation
13 of the United States, of the state of West Virginia, or of
14 the director, of a market value equal at all times to the
15 amount of the deposit and all banking institutions are
16 authorized to give such deposits.

**§20-5-11. Authority of director to pledge revenue from recre-
ational facilities as security.**

1 The director, with the approval of the governor, shall
2 have authority to pledge all revenue derived from any
3 project as security for any bonds issued to defray the
4 cost of the project. In any case in which the director may
5 deem it advisable, he or she shall also have the authority
6 to pledge the revenue derived from any existing recre-
7 ational facilities under his or her control, or any state
8 park or forest, as additional security for the payment of

9 any bonds issued under the provisions of this article to
10 pay the cost of any park development project.

§20-5-12. Management and control of project.

1 The division shall properly maintain, repair, operate,
2 manage and control the project, fix the rates of rental
3 and establish bylaws and rules for the use and operation
4 of the project and may make and enter into all contracts
5 or agreements necessary and incidental to the perfor-
6 mance of its duties and the execution of its powers
7 hereunder.

§20-5-13. Provisions of constitution and law observed; what approval required.

1 It shall not be necessary to secure from any officer or
2 board not named in this article any approval or consent,
3 or any certificate or finding, or to hold an election, or to
4 take any proceedings whatever, either for the construc-
5 tion of any project, or the improvement, maintenance,
6 operation or repair thereof, or for the issuance of bonds
7 hereunder, except as are prescribed by these provisions
8 or are required by the constitution of this state.

9 Nothing contained herein shall be so construed or
10 interpreted as to authorize or permit the incurring of
11 state debt of any kind or nature as contemplated by the
12 provisions of the constitution of the state in relation to
13 state debt.

§20-5-14. Restaurants and other facilities.

1 The director may, on all areas under his or her jurisdic-
2 tion and control, operate commissaries, restaurants and
3 other establishments for the convenience of the public.
4 For these purposes the director may purchase equip-
5 ment, foodstuffs, supplies and commodities according to
6 law.

**§20-5-15. Contracts for operation of commissaries, restau-
rants, recreational facilities and other establish-
ments limited to ten years' duration; renewal at
option of director; termination of contract by the**

director; necessity for prior legislative approval before certain lodge, cabin, camping, golf facility, including pro shop operations, ski facility or gift shop facilities are placed under contract.

1 When it is considered necessary by the director to enter
2 into a contract with a person, firm, corporation, founda-
3 tion or public agency for the operation of a commissary,
4 restaurant, recreational facility or other establishment
5 within the state parks and public recreation system, the
6 contract shall be for a duration not to exceed ten years,
7 but the contract may provide for an option to renew at
8 the director's discretion for an additional term or terms
9 not to exceed ten years at the time of renewal. Prior to
10 initiating a contract for the operation of a state park
11 lodge, cabin, campground, gift shop, golf facility, includ-
12 ing pro shop operations, or ski facility, the director shall
13 submit the specific location which would be subject to
14 the contract to the Legislature for its approval and
15 authorization: *Provided*, That for contracts for gift shops
16 or golf facilities in specific locations operated under
17 contract on the effective date of this section, and con-
18 tracts for a duration of not more than one year which
19 provide for options to renew for not more than five
20 succeeding years, notice to the joint committee on
21 government and finance, but not specific legislative
22 authorization and approval, is required prior to execu-
23 tion of the contract.

24 Any contract entered into by the director shall provide
25 an obligation upon the part of the operator that he or she
26 maintain a level of performance satisfactory to the
27 director and shall further provide that any contact may
28 be terminated by the director in the event he or she
29 determines that the performance is unsatisfactory and
30 has given the operator reasonable notice of the termina-
31 tion.

§20-5-16. Authority to enter into contracts with third parties to construct lodge facilities.

1 Notwithstanding any other provision of this code to the

2 contrary, in addition to all other powers and authority
3 vested in the director, he or she is hereby authorized and
4 empowered to enter into contracts with third parties for
5 the construction and operation of recreational facilities
6 at Chief Logan state park, Beech Fork state park,
7 Tomlinson Run state park and Stonewall Jackson lake
8 state park: *Provided*, That the term of the contracts may
9 not exceed a period of twenty-five years, at which time
10 the full title to the lodge facilities shall vest in the state:
11 *Provided, however*, That contracts shall be presented to
12 the joint committee on government and finance for
13 review and comment prior to execution: *Provided*
14 *further*, That the contract may provide for renewal for
15 the purpose of permitting continued operation of the
16 facilities at the option of director for a term or terms not
17 to exceed ten years: *And provided further*, That no
18 extension or renewal beyond the original twenty-five-
19 year term may be executed by the director absent the
20 approval of the joint committee on government and
21 finance.

§20-5-17. Correlation of projects and services.

1 The director of the division of natural resources shall
2 correlate and coordinate park and recreation programs,
3 projects and developments with the functions and
4 services of other offices and sections of the division and
5 other agencies of the state government so as to provide,
6 consistent with the provisions of this chapter, suitable
7 and adequate facilities, landscaping, personnel and other
8 services at and about all state parks and public recre-
9 ation facilities under his or her jurisdiction.

**§20-5-18. Discounts for West Virginia residents over the age
of sixty-two.**

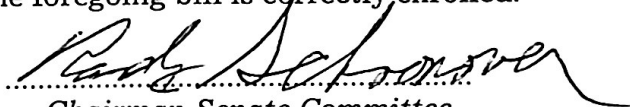
1 The director shall provide to West Virginia citizens
2 who are sixty-two years of age or older, and who docu-
3 ment residency and age by a valid West Virginia driver's
4 license, a fifty percent reduction in campground rental
5 fees for each campsite to be used exclusively by said

6 eligible camper: *Provided*, That the fifty percent reduc-
7 tion in campground rental fees shall only apply to those
8 rentals occurring during the period of time beginning on
9 the day after Labor Day and ending four days prior to
10 Memorial Day.

**§20-5-19. Discounts for West Virginia residents who are
totally and permanently disabled.**

1 The director shall issue a discount card to West Vir-
2 ginia residents who are totally and permanently disabled
3 which would provide a fifty percent reduction in camp-
4 ground rental fees for each campsite to be used exclu-
5 sively by the eligible camper: *Provided*, That in order to
6 be eligible for the reduction, the person shall document
7 that he or she is a resident of this state and that he or she
8 has a total and permanent disability. The director shall
9 promulgate rules in accordance with article three,
10 chapter twenty-nine of this code setting forth the
11 documentation which is necessary to prove residency
12 and total and permanent disability: *Provided, however*,
13 That the fifty percent reduction in campground rental
14 fees applies only to those rentals occurring during the
15 period of time beginning on the day after Labor Day and
16 ending four days prior to Memorial Day.

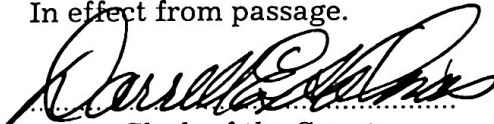
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



.....
Chairman House Committee


Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate



.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 23rd.....

day of March....., 1995.


.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/22/95
Time 4:40pm