

HB 4737

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



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LEGISLATIVE COUNSEL
24 APR 1 1996

HOUSE BILL No. 4737

(By Delegate Mr. Speake, Mr. Chambers, and
Delegates Manuel, Kuhn, Jenkins, Johnson,
Yeager and Smirl)

Passed March 9, 1996

In Effect Ninety Days from Passage

ENROLLED

H. B. 4737

(BY MR. SPEAKER, MR. CHAMBERS, DELEGATES MANUEL, KUHN,
JENKINS, JOHNSON, YEAGER AND SMIRL)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen; and to amend and reenact section one, article twenty-nine, chapter thirty of said code, all relating to establishing the Hatfield-McCoy regional recreation authority and the powers, goals and duties associated therewith; providing a statement of legislative purpose and findings; providing definitions; establishing the Hatfield-McCoy regional recreation authority; providing for a method of appointment to the board of the authority; prescribing the terms of appointment; required surety bonds; setting forth the powers and duties of the authority; providing for meetings of the board and payments of expenses; appointment of an executive director; authorizing rangers and describing the duties, powers and limitations of rangers and prescribing certain law-enforcement authority; limiting the liability of the state; and providing criminal penalties for a violation of the rules promulgated by the board.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen; and that section one, article twenty-nine, chapter thirty of said code be amended and reenacted, all to read as follows:

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CHAPTER 20. NATURAL RESOURCES.**ARTICLE 13. HATFIELD-MCCOY REGIONAL RECREATION
AUTHORITY.****§20-13-1. Legislative findings.**

1 The West Virginia Legislature finds that there is a
2 significant need within the state and throughout the east-
3 ern United States for well-managed facilities for
4 trail-oriented recreation for off-highway vehicle enthusi-
5 asts, mountain bicyclists and others. The Legislature fur-
6 ther finds that under an appropriate contractual and man-
7 agement scheme, well-managed, trail-oriented, recreation
8 facilities could exist on private property without diminish-
9 ing the landowner's interest, control or profitability in the
10 land.

11 The Legislature further finds that, with the cooperation
12 of private landowners who hold large tracts of land, there
13 is an opportunity to provide trail-oriented recreation facil-
14 ities primarily on private property in the mountainous
15 terrain of southern West Virginia and that the facilities will
16 provide significant benefit to the state and to the commu-
17 nities in southern West Virginia through increased tourism
18 in the same manner as white water rafting and snow skiing
19 benefit the state and communities surrounding those activ-
20 ities.

21 The Legislature further finds that the creation and
22 empowering of a statutory corporation to work with the
23 landowners, county officials and community leaders, state
24 and federal government agencies, recreational user groups
25 and other interested parties to enable and facilitate the
26 implementation of the facilities will greatly assist in the
27 realization of these potential benefits.

§20-13-2. Definitions.

1 Unless the context clearly requires a different mean-
2 ing, the terms used in this section have the following
3 meanings:

4 (a) "Authority" means the Hatfield-McCoy regional
5 recreational authority;

6 (b) "Board" means the board of the Hatfield-McCoy
7 regional recreation authority; and

8 (c) "Hatfield-McCoy recreation area" means a system
9 of recreational trails and appurtenant facilities, including
10 trail head centers, parking areas, camping facilities, picnic
11 areas, recreational areas, historic or cultural interpretive
12 sites and other facilities that are a part of the system;

13 (d) "Participating county" means the counties of
14 Boone, Lincoln, Logan, McDowell, Mingo, Wayne and
15 Wyoming, and, with the approval of the board, any other
16 county or counties where trails and other recreational
17 facilities relating to the Hatfield-McCoy recreation area
18 are developed in the future with the cooperation of the
19 county commission.

§20-13-3. Creation; appointment of board; terms.

1 (a) There is hereby created the "Hatfield-McCoy re-
2 gional recreation authority" which is a public corporation
3 and a government instrumentality existing for the purpose
4 of enabling and facilitating the development and opera-
5 tion of a system of trail-oriented recreation facilities for
6 use by off-highway vehicle enthusiasts, equestrians, moun-
7 tain bicyclists and others. This recreational trail system
8 shall be located in southern West Virginia with significant
9 portions of the recreational trail system being located on
10 private property made available for use through lease,
11 license, easement or other appropriate legal form by a
12 willing landowner.

13 (b) The authority shall be governed by a board of at
14 least seventeen members who shall be representative of the
15 various interests involved in the Hatfield-McCoy recre-
16 ation area project in the southern region of the state and
17 who shall be appointed as follows:

18 (1) The county commission of each participating
19 county, as defined in section two of this article, shall ap-
20 point two members of the board as follows:

21 (A) One member who represents and is associated with
22 a corporation or individual landowner whose land is being
23 used or is expected to be used in the future as part of the
24 Hatfield-McCoy recreation area project. This member
25 shall be appointed to a four-year term.

26 (B) One member who represents and is associated with
27 travel and tourism or economic development efforts within
28 the county. The initial appointment shall be for a two-year
29 term, but all subsequent appointments shall be for a
30 four-year term.

31 (2) The members of the board appointed under subdi-
32 vision one, subsection (b) of this section by the county
33 commissions shall appoint three additional board mem-
34 bers, at least two of whom represent and are associated
35 with recreational users of the Hatfield-McCoy recreation
36 area project. These members shall serve three-year terms.

37 (3) The following three persons shall serve as nonvot-
38 ing members representing the state: The director of the
39 division of travel and tourism, the director of the division
40 of natural resources, and the director of the division of
41 forestry, or their respective designees.

42 Any appointed member whose term has expired shall
43 serve until his or her successor has been duly appointed
44 and qualified. Any person appointed to fill a vacancy shall
45 serve only for the unexpired term. Any appointed mem-
46 ber is eligible for reappointment. Members of the board
47 are not entitled to compensation for services performed as
48 members but are entitled to reimbursement for all reason-
49 able and necessary expenses actually incurred in the per-
50 formance of their duties.

51 (c) Before the authority issues any revenue bonds or
52 revenue refunding bonds under the authority of this arti-
53 cle, each appointed voting member of the board shall
54 execute a surety bond in the penal sum of twenty-five
55 thousand dollars and the officers and executive director of
56 the board shall each execute a surety bond in the penal
57 sum of fifty thousand dollars. Each surety bond shall be
58 conditioned upon the faithful performance of the duties
59 of the member, officer or director, shall be executed by a
60 surety company authorized to transact business in this
61 state as surety and shall be approved by the governor and
62 filed in the office of the secretary of state. The authority
63 shall pay premiums on the surety bonds from funds ac-
64 cruing to the authority.

§20-13-4. Board; quorum; executive director; expenses.

1 The board is the governing body of the authority and
2 the board shall exercise all the powers given the authority
3 in this article.

4 The board shall meet quarterly, unless a special meet-
5 ing is called by its chairman: *Provided*, That on the sec-
6 ond Monday of July of each even-numbered year, or as
7 soon thereafter as feasible, the board shall meet to elect a
8 chairman, secretary and treasurer from among its own
9 members.

10 A majority of the members of the board constitutes a
11 quorum, and a quorum shall be present for the board to
12 conduct business. Unless the bylaws require a larger num-
13 ber, action may be taken by majority vote of the members
14 present.

15 The board shall prescribe, amend, and repeal bylaws
16 and rules governing the manner in which the business of
17 the authority is conducted and shall review and approve an
18 annual budget.

19 The board shall appoint an executive director to act as
20 its chief executive officer, to serve at the will and pleasure
21 of the board. The board, acting through its executive di-
22 rector, may employ any other personnel considered neces-
23 sary and may appoint counsel and legal staff for the au-
24 thority and retain such temporary engineering, financial
25 and other consultants or technicians as may be required
26 for any special study or survey consistent with the provi-
27 sions of this article. The executive director shall carry out
28 plans to implement the provisions of this article and to
29 exercise those powers enumerated in the bylaws. The ex-
30 ecutive director shall prepare annually a budget to be
31 submitted to the board for its review and approval.

32 All costs incidental to the administration of the author-
33 ity, including office expenses, personal services expense
34 and current expense, shall be paid in accordance with
35 guidelines issued by the board from funds accruing to the
36 authority.

37 All expenses incurred in carrying out the provisions of

38 this article shall be payable solely from funds provided
39 under the authority of this article and no liability or obli-
40 gation may be incurred by the authority under this article
41 beyond the extent to which moneys have been provided
42 under the authority of this article.

§20-13-5. Powers of authority.

1 The authority, as a public corporation and govern-
2 mental instrumentality exercising public powers of the
3 state, may exercise all powers necessary or appropriate to
4 carry out the purposes of this article, including, but not
5 limited to, the power:

6 (1) To acquire, own, hold and dispose of property, real
7 and personal, tangible and intangible;

8 (2) To lease property, whether as lessee or lessor, and
9 to acquire or grant through easement, license, or other
10 appropriate legal form, the right to develop and use prop-
11 erty and open it to the use of the public;

12 (3) To mortgage or otherwise grant security interests
13 in its property;

14 (4) To procure insurance against any losses in connec-
15 tion with its property, license or easements, contracts, in-
16 cluding hold-harmless agreements, operations or assets in
17 such amounts and from such insurers as the authority
18 considers desirable;

19 (5) To maintain such sinking funds and reserves as the
20 board determines appropriate for the purposes of meeting
21 future monetary obligations and needs of the authority;

22 (6) To sue and be sued, implead and be impleaded,
23 and complain and defend in any court;

24 (7) To contract for the provision of legal services by
25 private counsel, and notwithstanding the provisions of
26 article three, chapter five of this code, the counsel may, in
27 addition to the provisions of other legal services, represent
28 the authority in court, negotiate contracts and other agree-
29 ments on behalf of the authority, render advice to the
30 authority on any matter relating to the authority, prepare
31 contracts and other agreements, and provide such other
32 legal services as may be requested by the authority;

- 33 (8) To adopt, use and alter at will a corporate seal;
- 34 (9) To make, amend, repeal and adopt bylaws for the
35 management and regulation of its affairs;
- 36 (10) To appoint officers, agents and employees, and to
37 contract for and engage the services of consultants;
- 38 (11) To make contracts of every kind and nature and
39 to execute all instruments necessary or convenient for
40 carrying on its business, including contracts with any other
41 governmental agency of this state or of the federal gov-
42 ernment or with any person, individual, partnership or
43 corporation to effect any or all of the purposes of this
44 article;
- 45 (12) Without in any way limiting any other subdivi-
46 sion of this section, to accept grants and loans from and
47 enter into contracts and other transactions with any federal
48 agency;
- 49 (13) To maintain an office at such places within the
50 state as it may designate;
- 51 (14) To borrow money and to issue its bonds, security
52 interests or notes and to provide for and secure the pay-
53 ment of the bonds, security interests or notes, and to pro-
54 vide for the rights of the holders of the bonds, security
55 interests or notes, and to purchase, hold and dispose of
56 any of its bonds, security interests or notes;
- 57 (15) To sell, at public or private sale, any bond or
58 other negotiable instrument, security interest, or obligation
59 of the authority in such manner and upon such terms as
60 the authority considers would best serve the purposes of
61 this article;
- 62 (16) To issue its bonds, security interests and notes
63 payable solely from the revenues or other funds available
64 to the authority, and the authority may issue its bonds,
65 security interests or notes in such principal amounts as it
66 considers necessary to provide funds for any purpose
67 under this article, including:
- 68 (A) The payment, funding or refunding of the princi-
69 pal of, interest on or redemption premiums on, any bonds,
70 security interests or notes issued by it whether the bonds,

71 security interests, notes or interest to be funded or refund-
72 ed have or have not become due;

73 (B) The establishment or increase of reserves to secure
74 or to pay bonds, security interests, notes or the interest on
75 the bonds, security interest or notes, and all other costs or
76 expenses of the authority incident to and necessary or
77 convenient to carry out its corporate purposes and powers.
78 Any bonds, security interests or notes may be additionally
79 secured by a pledge of any revenues, funds, assets, or
80 moneys of the authority from any source whatsoever;

81 (17) To issue renewal notes or security interests, to
82 issue bonds to pay notes or security interests and, whenever
83 it considers refunding expedient, to refund any bonds
84 by the issuance of new bonds, whether the bonds to be
85 refunded have or have not matured except that no renewal
86 notes may be issued to mature more than ten years from
87 the date of issuance of the notes renewed and no refund-
88 ing bonds may be issued to mature more than twenty-five
89 years from the date of issuance;

90 (18) To apply the proceeds from the sale of renewal
91 notes, security interests of refunding bonds to the pur-
92 chase, redemption or payment of the notes, security inter-
93 ests or bonds to be refunded;

94 (19) To accept gifts or grants of property, funds, secu-
95 rity interests, money, materials, labor, supplies or services
96 from the federal government or from any governmental
97 unit or any person, firm or corporation, and to carry out
98 the terms or provisions of, or make agreements with re-
99 spect to, or pledge any gifts or grants, and to do any and
100 all things necessary, useful, desirable or convenient in
101 connection with the procuring, acceptance or disposition
102 of gifts or grants;

103 (20) To the extent permitted under its contracts with
104 the holders of bonds, security interests or notes of the
105 authority, to consent to any modification of the rate of
106 interest, time of payment of any installment of principal or
107 interest, security or any other term of any bond, security
108 interest, note, contract or agreement of any kind to which
109 the authority is a party;

110 (21) To sell security interests in the loan portfolio of
111 the authority. The security interests shall be evidenced by
112 instruments issued by the authority. Proceeds from the
113 sale of security interests may be issued in the same manner
114 and for the same purposes as bond and note venues;

115 (22) To promulgate legislative rules in accordance
116 with the provisions of article three, chapter twenty-nine-a
117 of this code, as necessary to implement and make effective
118 the powers, duties and responsibilities invested in the au-
119 thority by the provisions of this article and otherwise by
120 law, including regulation of the conduct of persons using
121 the Hatfield-McCoy recreation area;

122 (23) To construct, reconstruct, improve, maintain,
123 repair, operate and manage the Hatfield-McCoy recreation
124 area at the locations within the state as may be determined
125 by the authority;

126 (24) To exercise all power and authority provided in
127 this article necessary and convenient to plan, finance, con-
128 struct, renovate, maintain and operate or oversee the oper-
129 ation of the Hatfield-McCoy recreation area at such loca-
130 tions within the state as may be determined by the authori-
131 ty;

132 (25) To exercise such other and additional powers as
133 may be necessary or appropriate for the exercise of the
134 powers conferred in this section;

135 (26) To exercise all of the powers which a corporation
136 may lawfully exercise under the laws of this state;

137 (27) To provide for law enforcement within the
138 Hatfield-McCoy recreational area by appointing rangers
139 as provided in section six of this article;

140 (28) To develop, maintain and operate or to contract
141 for the development, maintenance and operation of the
142 Hatfield-McCoy recreation area;

143 (29) To enter into contract with landowners and other
144 persons holding an interest in the land being used for its
145 recreational facilities to hold those landowners and other
146 persons harmless with respect to any claim in tort growing
147 out of the use of the land for public recreation or growing

148 out of the recreational activities operated or managed by
149 the authority from any claim except a claim for damages
150 proximately caused by the willful or malicious conduct of
151 the landowner or other person or any of his or her agents
152 or employees;

153 (30) To assess and collect a reasonable fee from those
154 persons who use the trails, parking facilities, visitor centers
155 or other facilities which are part of the Hatfield-McCoy
156 recreation area, and to retain and utilize that revenue for
157 any purposes consistent with this article;

158 (31) To cooperate with the states of Kentucky and
159 Virginia and appropriate state and local officials and com-
160 munity leaders in those states to connect the trails of the
161 West Virginia portion of the Hatfield-McCoy recreation
162 area with similar recreation facilities in those states;

163 (32) To enter into contracts or other appropriate legal
164 arrangements with landowners under which their land is
165 made available for use as part of the Hatfield-McCoy
166 recreation area; and

167 (33) To directly operate and manage recreation activi-
168 ties and facilities within the Hatfield-McCoy recreation
169 area.

§20-13-6. Hatfield-McCoy recreation area rangers.

1 The board is hereby authorized to appoint bona fide
2 residents of this state to act as Hatfield-McCoy recreation
3 area rangers upon any premises which are part of the
4 Hatfield-McCoy recreation area, subject to the conditions
5 and restrictions imposed by this section. Before perform-
6 ing the duties of ranger, each appointed person shall qual-
7 ify for the position of ranger in the same manner as is
8 required of county officers by the taking and filing of an
9 oath of office as required by section one, article one,
10 chapter six of this code and by posting an official bond as
11 required by section one, article two, chapter six of this
12 code. No ranger may carry a gun or other dangerous
13 weapon.

14 It is the duty of any person appointed and qualified to
15 preserve law and order on any premises which are part of

16 the Hatfield-McCoy recreation area, the immediately adja-
17 cent property of landowners who are making land avail-
18 able for public use under agreement with the authority,
19 and on streets, highways or other public lands utilized by
20 the trails, parking areas or related recreational facilities,
21 and other immediately adjacent public lands. For this
22 purpose, the ranger shall be considered to be a
23 law-enforcement officer in accordance with the provisions
24 of section one, article twenty-nine, chapter thirty of this
25 code, and, as to offenses committed within those areas,
26 have and may exercise all the powers and authority and
27 are subject to all the requirements and responsibilities of a
28 law-enforcement officer. The assignment of rangers to
29 the duties authorized by this section may not supersede in
30 any way the authority or duty of other peace officers to
31 preserve law and order on those premises.

32 The salary of all rangers shall be paid by the board.
33 The board shall furnish each ranger with an official uni-
34 form to be worn while on duty and shall furnish and re-
35 quire each ranger while on duty to wear a shield with an
36 appropriate inscription and to carry credentials certifying
37 the person's identity and authority as a ranger.

38 The board may at its pleasure revoke the authority of
39 any ranger. The executive director shall report the termi-
40 nation of employment of a ranger by filing a notice to
41 that effect in the office of the clerk of each county in
42 which the rangers' oath of office was filed, and in the case
43 of a ranger licensed to carry a gun or other dangerous
44 weapon, by notifying the clerk of the circuit court of the
45 county in which the license for the gun or other danger-
46 ous weapon was granted.

§20-13-7. Bonds not a debt of the state.

1 Revenue bonds and revenue refunding bonds of the
2 Hatfield-McCoy regional recreation authority issued un-
3 der the provisions of this article do not constitute a debt of
4 the state or of any political subdivision of the state or a
5 pledge of the faith and credit of the state or of any politi-
6 cal subdivision, but the bonds shall be payable solely from
7 the funds provided for in this article from revenues result-
8 ing from the issuance of bonds. All bonds shall contain on

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9 the face of the statement to the effect that neither the state
 10 nor any political subdivision of the state is obligated to
 11 pay the bond or the interest on the ^{bond} ~~board~~ except from
 12 revenues of the recreational project or projects for which
 13 they are issued and that neither the faith or credit nor the
 14 taxing power of the state or any political subdivision of
 15 the state is pledged to the payment of the principal or the
 16 interest on the bonds.

§20-13-8. Criminal penalties.

1 Any person who violates any of the rules promulgated
 2 by the board under authority of this article is guilty of a
 3 misdemeanor, and, upon conviction thereof, shall for each
 4 offense be fined not more than five hundred dollars.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different
 2 meaning clearly appears in the context:

3 "Approved law-enforcement training academy" means
 4 any training facility which is approved and authorized to
 5 conduct law-enforcement training as provided in this arti-
 6 cle;

7 "Chief executive" means the superintendent of the state
 8 police; the chief conservation officer of the division of
 9 natural resources; the sheriff of any West Virginia county;
 10 or the chief of any West Virginia municipal
 11 law-enforcement agency;

12 "County" means the fifty-five major political subdivi-
 13 sions of the state;

14 "Exempt rank" means any noncommissioned or com-
 15 missioned rank of sergeant or above;

16 "Governor's committee on crime, delinquency and
 17 correction" or "governor's committee" means the gover-
 18 nor's committee on crime, delinquency and correction
 19 established as a state planning agency pursuant to section
 20 one, article nine, chapter fifteen of this code;

21 "Law-enforcement officer" means any duly authorized
22 member of a law-enforcement agency who is authorized
23 to maintain public peace and order, prevent and detect
24 crime, make arrests and enforce the laws of the state or
25 any county or municipality thereof, other than parking
26 ordinances, and shall include those persons employed as
27 security officers at state institutions of higher education in
28 accordance with the provisions of section five, article four,
29 chapter eighteen-b of this code, although those institu-
30 tions may not be considered law-enforcement agencies.
31 The term also includes those persons employed as rangers
32 by the Hatfield-McCoy regional recreation authority in
33 accordance with the provisions of section six, article thir-
34 teen, chapter twenty of this code, although the authority
35 may not be considered a law-enforcement agency: *Pro-*
36 *vided*, That the subject rangers shall pay the tuition and
37 costs of training. As used in this article, the term
38 "law-enforcement officer" does not apply to the chief
39 executive of any West Virginia law-enforcement agency or
40 any watchman or special conservation officer;

41 "Law-enforcement official" means the duly appointed
42 chief administrator of a designated law-enforcement agen-
43 cy or a duly authorized designee;

44 "Municipality" means any incorporated town or city
45 whose boundaries lie within the geographic boundaries of
46 the state;

47 "Subcommittee" or "law-enforcement training sub-
48 committee" means the subcommittee of the governor's
49 committee on crime, delinquency and correction created
50 by section two of this article; and

51 "West Virginia law-enforcement agency" means any
52 duly authorized state, county or municipal organization
53 employing one or more persons whose responsibility is
54 the enforcement of laws of the state or any county or
55 municipality thereof: *Provided*, That neither the
56 Hatfield-McCoy regional recreation authority nor any
57 state institution of higher education may be deemed a
58 law-enforcement agency.

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

Randy Schoover
Chairman Senate Committee

Randy Deaunt
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll E. Stone
Clerk of the Senate

Bryony M. Gray
Clerk of the House of Delegates
Carl Ray Brubaker
President of the Senate

Robert C. Byrd
Speaker of the House of Delegates

The within is approved this the 1st
day of April, 1996

Walter D. B. Gibson
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 10:12am