WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 490

(By Senator Tomblin, Mr. President, et al)

PASSED April 13, 2001

In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 490
(Senators Tomblin, Mr. President, Bailey, Chafin, Fanning, Jackson, Plymale, Redd, Wooton, Caldwell and Anderson, original sponsors)

[Passed April 13, 2001; in effect from passage.]

AN ACT to amend and reenact section five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, five and six, article fourteen, chapter twenty of said code; to further amend said article by adding thereto two new sections, designated sections nine and ten; and to amend and reenact section six, article seven, chapter sixty-one of said code, all relating to the Hatfield-McCoy recreation area; defining terms; allowing rangers on duty on the Hatfield-McCoy recreation area or trail to carry firearms; permitting the use of the Hatfield-McCoy trail for equestrians; allowing the Hatfield-McCoy recreation area authority to promulgate emergency rules under certain circumstances; requiring certain insurance policies to be read as containing a waiver of defenses; allowing the authority to set user fees for the Hatfield-McCoy recreation area and trail at its
Enr. Com. Sub. for S. B. No. 490] 2
discretion; and authorizing federal law enforcement officers
to carry concealed weapons.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-five, chapter nineteen of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; that sections one, two, five
and six, article fourteen, chapter twenty of said code be amended
and reenacted; that said article be further amended by adding
thereto two new sections, designated sections nine and ten; and
that section six, article seven, chapter sixty-one of said code be
amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.


1 Unless the context used clearly requires a different
2 meaning, as used in this article:
3
4 (1) “Charge” means:
5 (A) For purposes of limiting liability for recreational or
6 wildlife propagation purposes set forth in section two of
7 this article, the amount of money asked in return for an
8 invitation to enter or go upon the land, including a
9 one-time fee for a particular event, amusement, occur-
10 rence, adventure, incident, experience or occasion which
11 may not exceed fifty dollars a year per recreational
12 participant: Provided, That the monetary cap on charges
13 imposed pursuant to this article does not apply to the
14 provisions of article fourteen, chapter twenty of this code
15 pertaining to the Hatfield-McCoy regional recreational
16 authority or activities sponsored on the Hatfield-McCoy
17 recreation area;

18 (B) For purposes of limiting liability for military train-
19 ing set forth in section six of this article, the amount of
money asked in return for an invitation to enter or go upon the land;

(2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(3) "Noncommercial recreational activity" shall not include any activity for which there is any charge which exceeds fifty dollars per year per participant;

(4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(5) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities as governed by article three, chapter twenty-two of this code or from the use of surface in the conduct of underground coal mining as governed by said article and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of environmental protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those
purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

(7) "Military training" includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or a person on active duty in the armed forces of the United States, acting in that capacity.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway vehicle enthusiasts, mountain bicyclists, equestrians and others. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented, recreation facilities could exist on private property without diminishing the landowner's interest, control or profitability in the land and without increasing the landowner's exposure to liability.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased
tourism in the same manner as whitewater rafting and
snow skiing benefit the state and communities surround- ing those activities.

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

The Legislature further finds that it is in the best
interests of the state to encourage private landowners to
make available for public use through the Hatfield-McCoy
regional recreation authority land for these recreational
purposes by limiting their liability for injury to persons
entering thereon, by limiting their liability for injury to
the property of persons entering thereon and by limiting
their liability to persons who may be injured or otherwise
damaged by the acts or omissions of persons entering
thereon.

§20-14-2. Definitions.

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

(a) “Authority” means the Hatfield-McCoy regional
recreational authority;

(b) “Board” means the board of the Hatfield-McCoy
regional recreation authority;

(c) “Charge” means, for purposes of limiting liability for
recreational purposes set forth in this article, the amount
of money asked in return for an invitation to enter or go
upon the land, including a one-time fee for a particular
event, amusement, occurrence, adventure, incident,
experience or occasion as set by the authority: Provided,
That the authority may set charges in differing amounts
for different categories of participants, including, but not
limited to, in-state and out-of-state participants, as the
authority sees fit;

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

(e) "Land" includes, but is not limited to, roads, water,
watercourses, private ways and buildings, structures and
machinery or equipment thereon when attached to the
realty;

(f) "Owner" includes, but is not limited to, tenant, lessee,
occupant or person in control of the premises;

(g) "Recreational purposes" includes, but is not limited
to, any one or any combination of the following noncom-
mercial recreational activities: Hunting, fishing, swim-
ing, boating, camping, picnicking, hiking, pleasure
driving, motorcycle or all-terrain vehicle riding, bicycling,
horseback riding, nature study, water skiing, winter sports
and visiting, viewing or enjoying historical, archaeologi-
cal, scenic or scientific sites or otherwise using land for
purposes of the user;

(h) "Participating county" means the counties of Boone,
Lincoln, Logan, McDowell, Mingo, Wayne and Wyoming
and, with the approval of the board, any other county or
counties where trails and other recreational facilities
relating to the Hatfield-McCoy recreation area are devel-
oped in the future with the cooperation of the county
commission.

§20-14-5. Powers of authority.

The authority, as a public corporation and governmental
instrumentality exercising public powers of the state, may
exercise all powers necessary or appropriate to carry out
the purposes of this article, including, but not limited to, the power:

1. To acquire, own, hold and dispose of property, real and personal, tangible and intangible;

2. To lease property, whether as lessee or lessor, and to acquire or grant through easement, license or other appropriate legal form, the right to develop and use property and open it to the use of the public;

3. To mortgage or otherwise grant security interests in its property;

4. To procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations or assets in such amounts and from such insurers as the authority considers desirable;

5. To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

6. To sue and be sued, implead and be impleaded and complain and defend in any court;

7. To contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements and provide such other legal services as may be requested by the authority;

8. To adopt, use and alter at will a corporate seal;

9. To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;
(10) To appoint officers, agents and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

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

(14) To borrow money and to issue its bonds, security interests or notes and to provide for and secure the payment of the bonds, security interests or notes and to provide for the rights of the holders of the bonds, security interests or notes and to purchase, hold and dispose of any of its bonds, security interests or notes;

(15) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article;

(16) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority, and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on, any bonds,
security interests or notes issued by it whether the bonds,
security interests, notes or interest to be funded or re-
refunded have or have not become due;

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

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

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

(19) To accept gifts or grants of property, funds, security
interests, money, materials, labor, supplies or services
from the federal government or from any governmental
unit or any person, firm or corporation and to carry out
the terms or provisions of or make agreements with respect
to or pledge any gifts or grants and to do any and all
things necessary, useful, desirable or convenient in connec-
tion with the procuring, acceptance or disposition of gifts
or grants;

(20) To the extent permitted under its contracts with the
holders of bonds, security interests or notes of the author-
(21) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note venues;

(22) To promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law, including regulation of the conduct of persons using the Hatfield-McCoy recreation area. Notwithstanding any other provisions of this code to the contrary, until the Legislature has authorized the rules, the authority may promulgate emergency rules for those purposes pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

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

(24) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy recreation area at such locations within the state as may be determined by the authority;

(25) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;
(26) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

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

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

(29) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public recreation or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

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

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

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

(33) To directly operate and manage recreation activities and facilities within the Hatfield-McCoy recreation area.
§20-14-6. Hatfield-McCoy recreation area rangers.

The board is hereby authorized to appoint bona fide residents of this state to act as Hatfield-McCoy recreation area rangers upon any premises which are part of the Hatfield-McCoy recreation area, subject to the conditions and restrictions imposed by this section. Before performing the duties of ranger, each appointed person shall qualify for the position of ranger in the same manner as is required of county officers by the taking and filing of an oath of office as required by section one, article one, chapter six of this code and by posting an official bond as required by section one, article two, chapter six of this code. To facilitate the performance of the duties of a ranger, a ranger may carry a firearm or other dangerous weapon while the ranger is on duty.

It is the duty of any person appointed and qualified to preserve law and order on any premises which are part of the Hatfield-McCoy recreation area, the immediately adjacent property of landowners who are making land available for public use under agreement with the authority and on streets, highways or other public lands utilized by the trails, parking areas or related recreational facilities and other immediately adjacent public lands. For this purpose, the ranger shall be considered to be a law-enforcement officer in accordance with the provisions of section one, article twenty-nine, chapter thirty of this code and, as to offenses committed within those areas, have and may exercise all the powers and authority and are subject to all the requirements and responsibilities of a law-enforcement officer. The assignment of rangers to the duties authorized by this section may not supersede in any way the authority or duty of other peace officers to preserve law and order on those premises.

The salary of all rangers shall be paid by the board. The board shall furnish each ranger with an official uniform to be worn while on duty and shall furnish and require each ranger while on duty to wear a shield with an appropriate
inscription and to carry credentials certifying the person's identity and authority as a ranger.

The board may at its pleasure revoke the authority of any ranger. The executive director shall report the termination of employment of a ranger by filing a notice to that effect in the office of the clerk of each county in which the ranger's oath of office was filed and in the case of a ranger licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license for the gun or other dangerous weapon was granted.


(a) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen, an owner of land used by or for the stated purposes of the Hatfield-McCoy regional recreation authority, whether with or without charge, owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure or activity on the premises to persons entering for those purposes.

(b) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, the landowner or lessor of the property for recreational purposes does not thereby: (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of these persons.

(c) Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the authority for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous
or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the authority for recreational purposes does not by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.

(d) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself: *Provided, however*, That equestrians who are using the land upon which the Hatfield-McCoy recreation area is located but who are not engaged in a commercial profit-making venture are exempt from the provisions of subsection (d), section five, article four, chapter twenty of this code.

§20-14-10. Insurance policies.

Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any owner of lands covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy
limits, the immunity from liability of the insured by reason
of the use of such insured's land for recreational purposes,
unless such provision or endorsement is rejected in writing
by the named insured.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article do not apply to:

(1) Any person carrying a deadly weapon upon his or her own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;
(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia division of corrections duly appointed pursuant to the provisions of section five, article five, chapter twenty-eight of this code while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

(6) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;

(7) Any probation officer appointed under the provisions of section five, article twelve, chapter sixty-two of this code;

(8) Any resident of another state who has been issued a license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with this state shall be exempt from the licensing requirements of section four of this article. The governor may execute reciprocity agreements on behalf of the state of West Virginia with states or political subdivisions which have similar gun permitting laws and which recognize and honor West Virginia licenses issued pursuant to section four of this article;

(9) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and

(10) Any Hatfield-McCoy regional recreation authority ranger while the ranger is on duty.
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.

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 27th Day of April, 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/25/01
Time 5:15 pm