WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

House Bill 4488

BY DELEGATES HANSHAW, BOGGS AND SHOTT

[Passed March 10, 2018; in effect ninety days from passage.]
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AN ACT to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, and §20-14-8 of the Code of West Virginia, 1931, as amended, all relating to the Hatfield-McCoy Recreation Authority; updating legislative findings; adding the counties of Braxton, Clay, Fayette, Nicholas, and Webster to the list of participating counties; modifying the number of board members; providing that 10 members of the board constitutes a quorum; prohibiting persons from consuming non-intoxicating beer, nonintoxicating craft beer, or wine at any time within the Hatfield-McCoy Recreation Area; prohibiting a child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area; prohibits children under the age of eight years who are required to be in a child passenger safety device while occupying a motor vehicle from being allowed on any trail within the Hatfield-McCoy Recreation Area; and requiring all persons operating or riding upon an ATV, UTV, or motorcycle to follow the manufacturer’s recommendations for that vehicle relating to age and size limitations for operators and passengers.

Be it enacted by the Legislature of West Virginia:

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 motor vehicle enthusiasts. 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 surrounding those activities.

The Legislature further finds that the economic benefits of trail development are only
realized when the ridership is concentrated in specific areas. Before private capital will be brought
to the marketplace in support of a recreational trail system, a density of trail ridership must be
demonstrated and sustained over a period of years to warrant the investment. Therefore, any
expansion of the state's recreational trail systems must be strategic and require a showing that
the new trail system would not only expand visitation, but would not materially detract from the
visitation and ridership on existing trail systems where numerous private and public investments
have already been made.

The Legislature further finds that the creation and empowering of a joint development
entity 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;

(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” means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

(g) “Participant” means any person using the land, trails, and facilities of the Hatfield-McCoy Recreation Area;

(h) “Participating county or counties” means the counties of Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint development entity and to participate in its governance; and

(i) “Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or motor vehicle driving and 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.
§20-14-3. Creation; appointment of board; terms.

(a) The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously created by this section is hereby converted to a new public corporation created as a joint development entity of the participating counties for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway motor vehicle enthusiasts. This recreational trail system shall be located in the counties of Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of no more than two times the number of participating counties who shall be representative of the various interests involved in the Hatfield-McCoy Recreation Area project in the participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint one member of the board who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas, or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(2) The county commission of each participating county, as defined in §20-14-2 of this code, shall appoint one member of the board who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed to a four-year term.
Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint development entity does not terminate or interrupt its status as a public corporation. The amendments to this article made during the 2015 regular session of the Legislature do not alter the debts, liabilities, responsibilities, or other obligations of any party with regard to this public corporation.

(d) The Hatfield-McCoy Regional Recreation Authority is a "public body" for purposes of the West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

§20-14-4. Board; quorum; executive director; expenses.

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

The board shall meet quarterly, unless a special meeting is called by its chairman: Provided, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall elect a chairman, secretary, and Treasurer from among its own members.

Ten members of the board constitute a quorum and a quorum shall be present for the board to conduct business.

The board may prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants, and shall review and approve an annual budget. The fiscal year for the authority begins on July 1 and ends on the thirtieth day of the following June.
The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article.

The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits, and total compensation. Before August 15 the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

All costs incidental to the administration of the authority, including office expenses, personal services expense, and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.


(a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for recreational purposes;
(b) A person may not consume or possess any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, or wine at any time or any location within the Hatfield-McCoy Recreation Area.

(c) The operator and all passengers of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation safety standards for protective headgear for vehicle users.

(d) Each trail user shall obey all traffic laws, traffic-control devices, and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles, or those equipped with roll cages.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

(f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one-half hour after sunset until one-half hour before sunrise, except in an emergency.

(g) Every person within the Hatfield-McCoy Recreation Area who is under 16 years of age shall at all times be under the immediate supervision of, and within sight of, a person who is at least 18 years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian, or supervising adult may allow a child under the age of 16 years to leave that person’s sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.
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(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance, or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area is subject to all of the duties applicable to the driver of a motor vehicle by the provisions of §17C-1-1 et seq. of this code except where inconsistent with the provisions of this article and except as to those provisions of §17C-1-1 et seq. of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in §17F-1-1 et seq. of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting a minimum federal motor vehicle safety standard and properly worn by the driver and all passengers.

(m) (1) No child under the age of six years may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(2) No child under the age of eight years who is required to be placed in a child passenger safety device system meeting applicable federal motor vehicle safety standards pursuant to §17C-15-46 of this code while occupying a motor vehicle may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(3) All persons operating or riding upon an ATV, UTV, or motorcycle as defined in §20-15-1 et seq. of this code shall follow the manufacturer's recommendations for that vehicle relating to age and size limitations for operators and passengers.

(n) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100. Prosecution or conviction for the misdemeanor described in this subsection may not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ................................................... this the ...........................................
day of ................................................... 2018.

Governor
PRESENTED TO THE GOVERNOR

MAR 2 1 2018

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