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**Senate Bill No. 612**

(By Senators D. Hall, Williams and Stollings)

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[Introduced February 17, 2014; referred to the Committee on  
Natural Resources.]

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A BILL to amend and reenact §20-2-23a of the Code of West Virginia,  
1931, as amended, relating to discontinuing the moratorium on  
the issuance of commercial rafting licenses on a section of  
the New River.

*Be it enacted by the Legislature of West Virginia:*

That §20-2-23a of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-23a. Whitewater commission; powers and duties of commission  
and Division of Natural Resources; allocations; civil  
and criminal penalties for violations.**

(a) There is hereby created a whitewater commission within the  
Division of Natural Resources. The commission shall consist of the

1 Director of the Division of Natural Resources or his or her  
2 designee; the Director of the Division of Parks and Tourism or his  
3 or her designee; three representatives of private river users who  
4 have no affiliation with any commercial river enterprise to be  
5 appointed by the Governor: *Provided*, That no more than one  
6 representative of the private river users may be from each white  
7 water zone; and four persons representing four different licensed  
8 commercial white water outfitters currently operating within the  
9 state to be appointed by the Governor. The Superintendent of the  
10 New River Gorge National Park or his or her designee shall be a  
11 nonvoting member of the commission. All appointed members of the  
12 commission shall be citizens and residents of West Virginia. Of  
13 the four representatives of commercial outfitters, two persons  
14 shall represent commercial white water outfitters holding or  
15 controlling through corporate affiliation or common ownership  
16 multiple licenses in West Virginia and two persons shall represent  
17 commercial white water outfitters in West Virginia who hold only a  
18 single license and who have no common ownership or corporate  
19 affiliation with another licensee, the Director of the Division of  
20 Natural Resources shall serve as chairperson of the commission. Of  
21 the seven members of the commission first appointed by the  
22 Governor, two shall be appointed for a term of one year, two for a  
23 term of two years and three for a term of three years. Thereafter,

1 the terms of all appointed members of the commission are for three  
2 years. Members shall serve until their successors have been  
3 appointed and any vacancy in the office of a member shall be filled  
4 by appointment for the unexpired term. Members representing  
5 commercial outfitters who have served at least two years on the  
6 commission are not eligible for reappointment to a successive term.

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

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

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

20 (3) To restrict, deny or postpone the issuance of licenses to  
21 additional commercial white water outfitters seeking to operate in  
22 areas and portions of rivers and waters in this state designated  
23 white water zones by action of the Director of the Division of

1 Natural Resources as authorized under prior enactment of this  
2 section and so designated by the filing of a written notice entered  
3 upon the records of the division containing the designation and  
4 reasonable description of the white water zone: *Provided*, That in  
5 consideration of the consolidation occurring among outfitting  
6 companies providing rafting services on the Galley River, the  
7 commission shall grant one additional white water rafting license  
8 for the Galley River on or before July 1, 1999, with preference  
9 being given in the selection process to the applicant best  
10 satisfying the following criteria: (I) The applicant demonstrates  
11 a record of providing commercial rafting and related white water  
12 services in a safe and lawful manner on the New River and other  
13 rivers; (ii) the applicant has continuously engaged for three or  
14 more years in the commercial rafting business on the New River and  
15 has, or can obtain, the necessary equipment and facilities to  
16 support Galley River operations; (iii) the seniority of the  
17 application as measured by the length of time the applicant has  
18 sought a Galley River license with the more senior application  
19 given preference; (iv) that the applicant is not affiliated with,  
20 operated or owned by an existing Galley River licensee; (v) that  
21 the applicant has no common ownership with an existing Galley River  
22 licensee; and (vi) that the economic benefit represented by the  
23 award of a Galley River license will serve to assist the promotion

1 of tourism and the delivery of outfitting services beyond Fayette  
2 and Nicholas counties. In authorizing the issuance of an  
3 additional Galley River license, it is the intention of the  
4 Legislature that the commission not increase the carrying capacity  
5 of a current Galley River licensee, but that the commission promote  
6 and maintain competition among licensees by increasing the number  
7 of independent outfitters operating on the Galley;

8 (4) To commission such studies as are necessary to determine  
9 the physical carrying capacity and monitor the levels of use on the  
10 New, Galley, Cheat, Shenandoah and Tygart rivers and how each  
11 relates to the overall quality of the rafting experience, the  
12 economic impact of rafting, tourism and employment in the state and  
13 the safety of the general public: *Provided*, That if, during a  
14 study period, the commission deems that overcrowding is not a  
15 problem on any white water zone on the Cheat, Shenandoah and Tygart  
16 rivers, or on the New River upstream of the confluence of the  
17 Greenbrier and New rivers and on the Galley River upstream of the  
18 Summersville Dam, then it may issue a license;

19 (5) Based on the findings of a study of the carrying capacity  
20 of a river, to formulate rational criteria for an allocation  
21 methodology for the river subject to the study, including, but not  
22 limited to, a minimum allocation for each river studied;

23 (6) To immediately implement a freeze on mandated changes in

1 use allocations for the licenses of existing licensees on  
2 moratorium sections of the Galley and New rivers as defined in  
3 subsection (d) of this section. All such licenses shall carry the  
4 use allocation in effect on May 2, 1992. The commission shall  
5 implement allocation methodologies for other rivers as the  
6 commission, after appropriate study, may deem necessary with all  
7 such allocation methodologies implemented by rules promulgated  
8 pursuant to chapter twenty-nine-a of this code;

9       (7) To determine administrative policies relating to  
10 regulation of the white water industry and to administer such  
11 policies, except that the commission shall delegate to the Director  
12 of the Division of Natural Resources or his or her designee the  
13 authority to administer the day-to-day responsibilities of the  
14 commission pursuant to this section and may vest in the Director of  
15 the Division of Natural Resources or his or her designee the  
16 authority to make determinations with respect to which it is not  
17 practicable to convene or to poll the commission, within guidelines  
18 established by the commission;

19       (8) To review all contracts or agreements with governmental  
20 agencies related to white water studies or regulation, and any  
21 negotiations related thereto;

22       (9) To verify reports by outfitters of numbers of river users  
23 and guides, to monitor the extent of the crowding conditions on the

1 rivers and to establish a system for reporting the number of river  
2 users and guides on each white water expedition;

3       (10) To regulate the issuance, transfer, and renewal of  
4 licenses. However, licenses issued to commercial white water  
5 outfitters or use allocations or other privileges conferred by a  
6 license may be transferred, sold, offered as security to financial  
7 institutions or otherwise encumbered, upon notice in writing to the  
8 commission and the Director of the Division of Natural Resources,  
9 subject to the following limitations: (I) The commission may  
10 refuse a transfer upon a finding that there is reasonable cause to  
11 believe that the safety of members of the public may be adversely  
12 affected by the transfer; and (ii) the commission shall require  
13 that taxes, workers' compensation and other obligations due the  
14 state be paid prior to any transfer;

15       (11) To collect, for the duration of a study period  
16 established in subdivision (4) of this subsection, an annual  
17 license fee of \$500 for each river on which a commercial white  
18 water outfitter operates. The annual per river license fee is  
19 limited to the Cheat, Galley, New, Shenandoah and Tygart rivers.  
20 The annual license fee for a commercial white water outfitter  
21 operating on a river not so designated is \$500 regardless of the  
22 number of rivers operated on. A commercial white water outfitter  
23 who is operating on a river designated in this subdivision and who

1 has paid the annual per river license fee may not be required to  
2 pay an additional annual license fee to operate on a nondesignated  
3 river. The commercial white water outfitter license shall be  
4 issued by the commission and is for a period of ten years:  
5 *Provided*, That an outfitter pays the required annual license fee.  
6 If an outfitter fails to pay the license fee, then the license  
7 shall be suspended until the license fee is paid. Licenses are  
8 subject to the bonding provisions set forth in section twenty-  
9 three-d of this article and the revocation provisions set forth in  
10 the rules promulgated by the Director of the Division of Natural  
11 Resources. License fees shall be used by the Division of Natural  
12 Resources for the purpose of enforcing and administering the  
13 provisions of this section;

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

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

21 (14) To approve rules promulgated by the Director of the  
22 Division of Natural Resources pursuant to chapter twenty-nine-a of  
23 this code, with respect to commercial white water outfitters



1 operating upon the waters of the state, whether or not such waters  
2 have been designated white water zones, which relate to: (I)  
3 Minimum safety requirements for equipment; (ii) standards for the  
4 size of rafts and number of persons which may be transported in any  
5 one raft; (iii) qualifications of commercial white water guides;  
6 and with respect to waters designated white water zones; (iv)  
7 standards for the number of rafts and number of persons transported  
8 in rafts.

9 (c) The commission shall meet upon the call of the chairperson  
10 or a majority of the members of the commission. However, the  
11 commission shall meet at least quarterly and shall conduct business  
12 when a majority of the members are present. At the meetings, the  
13 commission shall review all data, materials and relevant findings  
14 compiled relating to any investigation and study then under  
15 consideration and, as soon as practicable thereafter, the  
16 commission may recommend rules to govern and apply to the  
17 designated white water zone(s). The commission may meet at its  
18 discretion for the purpose of considering and adjusting allocations  
19 and review fees and proposed expenditures. A budget shall be  
20 approved for each fiscal year for the expenditure of funds subject  
21 to the commission's control. The commission may not limit the  
22 number of commercial white water outfitters operating on rivers not  
23 designated as white water zones, nor may the commission limit the

1 number of rafts or total number of persons transported in rafts by  
2 commercial white water outfitters on rivers not designated as white  
3 water zones. Commission members shall be reimbursed all reasonable  
4 and necessary expenses incurred in the exercise of their duties.

5 (d) Special provisions for the New River and the Galley River:

6 (1) After the issuance of the Galley River rafting license  
7 provided for in subdivision (3), subsection (b) of this section, a  
8 moratorium shall be imposed by the commission upon the issuance of  
9 additional commercial rafting licenses on white water zones of the  
10 New River between the confluence of the Greenbrier and New rivers  
11 and the confluence of the New and Galley rivers and upon white  
12 water zones of the Galley River from the Summersville Dam to the  
13 confluence of the New and Galley rivers. The moratorium hereby  
14 imposed shall continue until such time as the commission is  
15 authorized by the Legislature to discontinue the moratorium:  
16 Provided, That the moratorium on the issuance of commercial rafting  
17 licenses on a section of the New River from the confluence of the  
18 Greenbrier and New Rivers to Brooks Falls, located approximately  
19 five miles north of the confluence of the Greenbrier and New  
20 Rivers, is discontinued.

21 (2) For the portions of the Galley and New Rivers subject to  
22 the moratorium imposed by this section, the minimum use allocation  
23 conferred by a license is one hundred twenty for each designated

1 section of a white water zone on the Galley and one hundred fifty  
2 for each designated section of a white water zone on the New River.  
3 A licensee who held a use allocation on May 2, 1992, with a use  
4 allocation greater than the minimum allocation established in this  
5 subdivision shall retain such use allocation on each designated  
6 section of a white water zone on the moratorium portions of the New  
7 and Galley rivers subject only to the sale, loss or forfeiture of  
8 the license or to a subsequent action of the commission imposing a  
9 reduction in use allocations pursuant to subdivision (4) of this  
10 subsection. The commission is authorized to increase or decrease  
11 minimum use allocations for the moratorium sections of the New and  
12 Galley rivers only in accordance with the provisions of  
13 subdivisions (4) and (5) of this subsection. The commission may  
14 permit additional allocations or licenses for white water  
15 outfitters which are nonprofit entities operating upon the waters  
16 of the state upon the effective date of this section. Except as  
17 provided in subdivision (4), subsection (d) of this section,  
18 nothing in this section shall be deemed to require the reduction of  
19 a use allocation granted under an existing license or to prohibit  
20 a commercial white water outfitter from acquiring a license with a  
21 use allocation in excess of the minimum allocations hereby  
22 established: *Provided*, That if a licensee has sold, leased or  
23 assigned his or her license, or sold or leased a portion of the use

1 allocation under his or her license, nothing herein shall be deemed  
2 to have the effect of increasing the use allocation assigned to  
3 such license.

4 (3) The commission may permit peak-day variances from license  
5 limitations not exceeding ten percent of the use allocation granted  
6 under a license. The commission may permit off-peak-day variances  
7 from license limitations not exceeding twenty-five percent of the  
8 use allocation granted under a license.

9 (4) If, as result of a study employing the limits of  
10 acceptable change process, the white water commission acts to  
11 reduce the aggregate maximum daily use limit for all commercial  
12 rafting licenses on a section of the New River or Galley River  
13 subject to the license moratorium, the reduction shall be  
14 distributed on a prorata basis among all licenses granted for the  
15 section in proportion to an individual license's relative share of  
16 the total use allocation for such river section.

17 (5) If the limits of acceptable change process results in an  
18 increase in the aggregate maximum daily use limit for all  
19 commercial rafting licenses on any section of the New River or  
20 Galley River subject to a moratorium on new licenses, such increase  
21 shall be divided by the total number of commercial rafting licenses  
22 issued for the relevant section of river and the minimum use  
23 allocation for each such license shall be increased by the nearest

1 whole number resulting from the division.

2       (6) If any party contracts to purchase a license containing a  
3 use allocation for a moratorium section of the New River or the  
4 Galley River, or if a licensee has obtained, or in the future shall  
5 obtain additional use allocations for a moratorium section by lease  
6 or purchase from another licensee, the commission shall permit the  
7 transfer of such license rights in accordance with the provisions  
8 of subdivision (10), subsection (b) of this section. Unless the  
9 owners of a license otherwise agree, when two or more licensees  
10 share ownership or control of the use allocation assigned to a  
11 license, any increase or decrease in use allocations which results  
12 from an action of the commission under subdivisions (4) and (5) of  
13 this subsection shall be distributed by the commission between such  
14 owners in proportion to their ownership or control of the use  
15 allocation assigned to such license.

16       (e) In the event the commission determines through an  
17 appropriate study and the limits of acceptable change process that  
18 a white water zone or a designated section of a white water zone on  
19 waters other than the moratorium sections of the New and Galley  
20 rivers requires implementation of use allocations, all white water  
21 rafting licenses issued for such zone or section thereof shall be  
22 given the same use allocation.

23       (f) Violation of this section or any rule promulgated pursuant

1 to this section constitutes a misdemeanor punishable by the  
2 penalties set forth in section twenty-three-d of this article.

3 (g) The Director of the Division of Natural Resources shall  
4 promulgate, pursuant to the provisions of chapter twenty-nine-a of  
5 this code, all rules necessary to effectuate the purposes of this  
6 section and these rules must be approved by the commission. The  
7 Division of Natural Resources shall enforce the provisions of this  
8 section and rules promulgated pursuant to this section, and shall  
9 provide necessary staff and support services to the commission to  
10 effectuate the purposes of this section.

11 (h) All orders, determinations, rules, permits, grants,  
12 contracts, certificates, licenses, waivers, bonds, authorizations  
13 and privileges which have been issued, made, granted or allowed to  
14 become effective pursuant to any prior enactments of this section  
15 by the Governor, the Secretary of the Department of Commerce, labor  
16 and environmental resources, the Director of the Division of  
17 Natural Resources, the white water advisory board or by a court of  
18 competent jurisdiction, and which are in effect on the effective  
19 date of this section, shall continue in effect according to their  
20 terms until modified, terminated, superseded, set aside or revoked  
21 by the Governor, secretary, director or commission pursuant to this  
22 section, by a court of competent jurisdiction, or by operation of  
23 law.

NOTE: The purpose of this bill is to discontinue the moratorium on the issuance of commercial rafting licenses on a section of the New River from the confluence of the Greenbrier and New Rivers to Brooks Falls, located approximately five miles north of the confluence of the Greenbrier and New Rivers.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.