

**H. B. 2640**

(By Delegates McGeehan, Azinger, Folk and Ihle)

[Introduced February 6, 2015; referred to the

Committee on Agriculture and Natural Resources then the Judiciary.]

A BILL to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-5 of said code, all relating to increasing buck firearms season by one week; permitting a season bag limit of four deer; requiring county commissions be consulted in determining and scheduling buck firearms season; permitting Sunday hunting in all fifty-five counties; and requiring rule-making.

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

That §20-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-2-5 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

**§20-1-7. Additional powers, duties and services of director.**

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

(1) With the advice of the commission, prepare and administer, through the various divisions

1 created by this chapter, a long-range comprehensive program for the conservation of the natural  
2 resources of the state which best effectuates the purpose of this chapter and which makes adequate  
3 provisions for the natural resources laws of the state;

4 (2) Sign and execute in the name of the state by the Division of Natural Resources any  
5 contract or agreement with the federal government or its departments or agencies, subdivisions of  
6 the state, corporations, associations, partnerships or individuals;

7 (3) Conduct research in improved conservation methods and disseminate information matters  
8 to the residents of the state;

9 (4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes  
10 of control and protection, to classify by regulation the various species into such categories as may  
11 be established as necessary;

12 (5) Prescribe the locality in which the manner and method by which the various species of  
13 wildlife may be taken, or chased, unless otherwise specified by this chapter;

14 (6) Hold at least six meetings each year at such time and at such points within the state, as  
15 in the discretion of the Natural Resources Commission may appear to be necessary and proper for  
16 the purpose of giving interested persons in the various sections of the state an opportunity to be heard  
17 concerning open season for their respective areas, and report the results of the meetings to the  
18 Natural Resources Commission before such season and bag limits are fixed by it;

19 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the state  
20 with the prior approval of the Governor in case of an emergency such as a drought, forest fire hazard  
21 or epizootic disease among wildlife. The suspension shall continue during the existence of the  
22 emergency and until rescinded by the director. Suspension, or reopening after such suspension, of

1 open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of  
2 suspension or reopening to the wire press agencies at the State Capitol;

3 (8) Supervise the fiscal affairs and responsibilities of the division;

4 (9) Designate such localities as he or she shall determine to be necessary and desirable for  
5 the perpetuation of any species of wildlife;

6 (10) Enter private lands to make surveys or inspections for conservation purposes, to  
7 investigate for violations of provisions of this chapter, to serve and execute warrants and processes,  
8 to make arrests and to otherwise effectively enforce the provisions of this chapter;

9 (11) Acquire for the state in the name of the Division of Natural Resources by purchase,  
10 condemnation, lease or agreement, or accept or reject for the state, in the name of the Division of  
11 Natural Resources, gifts, donations, contributions, bequests or devises of money, security or  
12 property, both real and personal, and any interest in such property, including lands and waters, which  
13 he or she deems suitable for the following purposes:

14 (a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or  
15 protecting watersheds or providing public recreation;

16 (b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic,  
17 scientific, cultural, archaeological or historical values or natural wonders, or providing public  
18 recreation;

19 (c) For public hunting, trapping or fishing grounds or waters for the purpose of providing  
20 areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and  
21 the rules issued hereunder;

22 (d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

1 (e) For the extension and consolidation of lands or waters suitable for the above purposes by  
2 exchange of other lands or waters under his or her supervision;

3 (f) For such other purposes as may be necessary to carry out the provisions of this chapter;

4 (12) Capture, propagate, transport, sell or exchange any species of wildlife as may be  
5 necessary to carry out the provisions of this chapter;

6 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser  
7 appointed by the director, from all lands under the jurisdiction and control of the director, except  
8 those lands that are designated as state parks and those in the Kanawha State Forest. The appraisal  
9 shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the  
10 director and shall be available for public inspection. The director must obtain the written permission  
11 of the Governor to sell timber when the appraised value is more than \$5,000. The director shall  
12 receive sealed bids therefor, after notice by publication as a Class II legal advertisement in  
13 compliance with the provisions of article three, chapter fifty-nine of this code and the publication  
14 area for such publication shall be each county in which the timber is located. The timber so  
15 advertised shall be sold at not less than the appraised value to the highest responsible bidder, who  
16 shall give bond for the proper performance of the sales contract as the director shall designate; but  
17 the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing  
18 provisions of this section have been complied with and no bid equal to or in excess of the appraised  
19 value of the timber is received, the director may, at any time, during a period of six months after the  
20 opening of the bids, sell the timber in such manner as he or she deems appropriate, but the sale price  
21 shall not be less than the appraised value of the timber advertised. No contract for sale of timber  
22 made pursuant to this section shall extend for a period of more than ten years. And all contracts

1 heretofore entered into by the state for the sale of timber shall not be validated by this section if the  
2 same be otherwise invalid. The proceeds arising from the sale of the timber so sold shall be paid to  
3 the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively  
4 for the purposes of this chapter: *Provided*, That nothing contained herein shall prohibit the sale of  
5 timber which otherwise would be removed from rights-of-way necessary for and strictly incidental  
6 to the extraction of minerals;

7 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel  
8 and any other minerals that may be found in the lands under the jurisdiction and control of the  
9 director, except those lands that are designated as state parks. The director, before making sale or  
10 lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal  
11 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and  
12 the publication area for such publication shall be each county in which such lands are located. The  
13 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond  
14 for the proper performance of the sales contract or lease as the director shall designate; but the  
15 director shall have the right to reject any and all bids and to readvertise for bids. The proceeds  
16 arising from any such sale or lease shall be paid to the Treasurer of the State of West Virginia and  
17 shall be credited to the division and used exclusively for the purposes of this chapter;

18 (15) Exercise the powers granted by this chapter for the protection of forests and regulate  
19 fires and smoking in the woods or in their proximity at such times and in such localities as may be  
20 necessary to reduce the danger of forest fires;

21 (16) Cooperate with departments and agencies of state, local and federal governments in the  
22 conservation of natural resources and the beautification of the state;

1           (17) Report to the Governor each year all information relative to the operation and functions  
2 of the division and the director shall make such other reports and recommendations as may be  
3 required by the Governor, including an annual financial report covering all receipts and  
4 disbursements of the division for each fiscal year, and he or she shall deliver such report to the  
5 Governor on or before December 1, next after the end of the fiscal year so covered. A copy of such  
6 report shall be delivered to each house of the Legislature when convened in January next following;

7           (18) Keep a complete and accurate record of all proceedings, record and file all bonds and  
8 contracts taken or entered into and assume responsibility for the custody and preservation of all  
9 papers and documents pertaining to his or her office, except as otherwise provided by law;

10          (19) Offer and pay, in his or her discretion, rewards for information respecting the violation,  
11 or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

12          (20) Require such reports as he or she may deem to be necessary from any person issued a  
13 license or permit under the provisions of this chapter, but no person shall be required to disclose  
14 secret processes or confidential data of competitive significance;

15          (21) Purchase as provided by law all equipment necessary for the conduct of the division;

16          (22) Conduct and encourage research designed to further new and more extensive uses of the  
17 natural resources of this state and to publicize the findings of such research;

18          (23) Encourage and cooperate with other public and private organizations or groups in their  
19 efforts to publicize the attractions of the state;

20          (24) Accept and expend, without the necessity of appropriation by the Legislature, any gift  
21 or grant of money made to the division for any and all purposes specified in this chapter and he or  
22 she shall account for and report on all such receipts and expenditures to the Governor;

1           (25) Cooperate with the state historian and other appropriate state agencies in conducting  
2 research with reference to the establishment of state parks and monuments of historic, scenic and  
3 recreational value and to take such steps as may be necessary in establishing such monuments or  
4 parks as he or she deems advisable;

5           (26) Maintain in his or her office at all times, properly indexed by subject matter and also in  
6 chronological sequence, all rules made or issued under the authority of this chapter. Such records  
7 shall be available for public inspection on all business days during the business hours of working  
8 days;

9           (27) Delegate the powers and duties of his or her office, except the power to execute  
10 contracts not related to land and stream management, to appointees and employees of the division,  
11 who shall act under the direction and supervision of the director and for whose acts he or she shall  
12 be responsible;

13           (28) Conduct schools, institutions and other educational programs, apart from or in  
14 cooperation with other governmental agencies, for instruction and training in all phases of the natural  
15 resources programs of the state;

16           (29) Authorize the payment of all or any part of the reasonable expenses incurred by an  
17 employee of the division in moving his or her household furniture and effects as a result of a  
18 reassignment of the employee: *Provided*, That no part of the moving expenses of any one such  
19 employee shall be paid more frequently than once in twelve months; and

20           (30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this  
21 code, to implement and make effective the powers and duties vested in him or her by the provisions  
22 of this chapter and take such other steps as may be necessary in his or her discretion for the proper

1 and effective enforcement of the provisions of this chapter. Those rules shall include provisions to:  
2 (A) Increasing buck firearms season by one week more than the season that existed on January 1,  
3 2015; (B) permitting a season bag limit of four deer having one or both antlers more than three  
4 inches in length above the hairline; (C) consulting with the county commissions of the fifty-five  
5 counties in determining and scheduling buck firearms season; and (D) Sunday hunting in all  
6 fifty-five counties.

7 **ARTICLE 2. WILDLIFE RESOURCES.**

8 **§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

9 Except as authorized by the director, it is unlawful at any time for any person to:

10 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

11 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild  
12 animal or wild bird out of its den or place of refuge except as may be authorized by rules  
13 promulgated by the director or by law;

14 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting,  
15 taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his  
16 or her possession or subject to his or her control, or for any person accompanying him or her to have  
17 in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow,  
18 arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or  
19 animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the  
20 use of artificial light subject to the restrictions set forth in this subdivision. No person is guilty of  
21 a violation of this subdivision merely because he or she looks for, looks at, attracts or makes  
22 motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he

1 or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other  
2 implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the  
3 artificial light (other than the head lamps of an automobile or other land conveyance) is attached to,  
4 a part of or used from within or upon an automobile or other land conveyance.

5 Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon  
6 conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500 and shall  
7 be confined in jail for not less than ten days nor more than one hundred days;

8 (4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or  
9 other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water  
10 conveyance, except as authorized by rules promulgated by the director;

11 (5) Take any beaver or muskrat by any means other than by trap;

12 (6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any  
13 wild turkey, ruffed grouse, pheasant or quail;

14 (7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or  
15 have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by  
16 or under a permit issued by the director;

17 (8) Except as provided in section six of this article, carry an uncased or loaded gun in any of  
18 the woods of this state except during the open firearms hunting season for wild animals and  
19 nonmigratory wild birds within any county of the state unless he or she has in his or her possession  
20 a permit in writing issued to him or her by the director: *Provided*, That this section does not prohibit  
21 hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds,  
22 during the open season, in the open fields, open water and open marshes of the state;

1           (9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm  
2 from the magazine of which all shells and cartridges have not been removed, in or on any vehicle  
3 or conveyance, or its attachments, within the state, except as may otherwise be provided by law or  
4 regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven  
5 o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow,  
6 being lawfully carried in accordance with the foregoing provisions, may be so carried only when in  
7 a case or taken apart and securely wrapped. During the period from July 1 to September 30,  
8 inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are  
9 permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard  
10 time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for  
11 one hour after the postmeridian times and one hour before the antemeridian times established above  
12 if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a  
13 hunting site, campsite, home or other place of abode;

14           ~~(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which  
15 wildlife may be taken after the hour of five o'clock antemeridian on Sunday on private land without  
16 the written consent of the landowner any wild animals or wild birds except when a big game season  
17 opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild  
18 animals or birds after five o'clock antemeridian on that Sunday: *Provided*, That traps previously and  
19 legally set may be tended after the hour of five o'clock antemeridian on Sunday and the person so  
20 doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped  
21 animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and,  
22 upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this~~

1 ~~code, is subject to a \$100 fine;~~

2       ~~(11)~~ (10) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

3       ~~(12)~~ (11) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

4       ~~(13)~~ (12) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means

5 other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law

6 or rules issued by the Director: *Provided*, That snaring of any species of suckers, carp, fallfish and

7 creek chubs shall at all times be lawful;

8       ~~(14)~~ (13) Employ or hire, or induce or persuade, by the use of money or other things of value,

9 or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those

10 species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or

11 aquatic life which is protected by the provisions of this chapter or rules of the director or the sale of

12 which is prohibited;

13       ~~(15)~~ (14) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game

14 or nongame birds included in the terms of conventions between the United States and Great Britain

15 and between the United States and United Mexican States for the protection of migratory birds and

16 wild mammals concluded, respectively, August 16, 1916, and February 7, 1936, except during the

17 time and in the manner and numbers prescribed by the federal Migratory Bird Treaty Act, 16 U.S.C.

18 §703, et seq., and regulations made thereunder;

19       ~~(16)~~ (15) Kill, take, catch or have in his or her possession, living or dead, any wild bird other

20 than a game bird; or expose for sale or transport within or without the state any bird except as

21 aforesaid. No part of the plumage, skin or body of any protected bird may be sold or had in

22 possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally

1 taken and stuffed or mounted, irrespective of whether the bird was captured within or without this  
2 state, except the English or European sparrow (*passer domesticus*), starling (*sturnus vulgaris*) and  
3 cowbird (*molothrus ater*), which may not be protected and the killing thereof at any time is lawful;

4 ~~(17)~~ (16) Use dynamite or any like explosive or poisonous mixture placed in any waters of  
5 the state for the purpose of killing or taking fish. Any person violating the provisions of this  
6 subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or  
7 imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

8 ~~(18)~~ (17) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods  
9 at the same time;

10 ~~(19)~~ (18) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or  
11 attempt to take any wildlife except as otherwise provided in section 42w of this article;

12 ~~(20)~~ (19) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow  
13 is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths  
14 of an inch wide;

15 ~~(21)~~ (20) Take or attempt to take any wildlife with an arrow having an explosive head or  
16 shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

17 ~~(22)~~ (21) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft,  
18 motor vehicle or other land conveyance;

19 ~~(23)~~ (22) Permit any dog owned by him or her or under his or her control to chase, pursue  
20 or follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the  
21 August 15 next following: *Provided*, That dogs may be trained on wild animals and wild birds,  
22 except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of

1 the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person  
 2 with his or her written permission or on public lands at any time: *Provided, however,* That  
 3 nonresidents may not train dogs in this state at any time except during the legal small game hunting  
 4 season: *Provided further,* That the person training said dogs does not have firearms or other  
 5 implements in his or her possession during the closed season on wild animals and wild birds,  
 6 whereby wild animals or wild birds could be taken or killed;

7 ~~(24)~~ (23) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild  
 8 hunt hereafter referred to as trial: *Provided,* That any person, group of persons, club or organization  
 9 may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six  
 10 of this article. The person responsible for obtaining the permit shall prepare and keep an accurate  
 11 record of the names and addresses of all persons participating in said trial and make same readily  
 12 available for inspection by any natural resources police officer upon request;

13 ~~(25)~~ (24) Except as provided in section four of this article, hunt, catch, take, kill or attempt  
 14 to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season  
 15 established by rule of the director as authorized by subdivision (6), section seven, article one of this  
 16 chapter;

17 ~~(26) Hunting on public lands on Sunday after five o'clock antemeridian is prohibited;~~

18 ~~(27) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which~~  
 19 ~~wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian:~~  
 20 ~~*Provided,* That the provisions of this subdivision do not apply in any county until the county~~  
 21 ~~commission of the county holds an election on the question of whether the provisions of this~~  
 22 ~~subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the~~

1 ~~allowance of hunting on Sunday in the county. The election is determined by a vote of the resident~~  
2 ~~voters of the county in which the hunting on Sunday is proposed to be authorized. The county~~  
3 ~~commission of the county in which Sunday hunting is proposed shall give notice to the public of the~~  
4 ~~election by publication of the notice as a Class II-0 legal advertisement in compliance with the~~  
5 ~~provisions of article three, chapter fifty-nine of this code and the publication area for the publication~~  
6 ~~is the county in which the election is to be held. The date of the last publication of the notice shall~~  
7 ~~fall on a date within the period of the fourteen consecutive days next preceding the election.~~

8       ~~On the local option election ballot shall be printed the following:~~

9       ~~Shall hunting on Sunday be authorized in \_\_\_\_\_ County?~~

10                    ~~Yes                    No~~

11       ~~(Place a cross mark in the square opposite your choice.)~~

12       ~~Any local option election to approve or disapprove of the proposed authorization of Sunday~~  
13 ~~hunting within a county shall be in accordance with procedures adopted by the commission. The~~  
14 ~~local option election may be held in conjunction with a primary or general election or at a special~~  
15 ~~election. Approval shall be by a majority of the voters casting votes on the question of approval or~~  
16 ~~disapproval of Sunday hunting at the election.~~

17       ~~If a majority votes against allowing Sunday hunting, no election on the issue may be held for~~  
18 ~~a period of one hundred four weeks. If a majority votes "yes," no election reconsidering the action~~  
19 ~~may be held for a period of five years. A local option election may thereafter be held if a written~~  
20 ~~petition of qualified voters residing within the county equal to at least five percent of the number of~~  
21 ~~persons who were registered to vote in the next preceding general election is received by the county~~  
22 ~~commission of the county in which Sunday hunting is authorized. The petition may be in any~~

1 number of counterparts. The election shall take place at the next primary or general election  
2 scheduled more than ninety days following receipt by the county commission of the petition required  
3 by this subsection: *Provided*, That the issue may not be placed on the ballot until all statutory notice  
4 requirements have been met. No local law or regulation providing any penalty, disability, restriction,  
5 regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt  
6 all regulations, rules, ordinances and laws of any county or municipality in conflict with this  
7 subdivision; and

8       (28) (25) Hunt or conduct hunts for a fee where the hunter is not physically present in the  
9 same location as the wildlife being hunted within West Virginia.

NOTE: The purpose of this bill is to increasing buck firearms season by one week. The bill permits a season bag limit of four deer. The bill requires the county commissions of the fifty-five counties be consulted in determining and scheduling buck firearms season. The bill permits Sunday hunting in all fifty-five counties. The bill requires rule making.

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