

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2574

By Delegates Horst, Householder, Longanacre,
Foster, Hardy, Phillips, Worrell, Mazzocchi, Ridenour,
Thorne, and Smith

[Introduced January 16, 2023; Referred to the
Committee on Agriculture and Natural Resources
then the Judiciary]

1 A BILL to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §20-7-4 of said code, all relating to warrantless entry of private lands;
 3 setting forth limitations of entry onto private lands; clarifying the process for law
 4 enforcement entry onto posted private lands; and clarifying the use of surveillance
 5 cameras on or near posted private lands.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

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

1 In addition to all other powers, duties, and responsibilities granted and assigned to the
 2 director in this chapter and elsewhere by law, the director may:

3 (1) With the advice of the commission, (1), prepare and administer, through the various
 4 divisions created by this chapter, a long-range comprehensive program for the conservation of the
 5 natural resources of the state which best effectuates the purpose of this chapter and which makes
 6 adequate provisions for the natural resources laws of the state;

7 (2) Sign and execute in the name of the state by the Division of Natural Resources any
 8 contract or agreement with the federal government or its departments or agencies, subdivisions of
 9 the state, corporations, associations, partnerships, or individuals: *Provided*, That
 10 intergovernmental cooperative agreements and agreements with nongovernmental organizations
 11 in furtherance of providing a comprehensive program for the exploration, conservation,
 12 development, protection, enjoyment, and use of the natural resources of the state are exempt from
 13 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That repair, renovation, and
 14 rehabilitation of existing facilities, buildings, amenities, and infrastructure necessary to protect
 15 public health or safety or to provide uninterrupted enjoyment and public use of state parks, state
 16 forests, wildlife management areas, and state natural areas under the jurisdiction of the Division of
 17 Natural Resources are exempt from the provisions of §5A-3-1 *et seq.* of this code. Nothing in this
 18 section authorizes new construction of buildings and new construction of recreational facilities as

19 defined in §20-5-4 of this code without complying with the provisions of §5A-3-1 *et seq.* of this
20 code;

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

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

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

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

33 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the state
34 with the prior approval of the Governor in case of an emergency such as a drought, forest fire
35 hazard, or epizootic disease among wildlife. The suspension shall continue during the existence of
36 the emergency and until rescinded by the director. Suspension, or reopening after such
37 suspension, of open seasons may be made upon 24 hours' notice by delivery of a copy of the
38 order of suspension or reopening to the wire press agencies at the State Capitol;

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

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

42 (10) ~~Enter~~ Subject to the limitations set forth in §20-7-4, enter private lands to make
43 surveys or inspections for conservation purposes, to investigate for violations of provisions of this
44 chapter, to serve and execute warrants and processes, to make arrests, and to otherwise

45 effectively enforce the provisions of this chapter;

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

51 (A) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or
52 protecting watersheds, or providing public recreation;

53 (B) For state parks or recreation areas for the purpose of preserving scenic, aesthetic,
54 scientific, cultural, archaeological, or historical values or natural wonders, or providing public
55 recreation;

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

59 (D) For fish hatcheries, game farms, wildlife research areas, and feeding stations;

60 (E) For the extension and consolidation of lands or waters suitable for the above purposes
61 by exchange of other lands or waters under his or her supervision;

62 (F) For such other purposes as may be necessary to carry out the provisions of this
63 chapter;

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

66 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser
67 appointed by the director, from all lands under the jurisdiction and control of the director, except
68 those lands that are designated as state parks and those in the Kanawha State Forest. The
69 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the
70 office of the director and shall be available for public inspection. The director must obtain the

71 written permission of the Governor to sell timber when the appraised value is more than \$5,000.
72 The director shall receive sealed bids therefor, after notice by publication as a Class II legal
73 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication
74 area for the publication shall be each county in which the timber is located. The timber so
75 advertised shall be sold at not less than the appraised value to the highest responsible bidder, who
76 shall give bond for the proper performance of the sales contract as the director shall designate; but
77 the director may reject any and all bids and readvertise for bids. If the foregoing provisions of this
78 section have been complied with and no bid equal to or in excess of the appraised value of the
79 timber is received, the director may, at any time, during a period of six months after the opening of
80 the bids, sell the timber in such manner as he or she deems appropriate, but the sale price may not
81 be less than the appraised value of the timber advertised. No contract for sale of timber made
82 pursuant to this section may extend for a period of more than 10 years. And all contracts
83 heretofore entered into by the state for the sale of timber may not be validated by this section if a
84 contract is otherwise invalid. The proceeds arising from the sale of the timber so sold shall be paid
85 to the Treasurer of the State of West Virginia and shall be credited to the division and used
86 exclusively for the purposes of this chapter: *Provided*, That nothing contained herein may prohibit
87 the sale of timber which otherwise would be removed from rights-of-way necessary for and strictly
88 incidental to the extraction of minerals;

89 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel,
90 and any other minerals that may be found in the lands under the jurisdiction and control of the
91 director, except those lands that are designated as state parks. The director, before making sale or
92 lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal
93 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication
94 area for such publication shall be each county in which such lands are located. The minerals so
95 advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the
96 proper performance of the sales contract or lease as the director shall designate; but the director

97 may reject any and all bids and readvertise for bids. The proceeds arising from any such sale or
98 lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the
99 division and used exclusively for the purposes of this chapter;

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

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

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

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

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

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

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

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

123 (23) Encourage and cooperate with other public and private organizations or groups in
124 their efforts to publicize the attractions of the state, including completing the feasibility study for the
125 Beech Fork State Park Lodge as follows:

126 (A) The director shall convene, prior to October 1, 2019, two public hearings:

127 (i) An initial public hearing shall be for the purpose of seeking public input regarding options
128 for the construction of a lodge and a conference center, including all available public, private, or
129 public-private partnership (PPP) funding and financing options; and

130 (ii) A subsequent public hearing at which the feasibility study and any recommendation
131 shall be available for public comment;

132 (B) The public hearings required by this subdivision must be held in a suitable location
133 reasonably close to Beech Fork State Park so as to accommodate public participation from the
134 citizens of Cabell, Lincoln, and Wayne counties; and

135 (C) Upon completion of the feasibility study, it shall be submitted by the director to the Joint
136 Committee on Government and Finance on or before December 1, 2019;

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

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

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

148 (27) Delegate the powers and duties of his or her office, except the power to execute

149 contracts not related to land and stream management, to appointees and employees of the
150 division, who shall act under the direction and supervision of the director and for whose acts he or
151 she shall be responsible;

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

155 (29) Authorize the payment of all or any part of the reasonable expenses incurred by an
156 employee of the division in moving his or her household furniture and effects as a result of a
157 reassignment of the employee: *Provided*, That no part of the moving expenses of any one such
158 employee may be paid more frequently than once in 12 months;

159 (30) Establish procedures and fee schedules for individuals applying for limited permit
160 hunts;

161 (31) Exempt designated sections within the Division of Natural Resources from the
162 requirement that all payments must be deposited in a bank within 24 hours for amounts less than
163 \$500, notwithstanding any other provision of this code to the contrary: *Provided*, That such
164 designated sections shall make a deposit in any amount no less than every seven working days;
165 *and*

166 (32) Promulgate rules, in accordance with the provisions of §29A-1-1 *et seq.* of this code,
167 to implement and make effective the powers and duties vested in him or her by the provisions of
168 this chapter and take such other steps as may be necessary in his or her discretion for the proper
169 and effective enforcement of the provisions of this chapter; and

170 (33) Cooperate with the State Resiliency Office to the fullest extent practicable to assist
171 that office in fulfilling its duties.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of natural resources police officers.

1 (a) Natural resources police officers and other persons authorized to enforce the

2 provisions of this chapter are under the supervision and direction of the director in the performance
3 of their duties.

4 (b) Natural resources police officers have statewide jurisdiction and have authority to:

5 (1) Arrest on sight, without warrant or other court process, any person or persons
6 committing a criminal offense in violation of the laws of this state, in the presence of the officer, but
7 no arrest may be made where any form of administrative procedure is prescribed by this chapter
8 for the enforcement of the provisions of this chapter;

9 (2) Carry arms and weapons as may be prescribed by the director in the course and
10 performance of their duties, but no license or other authorization is required for this privilege;

11 (3) Search and examine, in the manner provided by law, any boat, vehicle, automobile,
12 conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat or other
13 place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other
14 forms of aquatic life could be concealed, packed or conveyed whenever they have reason to
15 believe that they would thereby secure or discover evidence of the violation of the provisions of
16 this chapter;

17 (4) Execute and serve a search warrant, notice or other process of law issued under the
18 authority of this chapter or other law relating to wildlife, forests, and all other natural resources, by
19 a magistrate or court having jurisdiction in the same manner, with the same authority and with the
20 same legal effect as a sheriff;

21 (5) Require the operator of any motor vehicle or other conveyance on or about the public
22 highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of
23 allowing the natural resources police officers to conduct game-kill surveys;

24 (6) Summon aid in making arrests or seizures or in executing warrants, notices or
25 processes, in the same manner as sheriffs;

26 (7) Enter private lands or waters, not including homes or their curtilages, within the state
27 without a warrant or other legal process while engaged in the performance of their official duties:

28 Provided, That this provision shall not apply on posted land, as that term is defined in §61-3B-1 of
29 this code, unless the entry is requested by an owner, lessee, or other person entitled to possession
30 of the posted land, to dispatch crippled or distressed wildlife that the agent has personally
31 observed from a position where he or she had a lawful right to be, to prevent the imminent unlawful
32 killing of wildlife or the destruction of evidence of such unlawful killing where the officer has
33 articulable probable cause to believe either is about to occur, or to respond to a life-threatening
34 emergency or another immediate threat to public safety that was either reported to the agent or
35 that the agent personally observed from a position where he or she had a lawful right to be;

36 (8) Arrest on sight, without warrant or other court process, subject to the limitations set
37 forth in subdivision (1) of this section, any person or persons committing a criminal offense in
38 violation of any law of this state in the presence of the officer on any state-owned lands and waters
39 and lands and waters under lease by the Division of Natural Resources and all national forest
40 lands, waters and parks and U.S. Corps of Army Engineers' properties within the boundaries of the
41 State of West Virginia and, in addition to the authority conferred in other subdivisions of this
42 section, execute all arrest warrants on these state and national lands, waters and parks and U.S.
43 Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-
44 two of this code;

45 (9) Arrest any person who enters upon the land or premises of another without written
46 permission from the owner of the land or premises in order to cut, damage or carry away, or cause
47 to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plants or
48 products of any growing plant. Any person convicted of cutting, damaging or carrying away or
49 causing to be cut, damaged or carried away any timber, trees, logs, posts, fruits, nuts, growing
50 plants or products of growing plants is liable to the owner in the amount of three times the value of
51 the timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant, in
52 addition to and notwithstanding any other penalties by law provided by section thirteen, article
53 three, chapter sixty-one of this code;

54 (10) Make a complaint in writing before any court or officer having jurisdiction, and procure
55 and execute the warrant, when the officer knows or has reason to believe that a person has
56 violated a law of this state. The actions of the natural resources police officer have the same force
57 and effect as if made by a sheriff;

58 (11) Serve and execute warrants for the arrest of any person and warrants for the search of
59 any premises, buildings, properties or conveyances issued by a properly constituted authority in
60 the same manner, with the same authority, and with the same legal effect, as a sheriff; and

61 (12) Do all things necessary to carry into effect the provisions of this chapter.

62 (c) No natural resources police officers or other persons authorized to enforce the
63 provisions of this chapter shall place any surveillance camera or game camera on posted land, as
64 that term is defined in §61-3B-1 of this code, without first obtaining consent from the owner, lessee,
65 or other person entitled to possession of the posted land or a search warrant as required by and
66 under Article III, Section 6 of the Constitution of West Virginia or the Fourth and Fourteenth
67 Amendments of the Constitution of the United States: *Provided*, That nothing in this subsection
68 shall prohibit a natural resources police officer or other person authorized to enforce the provisions
69 of this chapter from placing a camera without consent or a warrant in an area where the natural
70 resources police officer or other person has a lawful right to be and facing a location on any land
71 that is open to public view.

NOTE: The purpose of this bill is to set forth limitations of entry onto private lands; clarify the process for law enforcement entry onto posted private lands; and clarify the use of surveillance cameras on or near posted private lands.

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