

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 270**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[BY REQUEST OF THE EXECUTIVE]

[Originating in the Committee on Enter References;

reported on January 14, 2016]

1 A BILL to amend and reenact §20-1-2 and §20-1-7 of the Code of West Virginia, 1931, as  
2 amended; and to amend said code by adding thereto a new section, designated §20-1-  
3 7a, all relating to authorizing the Director of the Division of Natural Resources to implement  
4 a sound silvicultural management plan for state park lands, which may include the  
5 harvesting and sale of timber; providing requirements for the sale of timber located on  
6 state park lands; providing requirements for the deposit and expenditure of proceeds; and  
7 authorizing emergency rule-making authority.

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

1 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

2 **§20-1-2. Definitions.**

3 As used in this chapter, unless the context clearly requires a different meaning:

4 “Agency” means any branch, department or unit of the state government, however  
5 designated or constituted.

6 “Alien” means any person not a citizen of the United States.

7 “Bag limit” or “creel limit” means the maximum number of wildlife which may be taken,  
8 caught, killed or possessed by any person.

9 “Big game” means elk, deer, black bears, wild boars, and wild turkeys.

10 “Bona fide resident, tenant or lessee” means a person who permanently resides on the  
11 land.

12 “Citizen” means any native-born citizen of the United States and foreign-born persons who  
13 have procured their final naturalization papers.

14 “Closed season” means the time or period during which it shall be unlawful to take any  
15 wildlife as specified and limited by this chapter.

16 “Commission” means the Natural Resources Commission.

17 “Commissioner” means a member of the advisory commission of the Natural Resources  
18 Commission.

19 “Director” means the Director of the Division of Natural Resources.

20 “Fishing” or “to fish” means the taking, by any means, of fish, minnows, frogs or other  
21 amphibians, aquatic turtles, and other forms of aquatic life used as fish bait.

22 “Fur-bearing animals” includes: (a) The mink; (b) the weasel; (c) the muskrat; (d) the  
23 beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h)  
24 the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; (l) the fisher; and  
25 (m) *canis latrans* var., more commonly known as the coyote.

26 “Game” means game animals, game birds and game fish as herein defined.

27 “Game animals” includes: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d)  
28 the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases -  
29 red, gray, black or albino; (e) the raccoon; (f) the black bear; (g) the wild boar; and (h) the marmot  
30 *monax*, more commonly known as woodchuck or groundhog. The term “game animals” does not  
31 include captive cervids regulated pursuant to §19-2H-1 *et seq.* of this code.

32 “Game birds” includes: (a) The anatidae, commonly known as swan, geese, brants and  
33 river and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and  
34 gallinule; (c) the limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers,  
35 yellow legs and curlews; (d) the galliformes, commonly known as wild turkey, grouse, pheasants,  
36 quails and partridges (both native and foreign species); (e) the columbidae, commonly known as  
37 doves; (f) the icteridae, commonly known as blackbirds, redwings and grackle; and (g) the  
38 corvidae, commonly known as crows.

39 “Game fish” includes: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow  
40 trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain  
41 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white  
42 crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue  
43 catfish; (u) sauger; and (v) all game fish hybrids.

44           “Hunt” means to pursue, chase, catch or take any wild birds or wild animals. However, the  
45 definition of “hunt” does not include an officially sanctioned and properly licensed field trial, water  
46 race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

47           “Lands” means land, waters and all other appurtenances connected therewith.

48           “Migratory birds” means any migratory game or nongame birds included in the terms of  
49 conventions between the United States and Great Britain and between the United States and  
50 United Mexican States, known as the Migratory Bird Treaty Act, for the protection of migratory  
51 birds and game mammals concluded, respectively, August 16, 1916, and February 7, 1936.

52           “Nonresident” means any person who is a citizen of the United States and who has not  
53 been a domiciled resident of the State of West Virginia for a period of thirty consecutive days  
54 immediately prior to the date of his or her application for a license or permit except any full-time  
55 student of any college or university of this state, even though he or she is paying a nonresident  
56 tuition.

57           “Open season” means the time during which the various species of wildlife may be legally  
58 caught, taken, killed or chased in a specified manner and shall include both the first and the last  
59 day of the season or period designated by the director.

60           “Person”, except as otherwise defined elsewhere in this chapter, means the plural  
61 “persons” and shall include individuals, partnerships, corporations or other legal entities.

62           “Preserve” means all duly licensed private game farmlands, or private plants, ponds or  
63 areas, where hunting or fishing is permitted under special licenses or seasons other than the  
64 regular public hunting or fishing seasons. The term “preserve” does not include captive cervid  
65 farming facilities regulated pursuant to §19-2H-1 *et seq.* of this code.

66           “Protected birds” means all wild birds not included within the definitions of “game birds”  
67 and “unprotected birds”.

68           “Resident” means any person who is a citizen of the United States and who has been a  
69 domiciled resident of the State of West Virginia for a period of thirty consecutive days or more

70 immediately prior to the date of his or her application for license or permit. However, a member  
71 of the armed forces of the United States who is stationed beyond the territorial limits of this state,  
72 but who was a resident of this state at the time of his or her entry into such service and any full-  
73 time student of any college or university of this state, even though he or she is paying a  
74 nonresident tuition, shall be considered a resident under this chapter.

75 “Roadside menagerie” means any place of business, other than a commercial game farm,  
76 commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game  
77 animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people  
78 for commercial purposes.

79 “Small game” includes all game animals, fur-bearing animals and game birds except elk,  
80 deer, black bears, wild boars and wild turkeys.

81 “Take” means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity,  
82 gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so. However, the definition  
83 of “take” does not include an officially sanctioned and properly licensed field trial, water race or  
84 wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

85 “Tract” means any area of a state park not generally utilized by the public and designated  
86 as eligible for harvesting pursuant to the provisions of §20-1-7a of this code.

87 “Unprotected birds” shall include: (a) The English sparrow; (b) the European starling; and  
88 (c) the cowbird.

89 “Wild animals” means all mammals native to the State of West Virginia occurring either in  
90 a natural state or in captivity, except house mice or rats, and includes coyotes and porcupines  
91 and all species of cervids. The term “wild animals” does not include captive cervids owned and  
92 possessed by persons licensed pursuant to §19-2H-1 et seq. of this code.

93 “Wild birds” shall include all birds other than: (a) Domestic poultry - chickens, ducks, geese,  
94 guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and  
95 (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild

96 birds, either: (i) Those occurring in a natural state in West Virginia; or (ii) those imported foreign  
97 game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long  
98 raised or held in captivity, shall remain wild birds under the meaning of this chapter.

99 "Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including  
100 minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish  
101 bait, whether dead or alive. The term "wildlife" does not include captive cervids regulated pursuant  
102 to 19-2H-1 *et seq.* of this code.

103 "Wildlife refuge" means any land set aside by action of the director as an inviolate refuge  
104 or sanctuary for the protection of designated forms of wildlife.

105 **§20-1-7. Additional powers, duties and services of the director.**

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

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

113 (2) Sign and execute in the name of the state by the Division of Natural Resources any  
114 contract or agreement with the federal government or its departments or agencies, subdivisions  
115 of the state, corporations, associations, partnerships or individuals: *Provided*, That  
116 intergovernmental cooperative agreements and agreements with nongovernmental organizations  
117 in furtherance of providing a comprehensive program for the exploration, conservation,  
118 development, protection, enjoyment and use of the natural resources of the state are exempt from  
119 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That repair and related  
120 construction contracts necessary to protect public health or safety or to provide uninterrupted  
121 enjoyment and public use of state parks, state forests, wildlife management areas and state

122 natural areas under the jurisdiction of the Division of Natural Resources are exempt from the  
123 provisions of §5A-3-1 *et seq.* of this code. Nothing in this section shall authorize the construction  
124 or replacement of capital improvements without complying with the provisions of §5A-3-1 *et seq.*  
125 of this code.(3) Conduct research in improved conservation methods and disseminate information  
126 matters to the residents of the state;

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

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

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

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

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

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

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

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

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

157 (b) For state parks or recreation areas for the purpose of ~~preserving~~ maintaining scenic,  
158 aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing  
159 public recreation;

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

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

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

166 (f) For ~~such other purposes as may be~~ any other purpose necessary to carry out the  
167 provisions of this chapter;

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

170 (13) Sell timber for not less than the value ~~thereof~~ of the timber as appraised by a qualified  
171 appraiser appointed by the director, from all lands under the jurisdiction and control of the director,  
172 except those lands that are designated as state parks and those in the Kanawha State Forest;

173 Provided, harvesting timber on Watoga State Park is permissible as long as such harvesting is  
174 conducted in accordance with the provisions of § 20-1-7a. The appraisal shall be made within a  
175 reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be  
176 available for public inspection. The director must obtain the written permission of the Governor to  
177 sell timber when the appraised value is more than \$5,000. The director shall receive sealed bids  
178 therefor, after notice by publication as a Class II legal advertisement in compliance with the  
179 provisions of §59-3-1 *et seq.* of this code and the publication area for such publication shall be  
180 each county in which the timber is located. The timber so advertised shall be sold at not less than  
181 the appraised value to the highest responsible bidder, who shall give bond for the proper  
182 performance of the sales contract as the director shall designate; but the director shall have the  
183 right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section  
184 have been complied with and no bid equal to or in excess of the appraised value of the timber is  
185 received, the director may, at any time, during a period of six months after the opening of the bids,  
186 sell the timber in such manner as he or she deems appropriate, but the sale price shall not be  
187 less than the appraised value of the timber advertised. No contract for sale of timber made  
188 pursuant to this section shall extend for a period of more than ten years. And all contracts  
189 heretofore entered into by the state for the sale of timber shall not be validated by this section if  
190 the same be otherwise invalid. The proceeds arising from the sale of the timber so sold shall be  
191 paid to the Treasurer of the State of West Virginia and shall be credited to the division and used  
192 exclusively for the purposes of this chapter: *Provided*, That nothing contained herein shall prohibit  
193 the sale of timber which otherwise would be removed from rights-of-way necessary for and strictly  
194 incidental to the extraction of minerals;

195 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel  
196 and any other minerals that may be found in the lands under the jurisdiction and control of the  
197 director, except those lands that are designated as state parks. The director, before making sale  
198 or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal

199 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the  
200 publication area for such publication shall be each county in which such lands are located. The  
201 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give  
202 bond for the proper performance of the sales contract or lease as the director shall designate; but  
203 the director shall have the right to reject any and all bids and to readvertise for bids. The proceeds  
204 arising from any such sale or lease shall be paid to the Treasurer of the State of West Virginia  
205 and shall be credited to the division and used exclusively for the purposes of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

257 **§20-1-7a. Healthy Forest and Recreational Expansion Pilot Program.**

258 (a) The director is hereby authorized to create and administer a pilot program  
259 implementing a management plan designed to improve and maintain forest health, increase  
260 wildlife diversity, reduce the risk of wildfire, and expand the recreational areas of Watoga State  
261 Park. The director may select and sell timber located on Watoga State Park only as part of the  
262 healthy forest and recreational expansion pilot program authorized in this section.

263 (b) The director, the Watoga state park superintendent, and the director of the division of  
264 forestry shall determine the most effective management plan and write necessary prescriptions  
265 to ensure the successful implementation of the management plan that improves and maintains  
266 forest health, creates wildlife diversity, reduces the risk of wildfire, and expands the recreational  
267 area of Watoga State Park.

268 (c) Any prescriptions written relating to timber harvesting shall not exceed the average of  
269 four trees per acre per tract nor more than one half of the merchantable timber volume of the acre.  
270 Only trees with a diameter of at least sixteen inches at breast height, may be harvested; *Provided*,  
271 That clear-cut harvesting is prohibited on state park lands.

272 (d) Any sale of timber harvested from Watoga State Park shall be conducted pursuant to  
273 the provisions of §21-1-7(13) of this code: *Provided*, That the proceeds arising from a sale of  
274 timber located on Watoga State Park shall be paid to the State Treasurer, credited to the division,

275 and used exclusively to promote and maintain forest health, create wildlife diversity, reduce the  
276 risk of wildfire, and expand the recreational area of Watoga State Park.

277 (e) The division may promulgate emergency rules pursuant to §29A-3-15 of this code in  
278 order to carry out the intent of this section, prevent additional harm to state lands, and protect the  
279 public interests.

280 (f) The provisions of this section shall terminate on July 1, 2021, unless sooner terminated,  
281 continued, or reestablished.