WEST VIRGINIA CODE CHAPTER 5b ARTICLE 1A

WV Legislature

§5B-1A-1. Purpose.

The Legislature hereby declares that the long-term value to the public of retaining networks of abandoned railroad corridor lines is substantial, not only for the preservation of corridors for future rail transportation uses, but in terms of providing interim recreational use, providing public open space and linking together other community areas and recreational spaces, providing for efficient and convenient placement of underground utilities and telecommunication lines, providing environmental greenways and wildlife habitat, providing public access to other forms of recreation and improving economic development opportunities associated with all of the above listed multiple uses.

WV Legislature

§5B-1A-2. Rails to trails program.

There is continued within the state rail authority provided for in article eighteen, chapter twenty-nine of this code the "West Virginia Rails to Trails Program," the purpose of which is to acquire or assist with the acquisition of, and to develop or assist with the development of, abandoned railroad rights-of-way for interim use as public nonmotorized recreational trails.

WV Legislature

§5B-1A-3. Definitions.

(1) “Abandoned railroad rights-of-way” means land on which discontinuance of rail service has been authorized by the interstate commerce commission.

(2) “Division” means the Division of Tourism and parks.

(3) “Nonmotorized recreational trail use” means bicycle, hiking, cross-country skiing, horseback riding, horse drawn wagon, jogging or other similar activities.

(4) “Rail bank” means the holding intact of an abandoned railroad right-of-way for future railroad service.

(5) “Rail trail” means an abandoned railroad right-of-way utilized in the interim as a public nonmotorized recreational trail.

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§5B-1A-4. Powers and duties of the authority.

The state rail authority is authorized to:

(1) Enter into agreements with any person on behalf of the state to acquire an interest in any abandoned railroad right-of-way, to develop, maintain or promote any rail trails created pursuant to the provisions of this article and, with the consent of the director of the Division of Natural Resources, to transfer the maintenance and operation of rail trails created and developed to the Division of Natural Resources.

(2) Assist any political subdivision or any person in acquiring an interest in any abandoned railroad right-of-way and in developing, maintaining or promoting rail trails.

(3) Evaluate existing and potential abandoned railroad rights-of-way so as to identify such lands as may be suitable for nonmotorized recreational trail use.

(4) Establish state rail trails, subject to the limitations on acquisition of land for state recreational facilities as set forth in section twenty, article one, chapter twenty of this code.

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§5B-1A-5. Powers to hold and acquire real property.

(a) The state rail authority shall hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by the state and utilized for interim nonmotorized recreational trail use pursuant to the provisions of this article. The state rail authority may, at the option of a political subdivision of this state, hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by such political subdivision and utilized for interim nonmotorized recreational trail use. Any provision of article one-a, chapter twenty of this code to the contrary notwithstanding, the public land corporation shall not be vested with title to any abandoned railroad right-of-way which becomes vested in the state pursuant to the provisions of this article.

(b) The state rail authority may acquire an interest in an abandoned railroad right-of-way to be used as a rail trail, in accordance with the provisions of section six, article eighteen, chapter twenty-nine of this code.

(c) The state rail authority shall issue a rail bank certificate for each abandoned railroad right-of-way held by the state rail authority for interim nonmotorized recreational purposes in accordance with the provisions of section six of this article.

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§5B-1A-6. Abandoned rights-of-way owned by the state prior to effective date of article.

(a) No abandoned railroad right-of-way acquired by the state prior to the effective date of this article and used as a rail trail may be used for any purpose that would unreasonably limit the ability to restore rail service over the right-of-way if such service were to be required in the future.

(b) Any and all abandoned railroad rights-of-way acquired by the state prior to the effective date of this article are hereby declared held for railroad transportation purposes as of the date of acquisition, until, by executive order of the Governor, the right-of-way is declared no longer suitable for a public transportation purpose as a railroad right-of-way. Such abandoned railroad rights-of-way shall not revert by operation of law to any other ownership while being held for future railroad use in accordance with the provisions of this article.

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§5B-1A-7. Railroad rights-of-way preservation.

(a) Upon receipt of a notice to abandon a railroad right-of-way by the owner thereof, the commissioner may enter into an agreement with the owners of the railroad right-of-way to preserve intact the railroad right-of-way for a period of time not to exceed three months to afford the state sufficient time to evaluate the potential for use by the state for the purposes of this article, and the funds available for acquisition.

(b) With regard to any land or an interest therein actually acquired by the state pursuant to the provisions of this article:

(1) Every specifically identified railroad right-of-way, including all bridges still in place, shall remain intact except for necessary modifications required to adapt the right-of-way for use as a nonmotorized recreational trail, except for where it is necessary for a motorized vehicle to cross the trail;

(2) Any abandoned railroad right-of-way shall be used solely for nonmotorized recreational purposes, subject to such right-of-way being made available for future rail use, if necessary; and

(3) Any abandoned railroad right-of-way acquired by the state pursuant to the provisions of this article shall be deemed to be held for railroad use and in continuation of the railroad easement and shall not revert by operation of law to any other ownership during the term of the agreement or during the term of a rail bank certificate issued pursuant to section five of this article.

WV Legislature

§5B-1A-8. Limitation on liability of owner from whom state acquires land or interest therein.

During the interim period when an abandoned railroad right-of-way is held by the state for possible future railroad use, the owner of the railroad right-of-way from whom the state acquired the land or an interest therein is relieved from civil liability for any personal injury or property damage occurring on the right-of-way during such interim period, which might otherwise arise from ownership.

WV Legislature

§5B-1A-9. Limitation on liability of persons making land available for trail use without charge.

(a) General rule. -- Except as specifically recognized or provided in subsection (d) of this section, an owner or lessee who provides the public with land for use as a trail under this article or who owns land adjoining any trail developed under this article owes no duty of care to keep the land safe for entry or use by others for recreational purposes, or to give any warning to persons entering or going on the trail or adjoining land of a dangerous condition, use, structure or activity thereon.

(b) Owner. -- Any person, public agency or corporation owning an interest in land utilized for recreational trail purposes pursuant to this article shall be treated as an "owner" for purposes of this article.

(c) Specific limitations on liability. -- Except as specifically recognized by or provided in subsection (d) of this section, an owner or lessee who provides the public with land or who owns adjoining land to the trail under this article is not, by providing that trail or land or owning land adjoining the trail:

(1) Presumed to extend any assurance that the land is safe for any purpose;

(2) Incur any duty of care toward a person who goes on that land; or

(3) Become liable for any injury to persons or property caused by an act or an act of omission of a person who goes on that land.

(d) Exception. --

(1) This section does not apply to the owner or lessee of the land used as a trail if there is any charge made or usually made for entering or using the trail or land, or any part thereof.

(2) This section does not apply to the owner of land adjoining a trail if there is any charge made or usually made by the owner of such adjoining land for using the trail or land, or any part thereof, or if any commercial or other activity relating to the use of the trail whereby profit is derived from the patronage of the general public is conducted on such adjoining land, or on any part thereof.

(3) The foregoing applies whether the person going on the land provided or adjoining is an invitee, licensee, trespasser or otherwise.

(e) This article does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions of this article do not create or increase the liability of any person.

WV Legislature