AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the West Virginia recreational trails system; the “West Virginia Rails to Trails Program”; establishing a state rail bank procedure; powers and duties of the division of tourism and parks and railroad maintenance authority; and establishing limited liability for adjacent landowners.

Be it enacted by the Legislature of West Virginia:

That chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. WEST VIRGINIA RAILS TO TRAILS PROGRAM.

§5B-1A-1. Purpose.

1 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, pro-
viding 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.

§5B-lA-2. Rails to trails program.

There is established within the division of tourism
and parks 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.

§5B-lA-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 nonmotor-
ized recreational trail.

§5B-lA-4. Powers and duties of the division.

The commissioner of the division of tourism and
parks 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, and to develop, maintain or promote any rail trails created pursuant to the provisions of this article or already existing and under the state’s control at the time of the enactment of this article;

(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.

§5B-1A-5. Railroad maintenance authority.

(a) The railroad maintenance authority, as created pursuant to the provisions of section four, article eighteen, chapter twenty-nine of this code, 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 railroad maintenance 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 railroad maintenance authority may, at the request of the commissioner of the division of tourism
and parks, 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 railroad maintenance authority shall issue a rail bank certificate for each abandoned railroad right-of-way held by the railroad maintenance authority for interim nonmotorized recreational purposes in accordance with the provisions of section six of this article.

§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-ways 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.

§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 provi-
sions 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 continu-ation 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.

§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.

§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
9 of a dangerous condition, use, structure or activity thereon.

11 (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 the article.

15 (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:

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

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

25 (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.

28 (d) Exception. —

29 (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.

33 (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.

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

44 (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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 
day of 1992.