

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 448

(By Senator Wiedebusch, et al)

PASSED March 7, 1992

In Effect 90 days from Passage

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 448

(BY SENATORS WIEDEBUSCH, MINARD, MACNAUGHTAN,
WITHERS, BRACKENRICH, BURDETTE, MR. PRESIDENT,
AND WHITLOW)

[Passed March 7, 1992; in effect ninety days from passage.]

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
2 value to the public of retaining networks of abandoned
3 railroad corridor lines is substantial, not only for the
4 preservation of corridors for future rail transportation

5 uses, but in terms of providing interim recreational
6 use, providing public open space and linking together
7 other community areas and recreational spaces, pro-
8 viding for efficient and convenient placement of
9 underground utilities and telecommunication lines,
10 providing environmental greenways and wildlife
11 habitat, providing public access to other forms of
12 recreation and improving economic development
13 opportunities associated with all of the above listed
14 multiple uses.

§5B-1A-2. Rails to trails program.

1 There is established within the division of tourism
2 and parks the “West Virginia Rails to Trails Program”,
3 the purpose of which is to acquire or assist with the
4 acquisition of, and to develop or assist with the
5 development of, abandoned railroad rights-of-way for
6 interim use as public nonmotorized recreational trails.

§5B-1A-3. Definitions.

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

4 (2) “Division” means the division of tourism and
5 parks.

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

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

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

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

1 The commissioner of the division of tourism and
2 parks is authorized to:

3 (1) Enter into agreements with any person on behalf
4 of the state to acquire an interest in any abandoned

5 railroad right-of-way, and to develop, maintain or
6 promote any rail trails created pursuant to the provi-
7 sions of this article or already existing and under the
8 state's control at the time of the enactment of this
9 article;

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

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

17 (4) Establish state rail trails, subject to the limita-
18 tions on acquisition of land for state recreational
19 facilities as set forth in section twenty, article one,
20 chapter twenty of this code.

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

1 (a) The railroad maintenance authority, as created
2 pursuant to the provisions of section four, article
3 eighteen, chapter twenty-nine of this code, shall hold
4 fee simple title or any lesser interest in land, including
5 easements and leaseholds, on all abandoned railroad
6 rights-of-way acquired by the state, and utilized for
7 interim nonmotorized recreational trail use pursuant
8 to the provisions of this article. The railroad mainte-
9 nance authority may, at the option of a political
10 subdivision of this state, hold fee simple title or any
11 lesser interest in land, including easements and
12 leaseholds, on all abandoned railroad rights-of-way
13 acquired by such political subdivision, and utilized for
14 interim nonmotorized recreational trail use. Any
15 provision of article one-a, chapter twenty of this code
16 to the contrary notwithstanding, the public land
17 corporation shall not be vested with title to any
18 abandoned railroad right-of-way which becomes
19 vested in the state pursuant to the provisions of this
20 article.

21 (b) The railroad maintenance authority may, at the
22 request of the commissioner of the division of tourism

23 and parks, acquire an interest in an abandoned
24 railroad right-of-way to be used as a rail trail, in
25 accordance with the provisions of section six, article
26 eighteen, chapter twenty-nine of this code.

27 (c) The railroad maintenance authority shall issue a
28 rail bank certificate for each abandoned railroad right-
29 of-way held by the railroad maintenance authority for
30 interim nonmotorized recreational purposes in accor-
31 dance 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.**

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

7 (b) Any and all abandoned railroad rights-of-way
8 acquired by the state prior to the effective date of this
9 article are hereby declared held for railroad transpor-
10 tation purposes as of the date of acquisition, until, by
11 executive order of the governor the right-of-way is
12 declared no longer suitable for a public transportation
13 purpose as a railroad right-of-way. Such abandoned
14 railroad rights-of-ways shall not revert by operation of
15 law to any other ownership while being held for
16 future railroad use in accordance with the provisions
17 of this article.

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

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

9 (b) With regard to any land or an interest therein
10 actually acquired by the state pursuant to the provi-

11 sions of this article:

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

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

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

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

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

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

1 (a) *General rule.* — Except as specifically recognized
2 or provided in subsection (d) of this section, an owner
3 or lessee who provides the public with land for use as
4 a trail under this article or who owns land adjoining
5 any trail developed under this article owes no duty of
6 care to keep the land safe for entry or use by others
7 for recreational purposes, or to give any warning to
8 persons entering or going on the trail or adjoining land

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

11 (b) *Owner.* — Any person, public agency or corpora-
12 tion owning an interest in land utilized for recrea-
13 tional trail purposes pursuant to this article shall be
14 treated as an “owner” for purposes of the article.

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

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

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

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

28 (d) *Exception.* —

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

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

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

44 (e) This article does not relieve any person of
45 liability which would otherwise exist for deliberate,

46 willful or malicious injury to persons or property. The
47 provisions of this article do not create or increase the
48 liability of any person.

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

Somer Leck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Donald E. Kepp
.....
Clerk of the Senate

Donald E. Kepp
.....
Clerk of the House of Delegates

Paul Brantette
.....
President of the Senate

Robert C. Cole
.....
Speaker House of Delegates

The within *is appended* this the *1st*
day of *April* 1992.

Yastou Capu
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/90

Time 4:55pm