

SB 616

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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*COMMITTEE SUBSTITUTE FOR*

SENATE BILL NO. 616

(By Senator ANDERSON, ET AL)



PASSED MARCH 14, 1998

In Effect NINETY DAYS FROM Passage

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LEGISLATIVE COUNCIL

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 616**

(SENATORS ANDERSON, BALL, ROSS, SHARPE, DITTMAR,  
LOVE, HELMICK, BAILEY, SCHOONOVER, SNYDER, MCKENZIE,  
KIMBLE, KESSLER, BUCKALEW, BOWMAN, FANNING,  
WALKER, CHAFIN, OLIVERIO, SPROUSE, TOMBLIN,  
MR. PRESIDENT AND HUNTER, *original sponsors*)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight; and to amend and reenact section two-a, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, all relating to the new river parkway authority; requiring a

development certification process for issuance of certifications of compliance with the authority's plan or plans; providing an appeal process; providing injunctive relief to force compliance with the authority's plans; and redefining the territory included in the parkway.

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

That section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, be amended and reenacted; and that section two-a, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, be amended and reenacted, all to read as follows:

**NEW RIVER PARKWAY AUTHORITY.**

**§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.**

- 1 (a) The authority consists of nine voting members and  
2 four to six ex officio nonvoting members.
- 3 (b) Three voting members shall be appointed by the  
4 Mercer County commission. Three voting members shall  
5 be appointed by the Raleigh County commission. Three  
6 voting members shall be appointed by the Summers  
7 County commission. No more than two of the three voting  
8 members appointed by a county commission may be  
9 members of the same political party, which said members  
10 shall not be elected to, appointed to or hold any other  
11 public office during their tenure as members of the  
12 authority. The regular term of a voting member is three  
13 years, provided that the terms of the voting members  
14 initially appointed by a county commission are as follows:  
15 One member shall be appointed for a term of one year, one  
16 member shall be appointed for a term of two years and  
17 one member shall be appointed for a term of three years.  
18 Should a vacancy occur, the person appointed to fill the

19 vacancy shall serve only for the unexpired portion thereof.  
20 All voting members are eligible for reappointment. Any  
21 voting member may be removed for cause by the appoint-  
22 ing county commission.

23 (c) The ex officio nonvoting members are the commis-  
24 sioner of the division of highways or his or her designee,  
25 the director of the division of natural resources or his or  
26 her designee, the commissioner of agriculture or his or her  
27 designee, the commissioner of commerce or his or her  
28 designee, and, if they choose to serve, the district engineer  
29 of the Huntington district of the United States army corps  
30 of engineers or his or her designee and the superintendent  
31 of the new river gorge national river or his or her designee.  
32 Any designee serving as a nonvoting member may be  
33 removed at the will and pleasure of the officer designating  
34 the member.

35 (d) Each voting member of the authority may be com-  
36 pensated monthly by the county commission which  
37 appointed such member in an amount to be fixed by said  
38 county commission.

39 (e) There shall be an annual meeting of the authority on  
40 the second Monday in July in each year and a monthly  
41 meeting on a day and at such time as the authority may  
42 designate in its bylaws. A special meeting may be called  
43 by the president, the secretary or any three voting mem-  
44 bers of the authority and may be held only after all voting  
45 and nonvoting members are given notice thereof in  
46 writing. Five voting members constitute a quorum for all  
47 meetings. At each annual meeting of the authority, it shall  
48 elect a president, vice president, secretary and treasurer.  
49 The authority shall adopt such bylaws and rules that are  
50 necessary for its operation and management.

51 (f) The authority has all powers necessary, incidental,  
52 convenient and advisable to accomplish the following  
53 purposes:

54 (1) The preparation of a plan or plans for the new river  
55 parkway and the new river parkway corridor;

56 (2) To create and administer a development certification  
57 process for issuance by the authority, where appropriate,  
58 of certifications of compliance with the authority's plan or  
59 plans;

60 (3) To hear and decide appeals from initial decisions  
61 made upon requests for certification of compliance with  
62 the authority's plan or plans;

63 (4) Advocating actions consistent with the plan or plans,  
64 to or before any governmental entity or any private person  
65 or entity; and

66 (5) Otherwise acting in an advisory capacity with regard  
67 to any aspect of the new river parkway and new river  
68 parkway corridor upon or without request to any govern-  
69 mental entity or private person or entity. The authority  
70 shall not own or hold any real estate or real property and  
71 shall not operate or maintain the parkway.

**§2a. Setting of standards and a development certification process for the regulation of use of property within the parkway corridor; definition of corridor; presentation of standards to governmental entities; requirement that governmental entities adopt and enforce standards; process of appeals and injunctive relief.**

1 (a) The authority may develop and set for land-use  
2 regulations performance standards which are necessary to  
3 implement the authority's plan or plans and which are  
4 consistent with the purpose of this chapter. The standards  
5 apply to the new river parkway corridor. New develop-  
6 ment within the parkway corridor requires certification  
7 by the authority that all requirements of its plan or plans  
8 have been complied with and that a certificate of compli-  
9 ance has been issued for the new development. The  
10 certification process shall be included in the authority's

11 plan or plans and shall include the right of appeal by any  
12 person adversely affected by the process as provided for in  
13 subdivision (3), subsection (f), section two of this article.  
14 For purposes of this chapter, "New River Parkway Corri-  
15 dor" or "corridor" means that area within five hundred  
16 feet of the parkway centerline, from interstate 64 to the  
17 Hinton new river bridge, as delineated on an official  
18 parkway corridor map. Areas which the standards may  
19 address include:

20 (1) Buffer areas between the roadway and paved parking  
21 areas;

22 (2) Landscaping or vegetation requirements, or both;

23 (3) Land coverage, frontage, setback, design and build-  
24 ing height for new structures;

25 (4) Siting of new structures to enhance the scenic  
26 qualities of the parkway and avoid visual intrusions;

27 (5) Design and placement of on-site advertising signs  
28 along the parkway;

29 (6) The dumping or storing of refuse to prevent deterio-  
30 ration of the natural or traditional parkway scene: *Pro-*  
31 *vided*, That the standards shall not discourage construc-  
32 tive development and uses of the property which are  
33 consistent with the purpose of this chapter; and

34 (7) Any other area, if regulation over such area is  
35 consistent with the purpose of this chapter. Standards  
36 which are developed by the authority shall not apply to  
37 structures existing in the corridor prior to the effective  
38 date of this section.

39 (b) Upon the development of standards and a develop-  
40 ment certification process, the authority shall present the  
41 standards and certification process to relevant govern-  
42 mental entities within the corridor. The presentation shall  
43 include relevant findings as to whether local plans and  
44 ordinances conform with the authority's performance

45 standards and certification process and this presentation  
46 shall specify deviations, if any, from the performance  
47 standards and certification process.

48 (c) Within ninety days of the presentation of the author-  
49 ity's performance standards and development certification  
50 process, the relevant governmental entities shall adopt  
51 and enforce the standards and certification process in the  
52 parkway corridor.

53 (d) The development certification process as provided  
54 for in subdivision (3), subsection (f), section two of this  
55 article, included in the authority's plan or plans and  
56 adopted by the relevant governmental entities shall  
57 include an appeals process. The appeals process shall  
58 include an informal administrative appeal by which an  
59 adversely affected person may appeal the initial decision  
60 regarding a request for issuance of certification for  
61 proposed new development within the parkway corridor.  
62 If the appeal of the initial decision regarding certification  
63 is affirmed, the adversely affected person has the right to  
64 judicial review in the circuit court of the county where the  
65 relevant portion of the parkway corridor is located. The  
66 review is de novo. The burden is on the adversely affected  
67 person to prove the initial decision of the authority is  
68 contrary to the requirements of the authority's plan or  
69 plans as adopted by the relevant governmental entity.

70 (e) The circuit court of the county where the relevant  
71 portion of the parkway corridor is located has the power  
72 to and may grant injunctive relief to compel compliance  
73 by any person with the plan or plans of the authority  
74 adopted by the relevant governmental entity.

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

*Paul Johnson*  
.....  
Chairman Senate Committee

*Nick Fantasia*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll Adams*  
.....  
Clerk of the Senate

*Bryant B. King*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Richard H. Pelt*  
.....  
Speaker House of Delegates

The within *approved* this the *6<sup>th</sup>*  
day of *April* ..... 1998.

*Lee R. Raabe*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 12:25 pm

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