SENATE BILL NO. 110

(Co-sponsored by Senator

ANDERSON, ET AL)

PASSED March 14, 1998
In Effect NINETY DAYS FROM PASSAGE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

Committee Substitute for
SENATE BILL NO. 110

PASSED March 14, 1998
In Effect NINETY DAYS FROM PASSAGE
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, OLIVERO, SPROUSE, TOMBLIN,
MR. PRESIDENT AND HUNTER, original sponsors)

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

AN ACT to amend and reenact section two, chapter one hun­
dred 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.

(a) The authority consists of nine voting members and four to six ex officio nonvoting members.

(b) Three voting members shall be appointed by the Mercer County commission. Three voting members shall be appointed by the Raleigh County commission. Three voting members shall be appointed by the Summers County commission. No more than two of the three voting members appointed by a county commission may be members of the same political party, which said members shall not be elected to, appointed to or hold any other public office during their tenure as members of the authority. The regular term of a voting member is three years, provided that the terms of the voting members initially appointed by a county commission are as follows: one member shall be appointed for a term of one year, one member shall be appointed for a term of two years and one member shall be appointed for a term of three years. Should a vacancy occur, the person appointed to fill the
vacancy shall serve only for the unexpired portion thereof. All voting members are eligible for reappointment. Any voting member may be removed for cause by the appointing county commission.

(c) The ex officio nonvoting members are the commissioner of the division of highways or his or her designee, the director of the division of natural resources or his or her designee, the commissioner of agriculture or his or her designee, the commissioner of commerce or his or her designee, and, if they choose to serve, the district engineer of the Huntington district of the United States army corps of engineers or his or her designee and the superintendent of the new river gorge national river or his or her designee. Any designee serving as a nonvoting member may be removed at the will and pleasure of the officer designating the member.

(d) Each voting member of the authority may be compensated monthly by the county commission which appointed such member in an amount to be fixed by said county commission.

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

(f) The authority has all powers necessary, incidental, convenient and advisable to accomplish the following purposes:
(1) The preparation of a plan or plans for the new river parkway and the new river parkway corridor;

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

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

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

(5) Otherwise acting in an advisory capacity with regard to any aspect of the new river parkway and new river parkway corridor upon or without request to any governmental entity or private person or entity. The authority shall not own or hold any real estate or real property and 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.

(a) The authority may develop and set for land-use regulations performance standards which are necessary to implement the authority's plan or plans and which are consistent with the purpose of this chapter. The standards apply to the new river parkway corridor. New development within the parkway corridor requires certification by the authority that all requirements of its plan or plans have been complied with and that a certificate of compliance has been issued for the new development. The certification process shall be included in the authority's
plan or plans and shall include the right of appeal by any
person adversely affected by the process as provided for in
subdivision (3), subsection (f), section two of this article.
For purposes of this chapter, “New River Parkway Corri-
dor” or “corridor” means that area within five hundred
feet of the parkway centerline, from interstate 64 to the
Hinton new river bridge, as delineated on an official
parkway corridor map. Areas which the standards may
address include:

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

(2) Landscaping or vegetation requirements, or both;

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

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

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

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

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

(b) Upon the development of standards and a develop-
ment certification process, the authority shall present the
standards and certification process to relevant govern-
mental entities within the corridor. The presentation shall
include relevant findings as to whether local plans and
ordinances conform with the authority’s performance
standards and certification process and this presentation shall specify deviations, if any, from the performance standards and certification process.

(c) Within ninety days of the presentation of the authority's performance standards and development certification process, the relevant governmental entities shall adopt and enforce the standards and certification process in the parkway corridor.

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

(e) The circuit court of the county where the relevant portion of the parkway corridor is located has the power to and may grant injunctive relief to compel compliance by any person with the plan or plans of the authority adopted by the relevant governmental entity.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Nick Fantasia

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 approved this the 6th day of April, 1966.

Governor