

FILED

2002 MAR 27 P 3:47

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*REGULAR SESSION, 2002*

**ENROLLED**

*COMMITTEE SUBSTITUTE FOR*

**SENATE BILL NO. 686**

(By Senator HELMICK, ET AL)

**PASSED MARCH 9, 2002**

**In Effect NINETY DAYS FROM Passage**

FILED

2002 MAR 27 P 3:47

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 686**

(SENATORS HELMICK, FANNING, LOVE, ANDERSON, UNGER,  
CHAFIN, EDGELL, MINARD, MCCABE, BOWMAN, PLYMALE,  
SNYDER, SHARPE, ROSS, MITCHELL, BOLEY, DEEM, OLIVERIO,  
HUNTER AND ROWE, *original sponsors*)

---

[Passed March 9, 2002; in effect ninety days from passage.]

---

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to creating the coal heritage highway authority and board; powers and duties of authority, board and executive director; board composition, terms and expenses; authority of board to adopt bylaws and rules; rulemaking authority; user fees; limited liability; insurance policies; exemptions from taxation; establishing special revenue fund; annual report; and limitation of article.

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

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

**ARTICLE 28. COAL HERITAGE HIGHWAY AUTHORITY.**

**§29-28-1. Legislative findings.**

1 The Legislature finds that the creation and empowering  
2 of a statutory corporation to work with landowners,  
3 county and municipal officials and community leaders,  
4 state and federal government agencies, recreational user  
5 groups, persons interested in historic preservation and  
6 other interested parties to enable and facilitate acquisi-  
7 tion, development, preservation and enhancement of  
8 facilities and resources proximate to or associated with the  
9 coal heritage trail, a national scenic byway in West  
10 Virginia, will greatly assist in the economic development  
11 of the state through increased tourism.

**§29-28-2. Definitions.**

1 Unless the context clearly requires a different meaning,  
2 the terms used in this section have the following meanings:

3 (1) "Authority" means the coal heritage highway author-  
4 ity.

5 (2) "Board" means the board of the coal heritage high-  
6 way authority.

7 (3) "Coal heritage trail" means that part of West Virginia  
8 route 16 connecting Beckley and Welch, and United States  
9 route 52, connecting Bluefield and Welch, all designated as  
10 a national scenic byway, and existing within the counties  
11 of Mercer, McDowell, Raleigh and Wyoming, and those  
12 routes that comprise the National Coal Heritage Trail  
13 Scenic Byway, as designated by the United States depart-  
14 ment of transportation, traversing the counties of Fayette,  
15 Mercer, McDowell, Raleigh and Wyoming.

**§29-28-3. Authority created.**

1 (a) There is hereby created the "Coal Heritage Highway  
2 Authority" which is a public corporation and a govern-  
3 ment instrumentality to promote economic development  
4 and tourism in areas along the national scenic byway,  
5 designated the coal heritage trail, and aid in the develop-  
6 ment, preservation, restoration or enhancement of roads,  
7 trails, lands and structures, including areas or structures  
8 associated with surface transportation, which have unique  
9 and significant historic, architectural or cultural impor-  
10 tance associated with the area's heritage of coal produc-  
11 tion and which are located in one or more of the counties  
12 of Fayette, Mercer, McDowell, Raleigh and Wyoming.

13 (b) The authority shall cooperate with counties, munici-  
14 palities, state and federal agencies, public nonprofit  
15 corporations, private corporations, associations, partner-  
16 ships and individuals for the purpose of planning, assisting  
17 and establishing recreational, tourism, industrial, eco-  
18 nomic and community development of the coal heritage  
19 trail for the benefit of West Virginia.

**§29-28-4. Appointment of board; terms.**

1 (a) The authority shall be governed by a board of six  
2 members. All members shall be appointed before the first  
3 day of July, two thousand two.

4 (b) Each of the county commissions of the counties of  
5 Fayette, Mercer, McDowell, Raleigh and Wyoming shall  
6 appoint one member each to the board. The appointees  
7 must be affiliated with or knowledgeable in tourism,  
8 economic development or heritage preservation. The sixth  
9 member shall be appointed by the secretary of education  
10 and the arts and shall be the chair. Of the members first  
11 appointed by the county commissions, the members  
12 representing Fayette, Mercer and Raleigh counties shall be  
13 appointed to terms ending the thirtieth day of June, two  
14 thousand three, and the members representing McDowell

15 and Wyoming counties shall be appointed to terms ending  
16 the thirtieth day of June, two thousand four. Thereafter,  
17 persons appointed or reappointed to the board, by the  
18 county commissions or the secretary of education and the  
19 arts, shall be appointed for terms of two years.

20 (c) Any appointed member whose term has expired shall  
21 serve until his or her successor has been duly appointed.  
22 Should a vacancy occur, the person appointed to fill the  
23 vacancy shall serve only for the unexpired portion thereof.  
24 All members are eligible for reappointment.

25 (d) Any appointed member of the board shall immedi-  
26 ately and automatically forfeit his or her membership on  
27 the board if he or she becomes a nonresident of the county  
28 from which he or she was appointed.

29 (e) Each member of the board shall serve without  
30 compensation, but shall receive expense reimbursement  
31 for all reasonable and necessary expenses actually in-  
32 curred in the performance of the duties of the office, in the  
33 same amount paid to members of the Legislature for their  
34 interim duties as recommended by the citizens legislative  
35 compensation commission and authorized by law: *Pro-*  
36 *vided*, That no member shall be reimbursed for expenses  
37 paid by a third party.

**§29-28-5. Board; quorum; bylaws.**

1 (a) The board is the governing body of the authority and  
2 the board shall exercise all the powers given the authority  
3 in this article. The board shall meet at least quarterly.

4 (b) A majority of the members of the board constitutes a  
5 quorum and a quorum must be present for the board to  
6 conduct business. Unless the bylaws require a larger  
7 number, action may be taken by majority vote of the  
8 members present.

9 (c) The board shall adopt bylaws and rules, as may be  
10 necessary for its operation and management, governing the

11 manner in which the business of the authority is conducted  
12 and shall review and approve an annual budget.

**§29-28-6. Executive director; powers and duties.**

1 (a) The board shall appoint an executive director to act  
2 as its chief executive officer, to serve at the will and  
3 pleasure of the board. The executive director may be  
4 employed on a full-time or part-time basis. The board, in  
5 consultation with its executive director, may employ any  
6 other necessary personnel. The board shall set the com-  
7 pensation of authority employees.

8 (b) The executive director shall carry out plans to  
9 implement the provisions of this article and exercise those  
10 powers enumerated in the bylaws. The executive director  
11 shall prepare an annual budget to be submitted to the  
12 board for its review and approval.

**§29-28-7. Board expenses.**

1 (a) Unless otherwise prohibited by law, the board may  
2 appoint counsel and legal staff for the authority and retain  
3 temporary engineering, financial and other consultants or  
4 technicians as may be required for any special study or  
5 survey consistent with the provisions of this article.

6 (b) All costs incidental to the administration of the  
7 authority, including office expenses, personal services  
8 expense and current expense, shall be paid in accordance  
9 with guidelines issued by the board from funds accruing to  
10 the authority.

11 (c) All expenses incurred in carrying out the provisions  
12 of this article are payable solely from funds provided  
13 under the authority of this article and no liability or  
14 obligation may be incurred by the authority under this  
15 article beyond the extent to which moneys have been  
16 provided under the authority of this article.

**§29-28-8. Powers of authority.**

1 The authority, as a public corporation and governmental  
2 instrumentality exercising public powers of the state, may  
3 exercise all powers necessary or appropriate to carry out  
4 the purposes of this article, except the power of eminent  
5 domain. Powers of the authority include, but are not  
6 limited to, the power:

7 (1) To undertake promotion and advocacy of projects,  
8 programs or facilities related to the coal heritage highway  
9 and the purposes of this article and to make grants consis-  
10 tent with the purposes and goals of the board;

11 (2) To directly operate and manage historic, cultural,  
12 architectural and recreational activities and facilities  
13 consistent with the purposes of the authority and this  
14 article;

15 (3) To cooperate with the state of Virginia and appropri-  
16 ate state and local officials and community leaders in  
17 Virginia to enhance the effectiveness of trails or other  
18 authority projects or facilities which may be located on the  
19 border which may connect to similar projects across the  
20 state border;

21 (4) To sue and be sued, implead and be impleaded and  
22 complain and defend in any court;

23 (5) Unless otherwise prohibited by law, to contract for  
24 the provision of legal services by private counsel and,  
25 notwithstanding the provisions of article three, chapter  
26 five of this code, the counsel may, in addition to the  
27 provisions of other legal services, represent the authority  
28 in court, negotiate contracts and other agreements on  
29 behalf of the authority, render advice to the authority on  
30 any matter relating to the authority, prepare contracts and  
31 other agreements and provide other legal services re-  
32 quested by the authority;

33 (6) To adopt, use and alter at will a corporate seal;

34 (7) To make, amend, repeal and adopt bylaws for the  
35 management and regulation of its affairs;

36 (8) To appoint an executive director and other employees  
37 or agents and to contract for and engage the services of  
38 consultants;

39 (9) To execute contracts necessary or convenient for  
40 carrying on its business, including contracts with any  
41 other governmental agency of this state or of the federal  
42 government or with any person, individual, partnership or  
43 corporation to effect any or all of the purposes of this  
44 article;

45 (10) Without in any way limiting any other subdivision  
46 of this section, to accept grants and loans from and enter  
47 into contracts and other transactions with any federal  
48 agency;

49 (11) To maintain an office at such places within the state  
50 as it may designate;

51 (12) To accept gifts or grants of property, funds, money,  
52 materials, labor, supplies or services from the federal  
53 government or from any governmental unit or any person,  
54 firm or corporation;

55 (13) To propose rules for legislative approval in accor-  
56 dance with the provisions of article three, chapter twenty-  
57 nine-a of this code as necessary to implement and make  
58 effective the powers, duties and responsibilities invested  
59 in the authority by the provisions of this article and  
60 otherwise by law;

61 (14) To construct, reconstruct, improve, maintain, repair,  
62 operate and manage certain facilities on the coal heritage  
63 trail, as determined by the authority;

64 (15) To develop, maintain and operate or to contract for  
65 the development, maintenance and operation of projects  
66 appropriate to the authority;

67 (16) To enter into contract with landowners and other  
68 persons holding an interest in the land being used for its  
69 historic, cultural or tourist facilities and to hold those  
70 landowners and other persons harmless with respect to  
71 any claim in tort growing out of the use of the land for  
72 public tourism or growing out of the tourism activities  
73 operated or managed by the authority from any claim  
74 except a claim for damages proximately caused by the  
75 willful or malicious conduct of the landowner or other  
76 person or any of his or her agents or employees;

77 (17) To assess and collect a reasonable fee from those  
78 persons who use trails, parking facilities, visitor centers or  
79 other facilities operated by the authority and to retain and  
80 use that revenue for any purposes consistent with this  
81 article;

82 (18) To enter into contracts or other appropriate legal  
83 arrangements with landowners under which their land is  
84 made available for use consistent with the purposes of the  
85 authority and this article; and

86 (19) To make funds in excess of current needs available  
87 for investment in accordance with the provisions of article  
88 six, chapter twelve of this code.

**§29-28-9. Limiting liability; insurance exemption for certain horsemen.**

1 (a) Notwithstanding the provisions of section three,  
2 article twenty-five, chapter nineteen of this code, an owner  
3 of land used by or for the stated purposes of the authority,  
4 whether with or without charge, owes no duty of care to  
5 keep the premises safe for entry or use by others for  
6 recreational purposes or to give any warning of a danger-  
7 ous or hazardous condition, use, structure or activity on  
8 the premises to persons entering for those purposes.

9 (b) Notwithstanding the provisions of section three,  
10 article twenty-five, chapter nineteen of this code, the

11 landowner or lessor of the property used by the authority  
12 for purposes of this article does not thereby:

13 (1) Extend any assurance that the premises are safe for  
14 any purpose;

15 (2) Confer upon persons the legal status of an invitee or  
16 licensee to whom a duty of care is owed; or

17 (3) Assume responsibility for or incur liability for any  
18 injury to person or property caused by an act or omission  
19 of these persons.

20 (c) Unless otherwise agreed in writing, an owner who  
21 grants a license of land to the authority for purposes  
22 provided in this article owes no duty of care to keep that  
23 land safe for entry or use by others or to give warning to  
24 persons entering or going upon the land of any dangerous  
25 or hazardous conditions, uses, structures or activities  
26 thereon.

27 (d) An owner who grants a license of land to the author-  
28 ity for recreational purposes does not by giving a lease,  
29 easement or license:

30 (1) Extend any assurance to any person using the land  
31 that the premises are safe for any purpose;

32 (2) Confer upon those persons the legal status of an  
33 invitee or licensee to whom a duty of care is owed; or

34 (3) Assume responsibility for or incur liability for any  
35 injury to person or property caused by an act or omission  
36 of a person who enters upon the land.

37 (e) The provisions of this section apply whether the  
38 person entering upon the land is an invitee, licensee,  
39 trespasser or otherwise.

40 (f) Nothing herein limits in any way any liability which  
41 otherwise exists for deliberate, willful or malicious  
42 infliction of injury to persons or property: *Provided*, That

43 nothing herein limits in any way the obligation of a person  
44 entering upon or using the land of another for recreational  
45 purposes to exercise due care in his or her use of the land  
46 and in his or her activities thereon, so as to prevent the  
47 creation of hazards or the commission of waste by himself  
48 or herself: *Provided, however,* That horsemen, as defined  
49 in section two, article four, chapter twenty of this code,  
50 who are using land or facilities held or operated pursuant  
51 to this article for equestrian activities and who are in  
52 compliance with rules proposed by the authority and  
53 approved by the Legislature, but who are not engaged in  
54 a commercial profit-making venture are exempt from the  
55 provisions of subsection (d), section five of said article.

**§29-28-10. Insurance policies.**

1 Any policy or contract of liability insurance providing  
2 coverage for liability sold, issued or delivered in this state  
3 to any owner of lands covered under the provisions of this  
4 article shall be read so as to contain a provision or en-  
5 dorsement whereby the company issuing the policy waives  
6 or agrees not to assert as a defense on behalf of the policy-  
7 holder or any beneficiary thereof, to any claim covered by  
8 the terms of the policy within the policy limits, the immu-  
9 nity from liability of the insured by reason of the use of the  
10 insured's land for recreational purposes, unless the provi-  
11 sion or endorsement is rejected in writing by the named  
12 insured.

**§29-28-11. Exemption from taxation.**

1 Revenues, properties, operations and activities of the  
2 authority are exempt from the payment of any taxes or  
3 fees to the state or any of its political subdivisions.

**§29-28-12. Fund established; authorized expenditures; annual report.**

1 (a) There is established in the state treasury a special  
2 revenue fund designated the "Coal Heritage Highway

3 Authority Fund”, which shall be administered by the coal  
4 heritage highway authority board.

5 (b) All funds accruing to the authority pursuant to the  
6 provisions of this article shall be deposited into the fund  
7 and expended in accordance with provisions of this article.

8 (c) Any remaining balance, including accrued interest, in  
9 the fund at the end of the fiscal year shall not revert to the  
10 general revenue fund, but shall remain in the account.

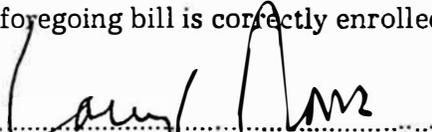
11 (d) On or before the first day of January of each year, the  
12 board shall submit to the Legislature an annual fiscal year  
13 report on the funds and the activities of the authority  
14 including, but not limited to, the previous fiscal year’s  
15 receipts and expenditures and projected receipts and  
16 expenditures for the current and next fiscal years. The  
17 board shall send the report to the legislative librarian.

**§29-28-13. Continuation of legal obligations.**

1 Nothing in this article shall be deemed as superseding,  
2 amending, modifying or repealing any contract or agree-  
3 ment entered into for the benefit of the coal heritage trail  
4 prior to the effective date of this article.

Enr. Com. Sub. for S. B. No. 686] 12

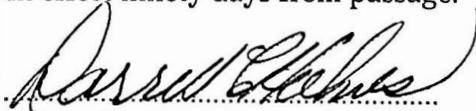
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

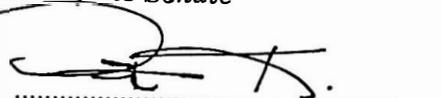
Originated in the Senate.

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 27<sup>th</sup>  
Day of March, 2002.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date: 3/19/02

Time: 9:10am