WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

Committee Substitute For

SENATE BILL NO. 686

(By Senator HERWICK, et al.)

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.

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


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

(1) "Authority" means the coal heritage highway authority.

(2) "Board" means the board of the coal heritage highway authority.

(3) "Coal heritage trail" means that part of West Virginia route 16 connecting Beckley and Welch, and United States route 52, connecting Bluefield and Welch, all designated as a national scenic byway, and existing within the counties of Mercer, McDowell, Raleigh and Wyoming, and those routes that comprise the National Coal Heritage Trail Scenic Byway, as designated by the United States department of transportation, traversing the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.
§29-28-3. Authority created.

(a) There is hereby created the “Coal Heritage Highway Authority” which is a public corporation and a government instrumentality to promote economic development and tourism in areas along the national scenic byway, designated the coal heritage trail, and aid in the development, preservation, restoration or enhancement of roads, trails, lands and structures, including areas or structures associated with surface transportation, which have unique and significant historic, architectural or cultural importance associated with the area's heritage of coal production and which are located in one or more of the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.

(b) The authority shall cooperate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the coal heritage trail for the benefit of West Virginia.

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

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

(b) Each of the county commissions of the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming shall appoint one member each to the board. The appointees must be affiliated with or knowledgeable in tourism, economic development or heritage preservation. The sixth member shall be appointed by the secretary of education and the arts and shall be the chair. Of the members first appointed by the county commissions, the members representing Fayette, Mercer and Raleigh counties shall be appointed to terms ending the thirtieth day of June, two thousand three, and the members representing McDowell
and Wyoming counties shall be appointed to terms ending
the thirtieth day of June, two thousand four. Thereafter,
persons appointed or reappointed to the board, by the
county commissions or the secretary of education and the
arts, shall be appointed for terms of two years.

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

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

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

§29-28-5. Board; quorum; bylaws.

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

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

(c) The board shall adopt bylaws and rules, as may be
necessary for its operation and management, governing the
manner in which the business of the authority is conducted and shall review and approve an annual budget.

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

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

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


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

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

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

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

1. To undertake promotion and advocacy of projects, programs or facilities related to the coal heritage highway and the purposes of this article and to make grants consistent with the purposes and goals of the board;

2. To directly operate and manage historic, cultural, architectural and recreational activities and facilities consistent with the purposes of the authority and this article;

3. To cooperate with the state of Virginia and appropriate state and local officials and community leaders in Virginia to enhance the effectiveness of trails or other authority projects or facilities which may be located on the border which may connect to similar projects across the state border;

4. To sue and be sued, implead and be impleaded and complain and defend in any court;

5. Unless otherwise prohibited by law, to contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements and provide other legal services requested by the authority;

6. To adopt, use and alter at will a corporate seal;
(7) To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;

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

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

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

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

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

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

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

(15) To develop, maintain and operate or to contract for the development, maintenance and operation of projects appropriate to the authority;
(16) To enter into contract with landowners and other persons holding an interest in the land being used for its historic, cultural or tourist facilities and to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public tourism or growing out of the tourism activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

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

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

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

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

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

(b) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, the
landowner or lessor of the property used by the authority for purposes of this article does not thereby:

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

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

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

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

d) An owner who grants a license of land to the authority for recreational purposes does not by giving a lease, easement or license:

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

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

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

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

f) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: Provided, That
nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself. Provided, however, That horsemen, as defined in section two, article four, chapter twenty of this code, who are using land or facilities held or operated pursuant to this article for equestrian activities and who are in compliance with rules proposed by the authority and approved by the Legislature, but who are not engaged in a commercial profit-making venture are exempt from the provisions of subsection (d), section five of said article.

§29-28-10. Insurance policies.

Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any owner of lands covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing the policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the use of the insured's land for recreational purposes, unless the provision or endorsement is rejected in writing by the named insured.


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

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

(a) There is established in the state treasury a special revenue fund designated the “Coal Heritage Highway
Authority Fund", which shall be administered by the coal heritage highway authority board.

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

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

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


Nothing in this article shall be deemed as superseding, amending, modifying or repealing any contract or agreement entered into for the benefit of the coal heritage trail prior to the effective date of this article.
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 27th Day of March, 2002.

Governor