

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 588

BY SENATORS TRUMP, LINDSAY, BALDWIN, STOLLINGS,

PLYMALE, AND WOODRUM

[Originating in the Committee on the Judiciary;

reported on February 22, 2022]

1 A BILL to amend and reenact §5B-1A-1, §5B-1A-2, §5B-1A-3, §5B-1A-4, §5B-1A-5, §5B-1A-6,
2 and §5B-1A-9 of the Code of West Virginia, 1931, as amended, all relating to establishing
3 the West Virginia Rail Trails Program consisting of rail-to-trail and rail with trail programs;
4 updating definitions to include a definition of “rail with trail;” expanding State Rail Authority
5 to acquire railroad rights-of-way and land for both trail programs; clarifying that rail-to-trail
6 program may not unreasonably limit ability to restore rail service on railroad rights-of-way;
7 and expanding limitation of and exception to liability to railroad owners under certain
8 circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. WEST VIRGINIA RAILS TO RAILTRAILS PROGRAM.

§5B-1A-1. Purpose of program.

1 The Legislature hereby declares that the long-term value to the public of retaining
2 networks of abandoned railroad corridor lines is substantial, not only for the preservation of
3 corridors for future rail transportation uses, but in terms of providing interim recreational use,
4 providing public open space and linking together other community areas and recreational spaces,
5 providing for efficient and convenient placement of underground utilities and telecommunication
6 lines, providing environmental greenways and wildlife habitat, providing public access to other
7 forms of recreation, and improving economic development opportunities associated with all of the
8 above listed multiple uses.

§5B-1A-2. ~~Rails to~~ Rail trails program.

1 There is continued within the State Rail Authority provided for §29-18-1 *et seq.* of this code
2 the West Virginia ~~Rails to~~ Rail Trails Program, the purpose of which is to acquire or assist with
3 the acquisition of and to develop or assist with the development of, abandoned railroad rights-of-
4 way for interim use as public nonmotorized recreational trails.

§5B-1A-3. Definitions.

1 As used in this article:

2 (1) "Abandoned railroad rights-of-way" means land on which discontinuance of rail service
3 has been authorized by the ~~interstate commerce commission~~ federal Surface Transportation
4 Board pursuant to the Surface Transportation Board Reauthorization Act of 2015, Public Law 114-
5 110.

6 ~~(2) "Division" means the Division of Tourism and parks.~~

7 ~~(3)~~ (2) "Nonmotorized recreational trail use" means bicycle, hiking, cross-country skiing,
8 horseback riding, horse drawn wagon, jogging, or other similar activities.

9 ~~(4)~~ (3) "Rail bank" means the holding intact of an abandoned railroad right-of-way for future
10 railroad service.

11 ~~(5)~~ (4) "Rail-to-trail" means an abandoned railroad right-of-way utilized ~~in the interim~~ as a
12 public nonmotorized recreational trail.

13 (5) "Rail with trail" means a shared-use path or trail open and developed for nonmotorized
14 recreational use by the public that is located on or adjacent to the rights-of-way of an active
15 railroad.

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

1 The State Rail Authority ~~is authorized to~~ may:

2 (1) Enter into agreements with any person on behalf of the state to acquire an interest in
3 any abandoned or active railroad right-of-way, to develop, maintain, or promote any rail-to-trails
4 or rail with trails created pursuant to the provisions of this article and, with the consent of the
5 director of the Division of Natural Resources, to transfer the maintenance and operation of rail
6 trails created and developed to the Division of Natural Resources.

7 (2) Assist any political subdivision or any person in acquiring an interest in any abandoned
8 railroad right-of-way and in developing, maintaining or promoting rail-to-trails or rail with trails.

9 (3) Evaluate existing and potential abandoned railroad rights-of-way ~~so as to identify such~~
10 suitable lands ~~as may be suitable~~ for nonmotorized recreational trail use.

11 (4) Establish state rail-to-trails or rail with trails, subject to the limitations on acquisition of
12 land for state recreational facilities, as set forth in §20-1-20 this code.

§5B-1A-5. Powers to hold and acquire real property.

1 (a) The State Rail Authority shall hold fee simple title or any lesser interest in land,
2 including easements and leaseholds, on all abandoned railroad rights-of-way acquired by the
3 state and ~~utilized~~ used for interim nonmotorized recreational trail use pursuant to the provisions
4 of this article. The State Rail Authority may, at the option of a political subdivision of this state,
5 hold fee simple title or any lesser interest in land, including easements and leaseholds, on all
6 abandoned railroad rights-of-way acquired by such political subdivision and ~~utilized~~ used for
7 interim nonmotorized recreational trail use. Any provision of article §20-1A-1 *et seq.* of this code
8 to the contrary notwithstanding, the public land corporation shall not be vested with title to any
9 abandoned railroad right-of-way which becomes vested in the state pursuant to the provisions of
10 this article.

11 (b) The State Rail Authority may acquire an interest in an abandoned railroad right-of-way
12 to be used as a rail-to-trail in accordance with the provisions of §29-18-6 of this code.

13 (c) The State Rail Authority shall issue a rail bank certificate for each abandoned railroad
14 right-of-way held by the State Rail Authority for interim nonmotorized recreational purposes in
15 accordance with the provisions of §5B-1A-6 of this code.

§5B-1A-6. Abandoned rights-of-way owned by the state prior to effective date of article.

1 (a) ~~No~~ An abandoned railroad right-of-way acquired by the state prior to the effective date
2 of this article and used as a rail-to-trail may not be used for any purpose that would unreasonably
3 limit the ability to restore rail service over the right-of-way if ~~such~~ that service were to be required
4 in the future.

5 (b) Any and all abandoned railroad rights-of-way acquired by the state prior to the effective
6 date of this article are hereby declared held for railroad transportation purposes as of the date of
7 acquisition, until, by executive order of the Governor, the right-of-way is declared no longer

8 suitable for a public transportation purpose as a railroad right-of-way. ~~Such~~ The abandoned
9 railroad rights-of-way shall not revert by operation of law to any other ownership while being held
10 for future railroad use in accordance with the provisions of this article.

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

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

7 (b) *Owner.*— Any person, public agency, or corporation owning an interest in land ~~utilized~~
8 used for recreational trail purposes pursuant to this article shall be treated as an “owner” for
9 purposes of this article.

10 (c) *Specific limitations on liability.*— Except as specifically recognized by or provided in
11 subsection (e) of this section, an owner, railroad company, or lessee who provides the public with
12 land or who owns adjoining land to the trail under this article is not, by providing that trail or land
13 or owning land adjoining the trail:

- 14 (1) Presumed to extend any assurance that the land is safe for any purpose;
15 (2) Incur any duty of care toward a person who goes on that land; or
16 (3) ~~Become liable~~ Liable for any injury to persons or property caused by an act or an act
17 of omission of a person who goes on that land.

18 (d) *Exception.*—

19 (1) This section does not apply to the owner, railroad company, or lessee of the land used
20 as a trail if there is any charge made or usually made for entering or using the trail or land, or any
21 part thereof.

22 (2) This section does not apply to the owner of land adjoining a trail if there is any charge
23 made or usually made by the owner of such adjoining land for using the trail or land, or any part
24 thereof, or if any commercial or other activity relating to the use of the trail whereby profit is derived
25 from the patronage of the ~~general~~ public is conducted on such adjoining land, or on any part
26 thereof.

27 (3) ~~The foregoing applies~~ provisions of this subsection apply whether the person going on
28 the land provided or adjoining is an invitee, licensee, trespasser, or otherwise.

29 (e) Application to railroad companies.— This section applies to railroad companies who
30 own unused rail lines, and who allow a nonprofit or a local or state governing body to use that
31 property for tourism or the public good to include, but not be limited to, the development of rail
32 trails, camp areas, playgrounds, and mini excursions.

33 ~~(e)~~ (f) Liability.— This article does not relieve any person of liability which would otherwise
34 exist for deliberate, willful, or malicious injury to persons or property. The provisions of this article
35 do not create or increase the liability of any person.