

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 588

BY SENATORS TRUMP, LINDSAY, BALDWIN, STOLLINGS,

PLYMALE, AND WOODRUM

[Introduced February 07, 2022; referred
to the Committee on the Judiciary]

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 updating
 3 and correcting sections of the West Virginia Rail Trails Program; providing for updating
 4 definitions to include a definition of “rail with trail;” and addressing railroad liability and
 5 safety risk concerns proposed during the 2021 regular legislative session.

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 in article eighteen, chapter
 2 twenty-nine of this code the “West Virginia ~~Rails to~~ Rail Trails Program,” the purpose of which is
 3 to acquire or assist with the acquisition of, and to develop or assist with the development of,
 4 abandoned railroad rights-of-way for interim use as public nonmotorized recreational trails.

§5B-1A-3. Definitions.

1 (1) “Abandoned railroad rights-of-way” means land on which discontinuance of rail service
 2 has been authorized by the ~~interstate commerce commission~~ Surface Transportation Board.

3 (2) “~~Division~~” “Department” means the ~~Division of Tourism and parks~~ Department of
 4 Tourism.

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

7 (4) "Rail bank" means the holding intact of an abandoned railroad right-of-way for future
8 railroad service.

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

11 (6) "Rail with trail" means a shared-use path or trail open and developed for public use
12 that is located on or adjacent to the rights-of-way of an active railroad or rail transit corridor.

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

1 The state rail authority is authorized to:

2 (1) Enter into agreements with any person on behalf of the state to acquire an interest in
3 any abandoned railroad right-of-way, to develop, maintain or promote any rail to trails or rail with
4 trails created pursuant to the provisions of this article and, with the consent of the director of the
5 Division of Natural Resources, to transfer the maintenance and operation of rail trails created and
6 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 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 section twenty, article one, chapter twenty of
13 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, including
2 easements and leaseholds, on all abandoned railroad rights-of-way acquired by the state and
3 utilized for interim nonmotorized recreational trail use pursuant to the provisions of this article.

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

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

12 (c) The state rail authority shall issue a rail bank certificate for each abandoned railroad
 13 right-of-way held by the state rail authority for interim nonmotorized recreational purposes in
 14 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 abandoned railroad right-of-way acquired by the state prior to the effective date of
 2 this article and used as a rail to trail may be used for any purpose that would unreasonably limit
 3 the ability to restore rail service over the right-of-way if such service were to be required in the
 4 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 abandoned railroad
 9 rights-of-way shall not revert by operation of law to any other ownership while being held for future
 10 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 (d) 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 for recreational trail purposes pursuant to this article shall be treated as an "owner" for purposes
9 of this article.

10 (c) *Specific limitations on liability.* -- Except as specifically recognized by or provided in
11 subsection (d) 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 for any injury to persons or property caused by an act or an act of
17 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 whether the person going on the land provided or adjoining is
28 an invitee, licensee, trespasser or otherwise.

29 (4) This section applies to railroad companies who own unused rail lines, and who allow
30 a nonprofit or a local or state governing body to use that property for tourism or the public good,
31 i.e. the development of rail trails, camp areas, playgrounds, and mini-excursions.

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

NOTE: The purpose of this bill is to update and correct sections of the West Virginia Rail Trails Program. The bill provides for updated definitions to include a definition of "rail with trail." Finally, the bill addresses railroad liability and safety risk concerns proposed during the 2021 regular legislative session.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.