

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 160

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WOODRUM, WOELFEL, DEEDS, TAYLOR, AND MAYNARD
[Originating in the Committee on Outdoor Recreation;
reported on January 26, 2023]

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 §5B-1A-7, §5B-1A-8, and §5B-1A-9 of the Code of West Virginia, 1931, as amended, all
3 relating to establishing the West Virginia Rail Trails Program consisting of rail-to-trail and
4 rail with trail programs; updating definitions to include definitions of "rail with trail", "railroad
5 right-of-way", and "trail"; expanding authority of Division of Multimodal Transportation
6 Facilities to acquire railroad rights-of-way and land for both trail programs; clarifying that
7 a rail-to-trail program may not unreasonably limit ability to restore rail service on railroad
8 rights-of-way; and expanding limitation of and exception to liability to railroad owners
9 under certain 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~~ inactive railroad corridor lines is substantial, not only for the preservation
3 of 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 Division of Multimodal Transportation Facilities provided for
2 in §17-16F-1 et seq. of this code the West Virginia ~~Rails to~~ Rail Trails Program, the purpose of
3 which is to acquire or assist with the acquisition of and to develop or assist with the development
4 of, ~~abandoned~~ railroad rights-of-way for ~~interim~~ use as public nonmotorized recreational trails.

§5B-1A-3. Definitions.

1 As used in this article:

2 (1) ~~Abandoned~~ Inactive railroad rights-of-way" means land, rights-of-way, easements, or
3 other interests in land on which ~~discontinuance of~~ rail service has been: (a) Abandoned; (b)
4 discontinued; (c) temporarily suspended; or (d) railbanked under federal law by authority of the
5 federal Surface Transportation Board or its successor agency. ~~authorized by the interstate~~
6 ~~commerce commission.~~

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

8 ~~(3)~~ (2) "Nonmotorized recreational trail use" means riding bicycles, including e-bikes as
9 permitted by statute, hiking, cross-country skiing, horseback riding, riding a horse-drawn wagon,
10 jogging, or other similar activities as permitted by the organization operating the trail with which
11 the Division of Intramodal Transportation Facilities has an agreement pursuant to §5B-1A-4 of
12 this code.

13 ~~(4)~~ (3) "Rail bank" means the holding intact of an abandoned railroad right-of-way for future
14 railroad service.

15 ~~(5)~~ (4) "Rail-to-trail" means an ~~abandoned~~ inactive railroad right-of-way being utilized in
16 ~~the interim for~~ as a public nonmotorized recreational trail use.

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

20 (6) "Railroad right-of-way" means fee land, rights-of-way, easements, leaseholds, and
21 other interests in land owned or formerly owned by a railroad company and used or formerly used
22 for railroad purposes.

23 (7) "Trail" as used in this article means a rail-to-trail, a rail with trail, or both, as the context
24 requires.

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

1 The ~~state rail authority~~ Division of Multimodal Transportation Facilities is authorized to:

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

8 (2) Assist any state agency, political subdivision, or any person in acquiring an interest in
9 any ~~abandoned~~ inactive railroad right-of-way and in developing, maintaining, or promoting rail
10 trails.

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

13 (4) Establish state rail-~~to-trails~~ or rail with trails, subject to the limitations on acquisition of
14 land for state recreational facilities, as set forth in ~~section twenty, article one, chapter twenty of~~
15 ~~this code~~ §20-1-20 of this code.

16 (5) Exercise all other powers granted in §17-16F-4 of this code, including the power of
17 eminent domain, in the exercise of its powers and the performance of its duties as set forth in this
18 article.

§5B-1A-5. ~~Powers to hold and acquire~~ Additional powers regarding real property.

1 (a) The Division of Multimodal Transportation Facilities ~~state rail authority~~ shall hold fee
2 simple title or any lesser interest in land, including easements and leaseholds, on all ~~abandoned~~
3 inactive railroad rights-of-way acquired by the state and utilized for ~~interim~~ nonmotorized
4 recreational trail use pursuant to the provisions of this article, subject to any railbanking
5 requirements regarding future use of such inactive railroad rights-of-way. The Division of

6 Multimodal Transportation Facilities ~~state rail authority~~ may, at the option of a political subdivision
7 of this state, hold fee simple title or any lesser interest in land, including easements and
8 leaseholds, on all ~~abandoned~~ inactive railroad rights-of-way acquired by such political subdivision
9 and utilized for ~~interim~~ nonmotorized recreational trail use. Any provision of article one-a, chapter
10 twenty of this code to the contrary notwithstanding, the public land corporation shall not be vested
11 with title to any ~~abandoned~~ inactive railroad right-of-way which becomes vested in the state
12 pursuant to the provisions of this article.

13 (b) The Division of Multimodal Transportation Facilities ~~state rail authority~~ may acquire an
14 interest in an abandoned railroad right-of-way to be used as a trail in accordance with the
15 provisions of ~~section six, article eighteen, chapter twenty-nine~~ §17-16F-4(8) of this code.

16 (c) The Division of Multimodal Transportation Facilities ~~state rail authority~~ shall issue a rail
17 bank certificate for each ~~abandoned~~ inactive railroad right-of-way held by the Division of
18 Multimodal Transportation Facilities ~~state rail authority~~ for ~~interim~~ nonmotorized recreational
19 ~~purposes~~ trail use in accordance with the provisions of §5B-1A-6 of this code.

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

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

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

9 The inactive railroad rights-of-way shall not revert by operation of law to any other ownership
10 while being held for future railroad use in accordance with the provisions of this article.

§5B-1A-7. Railroad rights-of-way preservation.

1 (a) Upon receipt of a notice to abandon, railbank or to otherwise make inactive a railroad
2 right-of-way by the owner thereof, the commissioner may enter into an agreement with the owners
3 of the railroad right-of-way to preserve intact the railroad right-of-way for a period of time not to
4 exceed three months to afford the state sufficient time to evaluate the potential for use by the
5 state for the purposes of this article, and the funds available for acquisition.

6 (b) With regard to any land or an interest therein actually acquired by the state pursuant
7 to the provisions of §5B-1A-1 *et seq.* of this code:

8 (1) Every specifically identified railroad right-of-way, including all bridges still in place, shall
9 remain intact except for necessary modifications required to adapt the right-of-way for use as a
10 nonmotorized recreational trail, except for where it is necessary for a motorized vehicle to cross
11 the trail;

12 (2) Any ~~abandoned~~ inactive railroad right-of-way shall be used solely for nonmotorized
13 recreational trail use, subject to such right-of-way being made available for future rail use, if
14 necessary; and

15 (3) Any ~~abandoned~~ inactive railroad right-of-way acquired by the state pursuant to the
16 provisions of this article shall be deemed to be held for railroad use and in continuation of the
17 railroad easement and shall not revert by operation of law to any other ownership during the term
18 of the agreement or during the term of a rail bank certificate issued pursuant to §5B-1A-5 of this
19 code.

§5B-1A-8. Limitation on liability of owner from whom state acquires land or interest therein.

1 During the interim period when an ~~abandoned~~ inactive railroad right-of-way is held by the
2 state for possible future railroad use, the owner of the railroad right-of-way from whom the state
3 acquired the land or an interest therein is relieved from civil liability for any personal injury or

4 property damage occurring on the right-of-way during such interim period, which might otherwise
5 arise from ownership.

§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 such trail ~~developed under this article~~, owes no
4 duty of care to keep the land safe for entry or use by others for recreational purposes, or to give
5 any warning to persons entering or going on the trail or adjoining land of a dangerous condition,
6 use, structure, or activity thereon.

7 (b) *Owner.*— Any person, public agency, or corporation owning an interest in land utilized
8 for nonmotorized recreational trail use ~~purposes~~ pursuant to §5B-1A-1 *et seq.* of this code shall
9 be treated as an "owner" for purposes of this article.

10 (c) *Specific limitations on liability.*— Except as specifically recognized by or provided in
11 subsection ~~(e)~~ (d) of this section, an owner, railroad company, or lessee who provides the public
12 with land or who owns adjoining land to the trail under §5B-1A-1 *et seq.* of this code is not, by
13 providing that trail or land 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 rail with trail or rail-to-trail if there is any charge made or usually made for entering or using
21 the trail or land, or any part thereof.

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

33 ~~(e)~~ (f) §5B-1A-1 *et seq.* of this code does not relieve any person of liability which would
34 otherwise exist for deliberate, willful, or malicious injury to persons or property. The provisions of
35 §5B-1A-1 *et seq.* of this code do not create or increase the liability of any person.