

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 640 Session of
1989INTRODUCED BY GREENLEAF, MADIGAN, AFFLERBACH, DAWIDA AND
RHOADES, MARCH 2, 1989

AS AMENDED ON THIRD CONSIDERATION, JUNE 19, 1989

AN ACT

1 Authorizing the Department of Environmental Resources to acquire
2 and develop abandoned railroad rights-of-way for public
3 recreational trail use; requiring the Department of
4 Transportation to coordinate certain acquisitions of rights-
5 of-way with the Department of Environmental Resources;
6 providing a limitation on the liability of persons who
7 provide property for public recreational trail use; and
8 making an appropriation.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Rails to
13 Trails Act.

14 Section 2. Definitions.

15 The following words and phrases when used in this act shall
16 have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Abandoned railroad right-of-way." Any railroad right-of-way
19 that is proposed or approved for abandonment before the
20 Interstate Commerce Commission.

21 "Department." The Department of Environmental Resources of

1 the Commonwealth.

2 Section 3. Rails to trails program.

3 There is established within the department the Pennsylvania
4 Rails to Trails Program, the purpose of which is to acquire and
5 develop abandoned railroad rights-of-way for public recreational
6 trail use. The rights-of-way shall be acquired pursuant to this
7 act.

8 Section 4. Acquisition of land.

9 (a) Acquisition.--The department is authorized to acquire
10 pursuant to sections 1902-A and 1906-A of the act of April 9,
11 1929 (P.L.177, No.175), known as The Administrative Code of
12 1929, fee simple absolute title or any lesser interest in land,
13 including easements and leaseholds, for the development purposes
14 of the Pennsylvania Rails-to-Trails Program as provided in this
15 section.

16 (b) Abandoned railroads.--The department is authorized to
17 participate in abandonment proceedings with the Interstate
18 Commerce Commission for the purposes of acquiring abandoned
19 railroads for use as interim trails or railbanking as set forth
20 in section 8(d) of the National Trails System Act (Public Law
21 90-543, 16 U.S.C. § 1247(d)).

22 (c) Acceptance of title.--For purposes of the Pennsylvania
23 Rails-to-Trails Program, the department or municipalities may by
24 gift or purchase:

25 (1) Accept title, including nonmarketable title, to
26 abandoned railroad rights-of-way and to any areas abutting
27 the rights-of-way which are needed for the construction of
28 trail-user support facilities.

29 (2) Accept title to abandoned railroad rights-of-way
30 conveyed by quitclaim deed or warranty deed.

1 (d) Time limit.--Acquisition proceedings must be initiated
2 within five years of the commencement of the abandonment
3 proceeding.

4 (e) Easements over land acquired.--Easements and rights-of-
5 way upon, over, under, across or along any land, the fee title
6 of which has been acquired by the department, may be granted by
7 the department so long as the use of the easement or right-of-
8 way does not interfere with the purposes of this act.

9 (f) Transfer of trails to local governmental agencies.--The
10 department may transfer its interest in any recreational trail
11 or portion thereof to a local governmental agency or agencies
12 having jurisdiction over the area in which the recreational
13 trail is located for recreational purposes in a manner
14 consistent with department rules and regulations.

15 Section 5. Powers and duties of Environmental Quality Board.

16 The Environmental Quality Board shall promulgate all rules
17 and regulations necessary to effectively carry out the purposes
18 of this act, including rules and regulations relating to
19 acquisition, development and use of recreational trails.

20 Section 6. Powers and duties of department.

21 The department shall:

22 (1) Publish and distribute appropriate maps of
23 recreational trails, including recommended extensions of
24 recreational trails.

25 (2) Establish access routes and related primitive
26 public-use facilities, which will not substantially interfere
27 with the nature and purposes of a trail, along recreational
28 trails.

29 (3) Evaluate existing and potential abandoned railroad
30 rights-of-way to identify the corridors which are suitable

1 for acquisition for recreational trail use and compile lists
2 of suitable corridors, ranking them in order of priority for
3 acquisition; and, for this purpose, devise a method of
4 evaluation which includes, but is not limited to,
5 consideration of the following:

6 (i) Current and future recreational need.

7 (ii) Potential for local sharing in the acquisition,
8 development, operation or maintenance of abandoned rail
9 corridors.

10 (iii) Costs of acquisition, development, operation
11 and maintenance.

12 (iv) Time of availability of rights-of-ways.

13 (4) Maintain updated lists of abandoned and to-be-
14 abandoned railroad rights-of-way and request information on
15 current and potential railroad abandonments from the
16 Department of Transportation, the Interstate Commerce
17 Commission and railroad companies operating within this
18 Commonwealth. At a minimum, lists shall be updated on a
19 quarterly basis.

20 (5) Provide information, including probable costs of
21 purchase or lease of the corridors, to public and private
22 agencies and organizations concerning abandoned rail
23 corridors which are or will be available for acquisition from
24 railroads or which are or will be available for lease for
25 interim recreational use from the Department of
26 Transportation.

27 (6) Cooperate with municipalities and other appropriate
28 agencies and organizations and, where possible and practical,
29 allocate expenditures among the several regions of this
30 Commonwealth, proportionately based on need, rail line

1 availability, population and other appropriate factors.

2 Section 7. Coordination with Department of Transportation.

3 (a) Method of coordination.--The Department of
4 Transportation and the Department of Environmental Resources
5 shall coordinate their evaluations of potential acquisitions and
6 acquisition priorities with respect to abandoned railroad
7 rights-of-way in order to avoid competing for the same
8 corridors. The Department of Transportation and the Department
9 of Environmental Resources shall enter into a memorandum of
10 understanding which shall contain a method by which the
11 coordination of evaluations and acquisition priorities is to be
12 accomplished.

13 (b) Interim lease of rights-of-way.--Should the Department
14 of Transportation acquire abandoned rights-of-way for future
15 transportation purposes, it shall lease such rights-of-way to a
16 public agency or private organization for interim public
17 recreational trail use if:

18 (1) The public agency or private organization has
19 requested the right-of-way for interim public recreational
20 trails use.

21 (2) The public agency or private organization agrees in
22 writing to assume all liability and management
23 responsibilities as prescribed by the Department of
24 Transportation to the extent authorized by law.

25 (3) The use of the right-of-way as a recreational trail
26 does not interfere with the ultimate transportation purposes
27 of the property as determined by the Department of
28 Transportation.

29 (c) Transportation use and trail use.--If the Department of
30 Transportation determines that an abandoned railroad right-of-

1 way leased for interim recreational trail use is needed for
2 transportation purposes, the Department of Transportation shall
3 work with the leasing agency to accommodate, when feasible, the
4 existing trail use in conjunction with the transportation use.

5 (d) Future disposal.--If the Department of Transportation
6 determines that an abandoned railroad right-of-way it owns is no
7 longer needed by the Department of Transportation for present or
8 future transportation uses, nothing in this act shall prevent
9 the department from disposing of that property in accordance
10 with its own procedures or applicable Commonwealth laws. Prior
11 to disposing of the property, the Department of Transportation
12 shall first notify the department.

13 Section 8. Limitation on liability of persons making land
14 available for trail use.

15 (a) General rule.--Except as specifically recognized or
16 provided in subsection (d), an owner or lessee who provides the
17 public with land for use as a trail under this act or who owns
18 land adjoining any trail developed under this act owes no duty
19 of care to keep the land safe for entry or use by others for
20 recreational purposes, or to give any warning to persons
21 entering or going on that trail land of a dangerous condition,
22 use, structure or activity thereon.

23 (b) Owner.--Any person, public agency, or corporation owning
24 an interest in land utilized for recreational trail purposes
25 pursuant to this act shall be an "owner" for purposes of the act
26 of February 2, 1966 (1965 P.L.1860, No.586), entitled "An act
27 encouraging landowners to make land and water areas available to
28 the public for recreational purposes by limiting liability in
29 connection therewith, and repealing certain acts."

30 (c) Specific limitations on liability.--Except as

1 specifically recognized by or provided in subsection (d), an
2 owner or lessee who provides the public with land under this act
3 shall not, by providing that trail or land:

4 (1) be presumed to extend any assurance that the land is
5 safe for any purpose;

6 (2) incur any duty of care toward a person who goes on
7 that land; or

8 (3) become liable for any injury to persons or property
9 caused by an act or an act of omission of a person who goes
10 on that land.

11 (d) Exception.--

12 (1) This section shall not apply TO THE OWNER OR LESSEE <—
13 OF THE LAND USED AS A TRAIL if there is any charge made or
14 usually made for entering or using the trail or land, or any
15 part thereof, or if any commercial or other activity whereby
16 profit is derived from the patronage of the general public is
17 conducted on the land, or on any part thereof.

18 (2) THIS SECTION SHALL NOT APPLY TO THE OWNER OF LAND <—
19 ADJOINING A TRAIL IF THERE IS ANY CHARGE MADE OR USUALLY MADE
20 BY THE OWNER OF SUCH ADJOINING LAND FOR USING THE TRAIL OR
21 LAND, OR ANY PART THEREOF, OR IF ANY COMMERCIAL OR OTHER
22 ACTIVITY RELATING TO THE USE OF THE TRAIL WHEREBY PROFIT IS
23 DERIVED FROM THE PATRONAGE OF THE GENERAL PUBLIC IS CONDUCTED
24 ON SUCH ADJOINING LAND, OR ON ANY PART THEREOF.

25 ~~(2)~~ (3) Nothing in this act limits in any way any <—
26 liability which otherwise exists for willful or malicious
27 failure to guard or warn against a dangerous condition, use,
28 structure or activity.

29 Section 9. Appropriations.

30 (a) Initial appropriation.--The sum of \$3,000,000, or as

1 much thereof, as may be necessary, is hereby appropriated to the
2 Department of Environmental Resources for the fiscal year July
3 1, 1989, to June 30, 1990, to carry out the provisions of this
4 act.

5 (b) Annual appropriation.--Subsequent to the initial
6 appropriation, the annual appropriation to the department shall
7 include funds necessary to carry out the provisions of this act.
8 The department may accept and expend Federal funds granted for
9 the purposes contained in this act.

10 Section 10. Effective date.

11 This act shall take effect in 90 days.