

No. 1990-188

AN ACT

SB 640

Authorizing the Department of Environmental Resources to acquire and develop available railroad rights-of-way for public recreational trail use; requiring the Department of Transportation to coordinate certain acquisitions of rights-of-way with the Department of Environmental Resources and the Pennsylvania Public Utility Commission; and providing a limitation on the liability of persons who provide property for public recreational trail use.

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

Section 1. Short title.

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

Section 2. Definitions.

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

“Available railroad right-of-way.” Any railroad right-of-way that is proposed or approved for abandonment before the Interstate Commerce Commission, the Pennsylvania Public Utility Commission, or other governing agency with jurisdiction in the matter.

“Department.” The Department of Environmental Resources of the Commonwealth.

“Secretary.” The Secretary of Environmental Resources of the Commonwealth.

Section 3. Rails to trails program.

There is established within the department the Pennsylvania Rails to Trails Program, the purpose of which is to acquire, operate, maintain and develop available railroad rights-of-way for public recreational trail use. The rights-of-way shall be acquired pursuant to this act.

Section 4. Acquisition of land.

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

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

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

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

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

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

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

Section 5. Powers and duties of Environmental Quality Board.

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

Section 6. Powers and duties of department.

The department shall:

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

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

(3) Evaluate existing and potential available railroad rights-of-way to identify the corridors which are suitable for recreational trail use.

(4) Maintain updated lists of railroad rights-of-way authorized or proposed for abandonment by the Interstate Commerce Commission and request information on current and potential railroad abandonments from the Department of Transportation, the Interstate Commerce Commission and railroad companies operating within this Commonwealth. At a minimum, lists shall be updated on a quarterly basis.

Section 7. Advisory committee.

(a) Purpose.—The department shall not develop or operate any railroad right-of-way for recreational or historical purposes until an advisory committee, as provided by this section, has been appointed and has met with the secretary or his designee for the purpose of reviewing preliminary plans for the development and operation of the property.

(b) Appointment.—The secretary shall appoint this committee to be composed of the following persons, or their designees:

(1) The chairman of the county planning commission of the county or counties affected.

(2) The chairman of the board of commissioners or of supervisors, as the case may be, of each of the townships in the county or counties affected.

(3) The chairman of the county board of commissioners of the county or counties affected.

(c) Meetings.—The advisory committee shall meet with appropriate officials of the department at least four times a year for the first two years following the date the department acquires the right to develop any property for the Pennsylvania Rails to Trails Program under this act, and semiannually thereafter. During the first two years, at least one meeting of the advisory committee shall be held in each of the counties affected.

Section 8. Review by General Assembly.

Notwithstanding any provision of this act, the department shall not develop or operate any railroad right-of-way for recreational or historical purposes until the designated standing committees of the Senate and the House of Representatives have reviewed a department management plan, as it specifically relates to the maintenance and operation of any such project.

Section 9. Coordination with Department of Transportation.

(a) Method of coordination.—The Department of Transportation and the Department of Environmental Resources shall coordinate their evaluations of potential acquisitions and acquisition priorities with respect to available railroad rights-of-way in order to avoid competing for the same corridors. The Department of Transportation and the Department of Environmental Resources shall enter into a memorandum of understanding which shall contain a method by which the coordination of evaluations and acquisition priorities is to be accomplished.

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

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

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

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

(c) Transportation use and trail use.—If the Department of Transportation determines that an available railroad right-of-way leased for interim recreational trail use is needed for transportation purposes, the Department of Transportation shall work with the leasing agency to accommodate, when feasible as determined by the department, the existing trail use in conjunction with the transportation use.

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

Section 10. Coordination with the Pennsylvania Public Utility Commission.

(a) **Method of coordination.**—Whenever the Pennsylvania Public Utility Commission receives or considers any request for the abandonment or removal of a railroad grade crossing, bridge or tunnel, the commission shall notify the Department of Environmental Resources. The department shall evaluate the proposed abandonment or removal in order to determine the impact of such action upon the development, expansion and existing use of public recreational trails and may participate in proceeding before the commission concerning such matter.

(b) **Actions by the commission.**—Before taking final action on any request for the abandonment or removal of a railroad grade crossing, bridge or tunnel, the commission shall consider the impact of such action upon the development, expansion and existing use of recreational trails pursuant to this act and identify and evaluate alternatives which will minimize any adverse impacts of commission actions upon the development and use of recreational trails.

Section 11. Limitation on liability of persons making land available for trail use.

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

(b) **Owner.**—Any person, public agency or corporation owning an interest in land utilized for recreational trail purposes pursuant to this act shall be treated as an “owner” for purposes of the act of February 2, 1966 (1965 P.L.1860, No.586), entitled “An act encouraging landowners to make land and water areas available to the public for recreational purposes by limiting liability in connection therewith, and repealing certain acts.”

(c) **Specific limitations on liability.**—Except as specifically recognized by or provided in subsection (d), an owner or lessee who provides the public with land under this act shall not, by providing that trail or land:

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

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

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

(d) **Exception.**—

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

(2) This section shall not apply to the owner of land adjoining a trail if there is any charge made or usually made by the owner of such adjoining land for using the trail or land, or any part thereof, or if any commercial or other activity relating to the use of the trail whereby profit is derived

from the patronage of the general public is conducted on such adjoining land, or on any part thereof, provided, however, that nothing in this section shall be construed to authorize an adjoining land owner claiming an interest in an available railroad right-of-way to charge for or inhibit the use of such a right-of-way as a recreational trail.

(3) Nothing in this act limits in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

Section 12. Notices.

(a) Service of notice.—The railroad shall serve any notices as required by the Interstate Commerce Commission, the Pennsylvania Public Utility Commission and other governing agencies upon the Governor and the Department of Environmental Resources.

(b) Notification of jurisdiction.—If the department determines that jurisdictional control is not appropriate by the department or other State agencies, then the department shall have the responsibility to notify the county government and municipalities of the availability or potential availability of the railroad right-of-way.

Section 13. Effective date.

This act shall take effect in 90 days.

APPROVED—The 18th day of December, A. D. 1990.

ROBERT P. CASEY