

CHAPTER 338

(HB 221)

AN ACT relating to a Rails to Trails Program.

WHEREAS, the 1998 Kentucky General Assembly directed the Legislative Research Commission to establish a special interim Rails to Trails Task Force to study the feasibility, benefits, and implementation of a strategy for a Rails to Trails Program throughout the Commonwealth; and

WHEREAS, the task force appointed by the Commission has reported its findings to the Commission and the General Assembly; and

WHEREAS, the task force has recommended that a Rails to Trails Program be pursued by the Commonwealth as promoting the health, safety, and welfare of the citizenry;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

A Railtrail Development Office is hereby created within the Department for Local Government. The department shall insure that the office has the necessary expertise to carry out the requirements imposed upon it by this section. Among other railtrail functions and duties which may be assigned to it, the office shall carry on at least the following responsibilities:

- (1) The office shall monitor the proceedings of the United States Department of Transportation's Surface Transportation Board and shall disseminate to interested entities in Kentucky information regarding those proceedings of interest to railtrail conversion or policy in the Commonwealth. If a railroad applies to the Surface Transportation Board for authority to discontinue service over or abandon a railroad corridor in the Commonwealth, the office shall immediately notify those political subdivisions through which the corridor passes and any interested state agency of the proceedings and the potential for trail development of the corridor. Notice shall also be sent to the county judge/executive of each county through which the proposed abandonment passes, who shall distribute copies of the notice to each member of the chief legislative body of the county government at the next regularly scheduled meeting of that legislative body. The office shall also send a copy of the notice to each soil and water conservation district through which the abandonment passes. If time is of the essence and it appears that the corridor is a suitable candidate for conversion to a railtrail and that no other railtrail interested entity will be participating in the federal proceeding, the office shall take those steps necessary to cause a railbanking or public use condition to be imposed in the federal proceeding;***
- (2) The office shall assist any requesting political subdivision or agency of state government with assistance on any application to the Surface Transportation Board regarding an abandoned or about to be abandoned railroad corridor, including any requests for railbanking or imposition of public use conditions;***
- (3) The office shall coordinate and promote railtrail development efforts among the various agencies of state government, including the Department of Parks and the Transportation Cabinet. While this subsection does not confer upon the office any powers beyond those***

that it may ordinarily possess, every entity of state government shall cooperate with the office to the extent practicable under the circumstances;

- (4) The office shall furnish to requesting political subdivisions assistance in applying to available federal, state, or local funding sources for funds to be used for the process of converting railroad corridors into public use trails; and*
- (5) The office may apply for federal, state, or private grants or other forms of financial assistance to carry on its mission.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

- (1) Any organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, agency of state government, or political subdivision or city of this state holding or acquiring a railroad corridor may preserve the corridor for future railroad use while utilizing the right-of-way in the interim for nonmotorized public recreational use by filing with the Secretary of State a “Declaration of State Railbanking”, concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall contain the name and address of the filing entity, a textual description and map of the railroad corridor being railbanked, a statement that the entity accepts full responsibility for managing the corridor, for any legal liability arising out of the use of the corridor or, if the entity is immune from suit, that the entity agrees to indemnify the railroad for any liability arising out of the use of the corridor, and for the payment of all taxes which may validly be assessed against the corridor, and a declaration that the property is being railbanked in accordance with the provisions of Kentucky law in that the corridor is held open for future restoration of rail service and that this section only grants authority for the corridor to be utilized for nonmotorized public recreational use during the interim.*
- (2) Any property that is the subject of a declaration of state railbanking, including property held by easement, shall, during the period a declaration of state railbanking remains in force, be deemed to be held for a railroad use and shall not revert to any other form of ownership. Until rail service is restored over the corridor, the declaration of state railbanking shall only authorize the use of the corridor for public, nonmotorized recreational use, with associated infrastructure. However, a declaration of state railbanking shall not preclude any public utility usage of the corridor if that usage is otherwise permitted under other applicable law. For the specific purpose of allowing railbanking under this section, an easement for railroad use shall not be deemed abandoned until the person holding the easement conveys the easement to another person for a nonrailroad use, title to the easement and the underlying estate comes into the hands of the same owner by conveyance, the easement owner files a disclaimer in the office of the county clerk of the county where the property is situated disclaiming all interest in the corridor, or the easement is declared abandoned by judicial decree.*
- (3) After property is railbanked under this section, the property shall be held available for purchase by any bona fide purchaser for the restoration of rail service over the property. The following requirements shall apply to any transfer of property in contemplation of the restoration of railroad service:
 - (a) The entity that acquired the right to use the railroad corridor for a railtrail under this section or to whom that right had been subsequently transferred shall be compensated**

for the fair market value of the corridor together with any improvements erected thereon. Funds received by the entity under this paragraph shall be held in trust for the benefit of the public;

- (b) All required federal and state permits and authority to reactivate and operate a railroad over the corridor shall be obtained prior to the transfer of the property for the contemplated railroad service restoration;*
 - (c) Adequate bond with good surety shall be posted ensuring that the railroad will be constructed, with the bond being used to cover the cost of restoring the corridor to its physical condition prior to transfer of the railbanked corridor for the contemplated railroad service restoration; and*
 - (d) The physical infrastructure necessary to operate the railroad, including tracks, ties, frogs, signaling equipment, grade crossings, and the like, shall be in place one (1) year from the date of the transfer. Train service shall be in place and operating two (2) years, from the date of the transfer. If these timelines are not met, the corridor and all associate physical improvements thereon shall automatically forfeit to the ownership of the entity responsible for railbanking the corridor under this section.*
- (4) Any person aggrieved by the act of railbanking a railroad corridor under the provisions of this section shall bring their claims within one (1) year after the declaration of state railbanking has been filed with the Kentucky Secretary of State. Any entity against whom a claim is asserted may utilize as an offset or setoff to the amount of any recovery those amounts in state or local taxes, together with interest and penalties, that have not been paid on the value of the property through which the claimant asserts title.*
- (5) Any entity which caused a declaration of state railbanking to be filed shall cause the declaration to be vacated on the files of the Secretary of State upon the cessation of use of the corridor as a nonmotorized public use trail or the reactivation of railroad service over the corridor.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

- (1) It is the public policy of this state to preserve railroad corridors for future railroad use. Toward this end, the Commonwealth recognizes that the salvage of tracks, ties, signaling equipment, ballast, and other items may indicate an intent to maximize return on present investment and not an intent to abandon any underlying easement for railroad or other use and that the obtaining of federal authority to discontinue service over or abandon a corridor does not necessarily indicate an intent to relinquish any property interests under state law. In any civil action to determine the status of a railroad use easement, ambiguity as to intent shall be resolved in favor of continued preservation of the corridor.*
- (2) Any holder of a railroad corridor held by easement or otherwise may preserve that corridor by filing with the Secretary of State a "Preliminary Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall state the name of the entity holding the corridor, a textual description and map of the land area encompassed by the corridor, and a statement that the entity does not intend to abandon the corridor described in the declaration. The entity filing the declaration may at any later time cause that declaration to be withdrawn from the Secretary of State's files. While a preliminary declaration of state railbanking is on file with the Secretary of*

State, the corridor set out in the declaration shall not, regardless of the status or conclusion of any federal regulatory proceeding or the salvage of track

and other material from the corridor, be deemed abandoned and shall continue to exist under Kentucky law and the property encompassed by the corridor shall not revert to any other form of ownership.

SECTION 4. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

In addition to any other legal right, any person having a legal interest in land adjoining a railtrail or in the land traversed by the railtrail itself may grant to the entity holding the right to maintain a railtrail over the property a conservation easement over all or a portion of the property in accordance with KRS 382.800 to 382.860. The entity holding the right to maintain a railtrail over the corridor may, if it finds the easement's terms acceptable, yearly designate for the tax purposes of the party conveying the easement that the entity is holding the corridor pursuant to the authority granted to that entity in the easement as opposed to authority granted in Section 2 of this Act or any similar law allowing railbanking under federal law. This designation shall not, however, affect in any way the legal right of that entity to hold the corridor pursuant to a federal or state railbanking law or the operation of those laws, and the right to maintain the railtrail on the land shall not lapse as the result of the extinguishment or modification of the easement. The easement, by its terms, may be limited in duration from year to year or for a set period of years, may extinguish itself upon the happening a defined contingent future event, or may last in perpetuity.

Section 5. KRS 148.690 is amended to read as follows:

- (1) The department shall review all formal declarations of railroad right-of-way abandonments by the Surface Transportation Board or other agency with jurisdiction and may review former railroad corridors for possible inclusion in the state trails system. The commissioner shall, within three (3) years after the route of a trail or trail segment included in the system has been located, determine the boundaries of the right-of-way to be associated with that trail. Such boundaries shall be established in such a manner that they protect the scenic value of the trail.
- (2) The commissioner is authorized to develop effective procedures to assure that, wherever practicable, utility rights-of-way, abandoned railroad corridors, or similar properties having value for trail purposes may be made available for such use; however, the commissioner shall take into consideration the rights of adjacent property owners in the development of any such procedures. Other departments of state government having jurisdiction, control over, or information concerning the use, abandonment, or disposition of rights-of-way, railroad corridors, and similar properties that may be suitable for trail purposes shall cooperate with the commissioner in the transfer of these rights for trail use. *These procedures shall include, at a minimum, that, for every railroad corridor that is the subject of a request for federal authority to discontinue service or for federal regulatory abandonment, the commissioner shall evaluate the potential of converting that corridor into a railtrail. The commissioner shall cause a preliminary review to be completed within thirty (30) days of the publication of the request for federal authority in the Federal Register. The commissioner shall cause a final review to be completed ninety (90) days after the publication of the request for federal authority in the Federal Register. The commissioner shall timely transmit copies of these reviews to the Legislative Research Commission and to the Commonwealth's Railtrail Development Office in the Department for Local Government as they are completed. If*

either review indicates the possibility of converting the corridor into a railtrail, the commissioner may participate in the federal proceeding to request that the corridor be railbanked in accordance with federal law or to request the imposition of a public use condition.

SECTION 6. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

- (1) *The Transportation Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*
- (2) *The Transportation Cabinet shall keep a record of railroad lines in the Commonwealth of Kentucky, including both lines that have been abandoned through the federal government's regulatory abandonment process and those where any railroad property interest in the railroad corridor itself has been abandoned under Kentucky law. The cabinet shall annually publish an updated map showing the location and as much information as to the status of these lines as practicable. The record shall include, in as much as possible;*
 - (a) *A description of the line and its location;*
 - (b) *The current or last railroad owner of the line;*
 - (c) *The operator of the line;*
 - (d) *The addresses and phone numbers for the owners and operators of the lines;*
 - (e) *Whether the owner of the line has received authority from the Federal Government to discontinue service over the line;*
 - (f) *Whether the owner of the line has received authority from the Federal Government to abandon the line;*
 - (g) *Whether the owner of the line has consummated any authority granted by the Federal Government to discontinue service over the line or to abandon the line;*
 - (h) *Whether the line has been railbanked under either federal or state law; and*
 - (i) *Any other information the cabinet deems pertinent and useful to the public.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The Natural Resources and Environmental Protection Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 8. KRS 171.381 is amended to read as follows:

- (1) The heritage council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication

it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.

- (2) The duties and functions of the council shall be to:
 - (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
 - (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
 - (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private; and
 - (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those such landmarks which possess statewide or national significance.
- (3) The council may:
 - (a) Accept grants or other funds or property from any available source, public or private;
 - (b) Employ, with the approval of the Governor, such staff as may be necessary. Any member of such staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;
 - (c) Enter into such contractual relationships as may be necessary;
 - (d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;
 - (e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and
 - (f) Adopt such rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.
- (4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.
- (5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.
- (6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Education, Arts, and Humanities Cabinet. The director of the Heritage Division shall be the state historic preservation officer.

- (7) The responsibilities of the state historic preservation officer shall include:
- (a) Development for the State Historic Preservation Program;
 - (b) Direction of a comprehensive statewide survey of historic properties;
 - (c) Nomination of historic properties to the National Register of Historic Places;
 - (d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;
 - (e) Cooperation in the integration of historic preservation planning with all levels of planning;
 - (f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;
 - (g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;
 - (h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;
 - (i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;
 - (j) Development and operation of a program of public information and education concerning the preservation program;
 - (k) Administration of the grants program within the state; ~~and~~
 - (l) Preparation and maintenance of a comprehensive statewide historic preservation plan;
and
 - (m) *The immediate transmittal to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government of any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 276 IS CREATED TO READ AS FOLLOWS:

The Railroad Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

SECTION 10. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the Department for Local Government and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.

SECTION 11. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Section 12. KRS 411.190 is amended to read as follows:

- (1) As used in this section:
 - (a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
 - (b) "Owner" means the possessor of a fee, *reversionary, or easement* interest, a tenant, lessee, occupant, or person in control of the premises.
 - (c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, *bicycling, horseback riding*, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
 - (d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land but does not include fees for general use permits issued by a government agency for access to public lands if the permits are valid for a period of not less than thirty (30) days.
- (2) The purpose of this section is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.
- (3) Except as specifically recognized by or provided in subsection (6) of this section, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes.
- (4) Except as specifically recognized by or provided in subsection (6) of this section, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreation purposes does not thereby:
 - (a) Extend any assurance that the premises are safe for any purpose.
 - (b) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed.
 - (c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of those persons.

- (5) Unless otherwise agreed in writing, the provisions of subsections (3) and (4) of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.
- (6) Nothing in this section limits in any way any liability which otherwise exists:
 - (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
 - (b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section.
- (7) Nothing in this section shall be construed to:
 - (a) Create a duty of care or ground of liability for injury to persons or property.
 - (b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of the land and in his activities thereon, or from the legal consequences of failure to employ such care.

Section 13. KRS 511.090 is amended to read as follows:

- (1) A person "enters or remains unlawfully" in or upon premises when he is not privileged or licensed to do so.
- (2) A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he defies a lawful order not to enter or remain personally communicated to him by the owner of such premises or other authorized person.
- (3) A license or privilege to enter or remain in or upon premises which are only partly open to the public is not a license or privilege to enter or remain in or upon a part of the premises which is not open to the public.
- (4) A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed does not commit criminal trespass unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person or unless notice is given by posting in a conspicuous manner.
- (5) ***Private land adjoining a railtrail that is neither fenced nor otherwise enclosed shall be presumed to be land where notice against trespassing has been given by the owner of the land, and a person utilizing the railtrail shall be presumed to lack privilege or license to enter upon that land unless the person has permission from an adjoining landowner to do so.***

Section 14. The Department for Local Government shall inventory the Commonwealth's active and abandoned rail corridors and, for the abandoned corridors, analyze the suitability of each of those corridors for railtrail conversion. Corridors inventoried shall include both common carrier and private railroads, as well as railroads which may not have been attached to the interstate transportation system. Additionally, corridors over which service has been discontinued as well as corridors potentially subject to abandonment shall be analyzed as abandoned corridors. In conducting the inventory, the department shall, for each corridor, attempt to ascertain the legal

ownership status of the corridor and the date rail service over the rail corridor ceased together with the dates of formal abandonment, and make an examination of the physical integrity of the corridor, including the presence or lack of tunnels, bridges, and culverts. The department shall make its report to the Legislative Research Commission no later than July 1, 2003. The department may divide the state into regions, and complete assessments for individual regions prior to July 1, 2003. The report shall be provided in both printed and electronic format. The department may, through a request for proposals process, contract with a Kentucky public university for the performance of any of the responsibilities imposed upon the department by this section. The department may seek and utilize available state and federal grant money to fund the assessment.

Section 15. The Legislative Research Commission shall establish a Rails to Trails Program Task Force. The task force shall be composed of fifteen members, nine of whom shall be members of the Kentucky General Assembly with Senate and House co-chairs appointed by the Legislative Research Commission. The task force shall include among the nine legislative members the Chair of the Senate Economic Development and Labor Committee, and the Chairs of both the House Economic Development Committee and the House Tourism Development and Energy Committee. The remaining six members of the task force shall be:

1. The Governor of the Commonwealth of Kentucky, or his designee;
2. The Commissioner of the Department of Parks, or his designee;
3. The Secretary of the Tourism Cabinet, or his designee;
4. The commissioiner of the Department for Local Government, or his designee;
5. A representative of the Kentucky Rails to Trails Council, to be designated by that organization; and
6. A representative of the Kentucky Farm Bureau, to be designated by that organization.

The task force shall continue to study railtrail issues, with particular emphasis on establishing actual trails within the Commonwealth. The Department for Local Government or the university to whom the assessment contract is awarded under Section 14 of this Act shall, upon request of the task force, update the task force on the progress of the work and allow task force members and staff access to records and meetings connected with the assessment. The task force shall report its findings and recommendations to the Legislative Research Commission by September 15, 2001.

Approved April 6, 2000