

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 15.2-5500, 15.2-5501, 15.2-5505, 15.2-5506, and 45.1-246 of the Code of Virginia, relating to the Tourism Development Authority; name change.

[S 1399]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5500, 15.2-5501, 15.2-5505, 15.2-5506, and 45.1-246 of the Code of Virginia are amended and reenacted as follows:

CHAPTER 55.

*HEART OF APPALACHIA TOURISM DEVELOPMENT AUTHORITY.***§ 15.2-5500. Heart of Appalachia Tourism Authority.**

There is hereby established *as a political subdivision, a body politic and corporate, the Heart of Appalachia Tourism Development Authority (the Authority)* for the LENOWISCO and Cumberland Plateau Planning District Commissions. The Authority shall promote, expand, and develop the tourism industries of this coal-producing region as a whole.

§ 15.2-5501. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means any ~~political subdivision, a body politic and corporate, the Heart of Appalachia Tourism Authority~~ created, organized and operated pursuant to the provisions of this chapter, or if such Authority is abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter are given by law.

"Participating locality" means any county or city in the LENOWISCO or Cumberland Plateau Planning District Commissions with respect to which an authority may be organized and in which it is contemplated the Authority will function.

§ 15.2-5505. Establishment of local tourism advisory committees.

Each of the participating localities in the LENOWISCO and Cumberland Plateau Planning District Commissions shall establish a local tourism advisory committee to promote tourism in the participating locality, participate and assist in the planning of the ~~regional Tourism Development~~ Authority, and develop a tourism destination plan for its participating locality.

The Tourism Director, working with the tourism advisory committee chair, shall provide a slate of recommendations to the local governing body, ~~which for positions on its tourism advisory committee. The local governing body shall then~~ appoint five or more appointees representing the travel industry, which includes lodging, restaurants, attractions, outdoor recreation, events ~~or~~, and parks, or ~~any~~ appoint community leaders ~~with terms. Terms of the appointees shall be determined by the local governing body, and who; such appointees may be reappointed.~~ The Tourism Director shall work with the chairman of the tourism advisory committee to facilitate regular meetings of the tourism advisory committee.

§ 15.2-5506. Responsibilities and duties; local tourism advisory committees.

The local tourism advisory committees established in § 15.2-5505 shall:

1. Promote and assist tourism development in their individual participating localities;
2. Develop and assist in the implementation of a tourism development plan to increase tourism revenue in their respective participating localities;
3. Encourage individuals, ~~and~~ businesses and their local ~~government~~ *governments* to invest in tourism development as an integral part of overall economic development; and
4. Assist the ~~regional Tourism Development~~ Authority in planning and implementing a regional tourism development plan.

§ 45.1-246. Civil and criminal penalties.

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations thereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed \$70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was

negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. Where such a public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A of this section has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. The permittee charged with the penalty shall then have 30 days to pay the proposed penalty in full or if the permittee wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the State Treasurer's office. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Director shall within 30 days of that determination remit the appropriate amount to the permittee with accrued interest thereon. Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. If a permittee who is required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the permittee within such county or city in the amount of the penalty. The Director may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into a special fund in the State Treasurer's office to be used by the Director for enhancing conservation and recreational opportunities in the coal-producing counties of the Commonwealth. The Director shall transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic Development Authority for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the *Heart of Appalachia* Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; or (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, fails or refuses to comply with the regulations or orders promulgated or issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B of this section shall, upon conviction, be punished by a fine of not more than \$10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, fails, or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines and confinement in jail that may be imposed upon a person under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any required statement, representation or certification, in any application, objection, record, report, plan or other document filed or required to be maintained pursuant to this chapter, the regulations promulgated thereunder, or any order or decision issued by the Director under this chapter shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or by confinement in jail for not more than 12 months, or both.

H. Any operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction, which period shall not end until the entry of a final order by the Director, in the case of any review proceedings initiated by the operator wherein the Director orders after an expedited hearing the suspension of the abatement requirements of the notice or order after

118 determining that the operator will suffer irreparable loss or damage from the application of those
119 requirements, or until entry of an order of the court, in the case of any review proceedings initiated by
120 the operator wherein the court orders the suspension of the abatement requirements, shall be assessed a
121 civil penalty of not less than \$750 for each day during which such failure or violation occurs.

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