

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

2

**HOUSE BILL 1526
Committee Substitute Reported Without Prejudice 5/31/05**

Short Title: Avery County/Heritage Park Authority.

(Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH THE
2 HERITAGE PARK AUTHORITY FOR THE MAINTENANCE AND
3 DEVELOPMENT OF THE HERITAGE PARK FACILITIES IN AVERY
4 COUNTY.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** There is hereby created the Heritage Park Authority ("Park
8 Authority"). The Park Authority is a body politic and corporate having the powers and
9 jurisdiction hereinafter enumerated and any other additional powers as shall be
10 conferred upon it by general law and the future acts of the General Assembly.

11 **SECTION 2.** The Park Authority shall consist of nine members who shall be
12 appointed to staggered terms of four years by the Avery County Board of
13 Commissioners. All of the members shall be permanent residents of Avery County. Of
14 the initial nine members, five shall be appointed to a term of four years and four shall be
15 appointed to a term of two years. Thereafter, all terms shall be for four years, thus
16 creating the staggered positions. Each member shall take and subscribe before the Clerk
17 of the Superior Court of Avery County an oath of office and file the same with the
18 Avery County Board of Commissioners. Upon the occurrence of any vacancy on the
19 Park Authority, the vacancy shall be filled within 60 days after the vacancy occurs by
20 the recommending entity upon approval of the Board of Commissioners. If the
21 Authority fails to recommend a replacement to fill the vacancy within 60 days, the
22 Board of Commissioners shall fill the vacancy at their next regular meeting.

23 **SECTION 3.(a)** The members of the Park Authority shall be appointed by
24 the Avery County Board of Commissioners, as follows:

- 25 (1) One member shall be appointed upon the recommendation of the
26 Avery County Agricultural and Horticultural Fair, Inc., a nonprofit
27 corporation.
28 (2) One member shall be appointed from the Avery County Recreational
29 Advisory Commission.

- 1 (3) The Towns of Banner Elk, Beech Mountain, Crossnore, Elk Park,
2 Newland, and Sugar Mountain shall each nominate one member.
- 3 (4) The southern portion of Avery County shall recommend one member,
4 with that nomination to be determined by the Frank and Green Valley
5 Fire Departments.

6 No member of the Avery County Board of Commissioners may serve on the
7 Park Authority Board. In the event that the Avery County Agricultural and Horticultural
8 Fair, Inc., becomes nonexistent, then the Park Authority Board will have only eight
9 members.

10 **SECTION 3.(b)** The Park Authority shall elect from among its members a
11 Chair, a Secretary, and a Treasurer at its initial meeting and then annually thereafter. A
12 majority of the Park Authority shall control its decisions. Each member of the Park
13 Authority, including the Chair, shall have one vote. The Park Authority shall meet at
14 the places and times designated by the Chair and shall be subject to the Open Meetings
15 Law.

16 **SECTION 3.(c)** The Park Authority may adopt suitable bylaws for its
17 management, subject to approval of the Avery County Board of Commissioners. The
18 members of the Park Authority shall receive no compensation or per diem, but shall be
19 allowed and paid their actual traveling expenses incurred in transacting the official
20 business of the Park Authority.

21 **SECTION 4.** The Park Authority shall have the following powers and
22 authority:

- 23 (1) To purchase, acquire, establish, construct, own, control, lease, equip,
24 improve, maintain, operate, and regulate Heritage Park facilities for
25 the use of the general public within Avery County for the purpose to
26 purchase, improve, own, hold, lease, or operate real or personal
27 property.
- 28 (2) To sue and to be sued in the name of the Park Authority, to make
29 contracts and hold any personal property necessary for the exercise of
30 the powers of the Park Authority, and to acquire by purchase, lease, or
31 otherwise any existing lease or leasehold right.
- 32 (3) To charge and collect reasonable and adequate fees and rents for the
33 use of the Heritage Park facilities or for services rendered in the
34 operation of the facilities. Revenues from fees and rents shall be used
35 only for upkeep and operation of Heritage Park.
- 36 (4) To make all reasonable rules and regulations it deems necessary for the
37 proper maintenance, use, operation, and control of Heritage Park
38 facilities and to provide and enforce penalties for the violation of these
39 rules and regulations; provided, however, that the rules and regulations
40 and schedules of fees shall not be in conflict with the laws of the State
41 of North Carolina.
- 42 (5) To sell, lease, or otherwise dispose of any property, real or personal,
43 belonging to the Park Authority, according to the procedures described
44 in Article 12 of Chapter 160A of the General Statutes, but no sale of

1 real property shall be made without the express approval of the Avery
2 County Board of Commissioners.

3 (6) To deposit or invest and reinvest any of its funds as provided by the
4 Local Government Finance Act, as it may be amended from time to
5 time.

6 (7) To purchase any of its own outstanding bonds or notes.

7 (8) To operate, own, lease, control, regulate, or grant to others, for a
8 period not to exceed five years, with an option to renew the right to
9 operate on the Heritage Park facilities any snack bars, vending
10 machines, food and beverages dispensing outlets, advertising media,
11 automobile parking facilities, and other types of facilities as may be
12 directly related to the maintenance and furnishing of a complete parks
13 and recreational facility to the public.

14 (9) To erect and construct buildings and other improvements and facilities
15 not inconsistent with or in violation of the agreements applicable to
16 and the grants under which real property of the Park Authority is held.

17 (10) To lease their improvements and facilities for a term or terms not to
18 exceed five years, with an option to renew at the termination of the
19 lease.

20 (11) To borrow money for use in the making and paying of these
21 improvements and facilities, secured by and on the credit only of any
22 lease agreements in respect to these improvements and facilities, and
23 to pledge and assign leases and lease agreements as security for the
24 authorized loans.

25 (12) To procure grants to allow for the installation of improvements upon
26 real property.

27 (13) To have a corporate seal which may be altered at will.

28 **SECTION 5.** The Park Authority shall possess the same exemptions in
29 respect to payment of taxes and license fees and shall be eligible for sales and use tax
30 refunds to the same extent as provided for municipal corporations by the laws of the
31 State of North Carolina.

32 **SECTION 6.** The Park Authority may acquire from Avery County, by
33 agreement with the County, and the County may grant and convey, either by gift or for
34 such consideration as the County may deem appropriate, any real or personal property
35 which it now owns or may hereafter acquire, which may be necessary for the
36 construction, operation, and maintenance of Heritage Park facilities.

37 **SECTION 7.** Any lands acquired, owned, controlled, or occupied by the
38 Park Authority shall be, and are hereby declared to be acquired, owned, controlled, and
39 occupied for a public purpose.

40 **SECTION 8.** Subject to the limitations as set out in this act, all rights and
41 powers given and granted to counties and municipalities by general law, which may
42 now be in effect, or enacted in the future relating to the development, regulation, and
43 control of Heritage Park facilities, are vested in the Park Authority. The Avery County
44 Board of Commissioners may delegate its powers under these acts of the Park

1 Authority, and the Park Authority shall have concurrent rights with Avery County to
2 control, regulate, and provide for the development of Heritage Park in Avery County.

3 **SECTION 9.** The Park Authority may contract with and accept grants from
4 the State of North Carolina, the federal government, or any of the agencies or
5 representatives of either said governmental bodies relating to the purchase of land and
6 to the grading, constructing, equipping, improving, maintaining, or operating of
7 Heritage Park.

8 **SECTION 10.** The Park Authority may employ any agents or professionals
9 whose services may be deemed by the Park Authority to be necessary and useful in
10 carrying out the provisions of this act.

11 **SECTION 11.** The Avery County Board of Commissioners may appropriate
12 funds as the Board of Commissioners deems necessary to carry out the provisions of
13 this act in any proportion or upon any basis as may be determined by the Avery County
14 Board of Commissioners. The Park Authority may make recommendations to the
15 Avery County Board of Commissioners with respect to such appropriations.

16 **SECTION 12.** The Park Authority may expend the funds that are
17 appropriated by the County and may pledge the credit of the Park Authority only to the
18 extent of the appropriate funds.

19 **SECTION 13.** The Park Authority shall not have the power to pledge the
20 credit of Avery County, or any subdivision thereof, or to impose any obligation upon
21 Avery County or any of its subdivisions except when the power is expressly granted by
22 statute.

23 **SECTION 14.** The Park Authority shall make an annual report to the Avery
24 County Board of Commissioners in July of each year setting forth in detail the
25 operations and transactions conducted by it pursuant to this act.

26 **SECTION 15.** The powers granted to the Park Authority shall not be
27 effective until the members of the Park Authority have been appointed by the Avery
28 County Board of Commissioners, and nothing in this act shall require the Board of
29 Commissioners to make the initial appointments. It is the intent of this act to enable,
30 but not require, the formation of the Avery County Parks and Recreational Authority.

31 **SECTION 16.** If one or more sections, clauses, sentences, or parts of this act
32 shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the
33 remaining provisions thereof, but shall be confined in its operation to the specific
34 provision held invalid, and the inapplicability or invalidity of any section, clause,
35 sentence, or part of this act in one or more instances or circumstances shall not be taken
36 in affect or prejudice in any way its applicability or validity in any other instance.

37 **SECTION 17.** This act is effective when it becomes law.