

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE BILL 1526**  
**Committee Substitute Reported Without Prejudice 5/31/05**  
**Committee Substitute Favorable 8/23/05**

Short Title: Avery County/Heritage Park Authority.

(Local)

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Sponsors:

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Referred to:

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April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE HERITAGE PARK AUTHORITY.

The General Assembly of North Carolina enacts:

**SECTION 1.** There is created the "Heritage Park Authority" which, when duly established as provided for in this act, shall be both a body politic and corporate, having all of the following enumerated powers and jurisdiction as well as any other additional powers that may be conferred upon it by the general law and by act of the General Assembly.

**SECTION 2.** For purposes of this act:

(1) "Authority" means the Heritage Park Authority or its governing board, as the case may be.

(2) "Board" means the Board of Commissioners of Avery County.

(3) "Heritage Park" means the 52 acres of land known as "Heritage Park" and all facilities located on that land.

(4) "Member" means a member of the Authority.

**SECTION 3.** The Board may by ordinance create the Authority. The Board shall hold a public hearing on the ordinance to create the Authority. The location of the public hearing shall be determined by the Board and established by resolution. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in each county. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation, the Authority shall enjoy the powers and have the duties and responsibilities conferred upon it by ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any ordinance may be modified, amended, or rescinded by a subsequent ordinance.

**SECTION 4.(a)** Upon its creation, the Authority shall have a governing board of nine. Except as otherwise provided for the initial appointees, each

1 commissioner shall serve a four-year staggered term. Upon creation of the Authority,  
2 the members of the Authority shall be appointed by the Board as follows:

- 3 (1) One member shall be appointed upon the recommendation of the  
4 Avery County Agricultural and Horticultural Fair, Inc., a nonprofit  
5 corporation.
- 6 (2) One member shall be appointed from the Avery County Recreational  
7 Advisory Commission.
- 8 (3) The southern portion of Avery County shall recommend one member,  
9 with that nomination to be determined by the Frank and Green Valley  
10 Fire Departments.
- 11 (4) One member each recommended by the Board of Commissioners of  
12 Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and  
13 Sugar Mountain.

14 **SECTION 4.(b)** All members must maintain a permanent residence within  
15 the County of Avery. No member of the Board may serve on the Authority. In the event  
16 that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent,  
17 then the Authority shall have only eight members.

18 **SECTION 4.(c)** Any member who has served two consecutive terms,  
19 including any initial term of less than four years, may not be reappointed to a third  
20 consecutive term. Such a member may, however, be appointed to serve again after the  
21 expiration of the term of the member's successor.

22 **SECTION 4.(d)** On the death of a commissioner, resignation, incapacity, or  
23 inability to serve, as determined by the board appointing that commissioner, or removal  
24 of the commissioner for cause, as determined by the board appointing that  
25 commissioner, the board affected may appoint another commissioner to fill the  
26 unexpired term.

27 **SECTION 5.** The members of the Authority shall receive no compensation  
28 or per diem, but shall be allowed and paid their actual traveling expenses incurred in  
29 transacting the official business of the Authority.

30 **SECTION 6.** Upon creation of the Authority, its governing board shall meet  
31 at a time and place set by the Board. The Authority shall elect from among its members  
32 a chair, a secretary, and a treasurer at its initial meeting and then annually thereafter. In  
33 order to conduct business, a quorum must be present. A majority of the Authority shall  
34 control its decisions. Each member of the Authority, including the chair, shall have one  
35 vote. The Authority shall meet at the places and times designated by the chair. The  
36 provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General  
37 Statutes, shall apply.

38 **SECTION 7.(a)** Within the limits of the funds available to it, and subject to  
39 the provisions of this Article and the ordinance, the Authority may:

- 40 (1) Purchase, acquire, establish, construct, own, control, lease, equip,  
41 improve, maintain, operate, and regulate Heritage Park facilities for  
42 the use of the general public within Avery County for the purpose to  
43 purchase, improve, own, hold, lease, or operate real or personal  
44 property.

- 1           (2) Sue and be sued in the name of the Authority, to make contracts and  
2 hold any personal property necessary for the exercise of the powers of  
3 the Authority, and to acquire by purchase, lease, or otherwise any  
4 existing lease or leasehold right.
- 5           (3) Charge and collect reasonable and adequate fees and rents for the use  
6 of Heritage Park or for services rendered in the operation of the  
7 facilities. Revenues from fees and rents shall be used only for upkeep  
8 and operation of Heritage Park.
- 9           (4) Make reasonable regulations it deems necessary for the proper  
10 maintenance, use, operation, and control of Heritage Park facilities and  
11 to provide and enforce penalties for the violation of these rules and  
12 regulations; provided, however, that the regulations and schedules of  
13 fees shall not be in conflict with the laws of the State of North  
14 Carolina.
- 15           (5) Sell, lease, or otherwise dispose of any property, real or personal,  
16 belonging to the Authority, according to the procedures described in  
17 Article 12 of Chapter 160A of the General Statutes, but no sale of real  
18 property shall be made without the express approval of the Board.
- 19           (6) Deposit or invest and reinvest any of its funds as provided in Chapter  
20 159 of the General Statutes, as it may be amended from time to time.
- 21           (7) Purchase any of its own outstanding bonds or notes.
- 22           (8) Operate, own, lease, control, regulate, or grant to others, for a period  
23 not to exceed five years, with an option to renew the right to operate  
24 on Heritage Park any snack bars, vending machines, food and  
25 beverages dispensing outlets, advertising media, automobile parking  
26 facilities, and other types of facilities as may be directly related to the  
27 maintenance and furnishing of a complete parks and recreational  
28 facility to the public.
- 29           (9) Erect and construct buildings and other improvements and facilities  
30 not inconsistent with or in violation of the agreements applicable to  
31 and the grants under which real property of the Authority is held.
- 32           (10) Borrow money for use in the making and paying of these  
33 improvements and facilities, secured by and on the credit only of any  
34 lease agreements in respect to these improvements and facilities, and  
35 to pledge and assign leases and lease agreements as security for the  
36 authorized loans.
- 37           (11) Employ any agents or professionals whose services may be deemed by  
38 the Authority to be necessary and useful.
- 39           (12) Procure grants to allow for the installation of improvements upon real  
40 property.
- 41           (13) Have a corporate seal that may be altered at will.
- 42           (14) Contract with and accept grants from the State of North Carolina, the  
43 federal government, or any of the agencies or representatives of either  
44 said governmental bodies relating to the purchase of land and to the

1 grading, constructing, equipping, improving, maintaining, or operating  
2 of Heritage Park facilities.

3 **SECTION 7.(b)** The Avery County Board of Commissioners may  
4 appropriate funds as the Board of Commissioners deems necessary to carry out the  
5 provisions of this act in any proportion or upon any basis as may be determined by the  
6 Avery County Board of Commissioners. The Authority may make recommendations to  
7 the Avery County Board of Commissioners with respect to such appropriations.

8 **SECTION 7.(c)** The Authority shall possess the same exemptions in respect  
9 to payment of taxes and license fees and shall be eligible for sales and use tax refunds to  
10 the same extent as provided for municipal corporations by the laws of the State of North  
11 Carolina.

12 **SECTION 7.(d)** The Authority may acquire from the Board, and the Board  
13 may grant and convey, either by gift or for such consideration as the Board may deem  
14 appropriate, any real or personal property which it now owns or may hereafter acquire,  
15 which may be necessary for the construction, operation, and maintenance of Heritage  
16 Park facilities.

17 **SECTION 7.(e)** Any lands acquired, owned, controlled, or occupied by the  
18 Authority shall be, and are hereby declared to be acquired, owned, controlled, and  
19 occupied for a public purpose.

20 **SECTION 8.(a)** A copy of the ordinance creating the Authority and of any  
21 ordinance amending or repealing the joint resolution creating the Authority shall be  
22 filed with the following:

- 23 (1) The Secretary of State.
- 24 (2) The clerk to the Board.
- 25 (3) The Clerk of Superior Court of Avery County.
- 26 (4) A newspaper of general circulation in Avery County.

27 **SECTION 8.(b)** Unless an ordinance specifies a later date, it shall take  
28 effect when the ordinance has been submitted to the Secretary of State for filing.  
29 Certifications by the clerk of superior court of the text of any ordinance filed with that  
30 clerk are admissible in evidence.

31 **SECTION 9.(a)** Except as limited by restrictions in any ordinance and by  
32 other supervening provisions of law, the Authority may make regulations applicable to  
33 Heritage Park concerning all matters relating to or affecting the use of Heritage Park.  
34 These regulations may not conflict with or supersede provisions of general or special  
35 acts or of regulations of State agencies promulgated under the authority of general law.  
36 No regulations adopted under the provisions of this section may be adopted by the  
37 Authority except after public hearing, with publication of notice of the hearing in a  
38 newspaper of general circulation in the county at least 10 days before the hearing.

39 **SECTION 9.(b)** Violation of any regulation of the Authority commanding  
40 or prohibiting an act shall be a Class 3 misdemeanor.

41 **SECTION 9.(c)** The regulations promulgated under this section take effect  
42 upon passage or upon such dates as may be stipulated in the regulations except that no  
43 regulation may be enforced unless adequate notice of the regulation has been posted in  
44 Heritage Park. Ordinances providing regulations for specific areas shall clearly establish

1 the boundaries of the affected area by including a map of the regulated area, with the  
2 boundaries clearly drawn, by setting out the boundaries in a written description, or by a  
3 combination of these techniques. Adequate notice as to a regulation affecting only a  
4 particular location shall be given in the following manner. When a regulation applies  
5 generally as to Heritage Park, there must be a posting of notices, signs, or markers  
6 communicating the essential provisions in at least three different places throughout the  
7 area, and it shall be printed in a newspaper of general circulation in the county.

8 **SECTION 9.(d)** A copy of each regulation promulgated under this section  
9 must be filed by the Authority with the following persons:

- 10 (1) The Secretary of State.
- 11 (2) The Clerk of Superior Court of Avery County.
- 12 (3) The clerk to the Board.

13 **SECTION 9.(e)** Any official designated in subsection (d) of the section may  
14 issue certified copies of regulations filed with the official under the seal of the official's  
15 office. Such certified copies may be received in evidence in any proceeding.

16 **SECTION 9.(f)** Publication and filing of regulations promulgated under this  
17 section as required above are for informational purposes and is not a prerequisite to their  
18 validity if they in fact have been duly promulgated, the public has been notified as to the  
19 substance of the regulations, a copy of the text of all regulations is in fact available to  
20 any person who may be affected, and no party to any proceeding has been prejudiced by  
21 any defect that may exist with respect to publication and filing. Rules and regulations  
22 promulgated by the Authority under the provisions of other sections of this Article  
23 relating to internal governance of the Authority need not be filed or published. Where  
24 posting of any sign, notice, or marker, or the making of other communication is  
25 essential to the validity of a regulation duly promulgated, it is presumed in any  
26 proceeding that prior notice was given and maintained and the burden lies upon the  
27 party asserting to the contrary to prove lack of adequate notice of any regulation.

28 **SECTION 10.(a)** Where an ordinance so provides, all law enforcement  
29 officers, or those officers as may be designated in the ordinance, with territorial  
30 jurisdiction as to any part of Heritage Park within the limitations of their subject matter  
31 jurisdiction, have the authority of peace officers in enforcing the laws over all of  
32 Heritage Park. A certificate of training issued by the North Carolina Criminal Justice  
33 Education and Training Standards Commission or the North Carolina Sheriffs'  
34 Education and Training Standards Commission will suffice for certification for the  
35 purposes of this Article.

36 **SECTION 10.(b)** Where a law enforcement officer with jurisdiction over  
37 any part of Heritage Park is performing duties relating to the enforcement of the laws,  
38 the officer shall have such extraterritorial jurisdiction as may be necessary to perform  
39 the officer's duties. These duties include investigations of crimes an officer reasonably  
40 believes have been, or are about to be, committed within the area in question. This  
41 includes traversing by reasonable routes from one portion of this area to another  
42 although across territory not within the boundaries of Heritage Park; conducting  
43 prisoners in custody to a court or to detention facilities as may be authorized by law,  
44 although this may involve going outside the area in question; and execution of process

1 connected with any criminal offense alleged to have been committed within the  
2 boundaries in question, except that this process may not be executed by virtue of this  
3 provision beyond the boundaries of the two counties. This also includes continuing  
4 pursuit of and arresting any violator or suspected violator as to which grounds for arrest  
5 arose within the area in question.

6       **SECTION 10.(c)** Where law enforcement officers are given additional  
7 territorial jurisdiction under the provisions of this section, this shall be considered an  
8 extension of the duties of the office held and no officer shall take any additional oath or  
9 title of office.

10       **SECTION 11.** The Authority shall report annually to the Board regarding its  
11 operations and activities during the previous year and on any other matter requested by  
12 the Board.

13       **SECTION 12.** If one or more sections, clauses, sentences, or parts of this act  
14 shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the  
15 remaining provisions thereof, but shall be confined in its operation to the specific  
16 provision held invalid, and the inapplicability or invalidity of any section, clause,  
17 sentence, or part of this act in one or more instances or circumstances shall not be taken  
18 in affect or prejudice in any way its applicability or validity in any other instance.

19       **SECTION 13.** This act is effective when it becomes law.