

Adopted by House 4-12-2013

SB103 HFIN AM 4-10

1 The Committee on Finance moves to amend the bill on page one,
2 following the enacting clause, by striking the remainder of the
3 bill and inserting in lieu thereof the following:

4 "That §29-18-3 and §29-18-6 of the Code of West Virginia,
5 1931, as amended, be amended and reenacted; and that said code be
6 amended by adding thereto a new section, designated §29-18-24, all
7 to read as follows:

8

9 **§29-18-3. Definitions.**

10 As used in this article unless the context clearly requires a
11 different meaning:

12 (1) "Authority" means the West Virginia ~~railroad maintenance~~
13 ~~authority~~ State Rail Authority created by this article, the duties,
14 powers, responsibilities and functions of which are specified in
15 this article.

16 (2) "Bond" or "~~railroad maintenance~~ state rail authority bond"
17 means a revenue bond or rate issued by the ~~railroad maintenance~~
18 state rail authority to effectuate the intents and purposes of this
19 article.

20 (3) "Commuter rail" means a transit mode that is an electric
21 or diesel propelled railway for urban passenger train service
22 consisting of local short distance travel operating between a
23 central city and adjacent suburbs. Service must be operated on a
24 regular basis by or under contract with a transit operator for the
25 purpose of transporting passengers within urbanized areas or

1 between urbanized areas and outlying areas. The rail service,
2 using either locomotive hauled or self-propelled railroad passenger
3 cars, is generally characterized by multitrip tickets, specific
4 station to station fares or railroad employment practices and
5 usually has only one or two stations in the central business
6 district. It does not include heavy rail rapid transit or light
7 rail/streetcar transit service. Intercity rail service is excluded
8 except for that portion of service operated by or under contract
9 with a public transit agency for predominantly commuter services.
10 Only the predominantly commuter service portion of an intercity
11 route is eligible for inclusion when determining commuter rail
12 route miles.

13 (4) "Heavy rail" means a transit mode that is an electric
14 railway with the capacity for a heavy volume of traffic. It is
15 characterized by high speed and rapid acceleration passenger rail
16 cars operating singly or in multicar trains on fixed rails,
17 separate rights-of-way from which all other vehicular and foot
18 traffic are excluded, sophisticated signaling and high platform
19 loading.

20 (5) "Income" means and includes all money accruing to the
21 authority from any source.

22 (6) "Light rail" means a transit mode that typically is an
23 electric railway with a light volume traffic capacity compared to
24 heavy rail. It is characterized by passenger rail cars operating
25 singly or in short, usually two-car, trains, on fixed rails in
26 shared or exclusive rights-of-way, low or high platform loading and
27 vehicle power drawn from an overhead electric line via a trolley or
28 a pantograph.

1 (7) "Owner" means and includes all individuals,
2 copartnerships, associations, corporations, companies,
3 transportation companies, public service corporations, the United
4 States or any agency or instrumentality thereof, common carriers by
5 rail and railroad companies having any title or interest in any
6 rail properties authorized to be acquired, leased or used by this
7 article.

8 (8) "Person" means individuals, corporations, partnerships or
9 foreign and domestic associations, including railroads.

10 (9) "Predominantly commuter services" means that for any given
11 trip segment (i.e., distance between two stations), more than fifty
12 percent of the average daily ridership travels on the train at
13 least three times a week.

14 ~~(3) "Railroad" means a common carrier by railroad as defined~~
15 ~~in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C.~~
16 ~~(1) 3).~~

17 ~~(4) "Owner" means and includes all individuals,~~
18 ~~copartnerships, associations, corporations, companies,~~
19 ~~transportation companies, public service corporations, the United~~
20 ~~States or any agency or instrumentality thereof, common carriers by~~
21 ~~rail and railroad companies having any title or interest in any~~
22 ~~rail properties authorized to be acquired, leased or used by this~~
23 ~~article.~~

24 ~~(5) "Income" means and includes all money accruing to the~~
25 ~~authority from any source.~~

26 ~~(6) "Person" means individuals, corporations, partnerships or~~
27 ~~foreign and domestic associations, including railroads.~~

28 ~~(7)~~ (10) "Rail properties" means assets or rights owned,

1 leased, or otherwise controlled by a railroad or other person which
2 are used, or useful, in rail transportation service: *Provided,*
3 That rail properties does not include any properties owned, leased,
4 or otherwise controlled by a railroad not in reorganization, unless
5 it consents to such properties' inclusion in the particular
6 transaction.

7 ~~(8)~~ (11) "Rail service" means both freight and passenger
8 service.

9 (12) "Railroad" means a common carrier by railroad as defined
10 in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C.
11 (1) 3).

12 ~~(9)~~ (13) "Railroad project" means the initiation, acquisition,
13 construction, maintenance, repair, equipping or operation of rail
14 properties or rail service, or the provisions of loans or grants to
15 or with government agencies, or to persons for such purposes, by
16 the authority.

17 **§29-18-6. Powers, duties and responsibilities of authority**
18 **generally.**

19 The West Virginia State Rail Authority is hereby granted, has
20 and may exercise all powers necessary or appropriate to carry out
21 and effectuate its corporate purpose.

22 (a) The authority may:

23 (1) Adopt and, from time to time, amend and repeal bylaws
24 necessary and proper for the regulation of its affairs and the
25 conduct of its business and propose rules for legislative approval
26 in accordance with the provisions of article three, chapter
27 twenty-nine-a of this code to implement and make effective its

1 powers and duties.

2 (2) Adopt an official seal.

3 (3) Maintain a principal office and, if necessary, regional
4 suboffices at locations properly designated or provided.

5 (4) Sue and be sued in its own name and plead and be impleaded
6 in its own name and particularly to enforce the obligations and
7 covenants made under sections ten, eleven and sixteen of this
8 article. Any actions against the authority shall be brought in the
9 circuit court of Kanawha County. The location of the principal
10 office of the authority shall be determined by the Governor.

11 (5) Make loans and grants to governmental agencies and persons
12 for carrying out railroad projects by any governmental agency or
13 person and, in accordance with chapter twenty-nine-a of this code,
14 propose rules for legislative approval and procedures for making
15 such loans and grants.

16 (6) Acquire, construct, reconstruct, enlarge, improve,
17 furnish, equip, maintain, repair, operate, lease or rent to or
18 contract for operation by a governmental agency or person, railroad
19 projects and, in accordance with chapter twenty-nine-a of this
20 code, propose legislative rules for the use of these projects.

21 (7) Make available the use or services of any railroad project
22 to one or more persons, one or more governmental agencies or any
23 combination thereof.

24 (8) Issue ~~Railroad Maintenance~~ State Rail Authority bonds and
25 notes and refunding bonds of the state, payable solely from
26 revenues as provided in section ten of this article unless the
27 bonds are refunded by refunding bonds for the purpose of paying any
28 part of the cost of one or more railroad projects or parts thereof.

1 (9) Acquire, by gift or purchase, hold and dispose of real and
2 personal property in the exercise of its powers and the performance
3 of its duties as set forth in this article.

4 (10) Acquire in the name of the state, by purchase or
5 otherwise, on terms and in the manner it considers proper, or by
6 the exercise of the right of eminent domain in the manner provided
7 in chapter fifty-four of this code, rail properties and appurtenant
8 rights and interests necessary for carrying out railroad projects.

9 (11) (A) Make and enter into all contracts and agreements and
10 execute all instruments necessary or incidental to the performance
11 of its duties and the execution of its powers including, but not
12 limited to, the power to make contracts and agreements in
13 accordance with the provisions set forth in paragraph (B) of this
14 subdivision.

15 (B) Make and enter into contracts and agreements to acquire
16 rolling stock or equipment with a value of \$500,000 or less exempt
17 from the provisions of article three, chapter five-a of this code.

18 The authority shall propose rules for legislative approval in
19 accordance with the provisions of article three, chapter
20 twenty-nine-a of this code which set forth the methods for
21 determining value of rolling stock or equipment to be purchased in
22 accordance with the provisions of paragraph (B) of this
23 subdivision.

24 (C) Where rolling stock, equipment or trackage of the
25 authority is in need of immediate maintenance, repair or
26 reconstruction in order to avoid a cessation of its operations,
27 economic loss, the inability to provide essential service to
28 customers or danger to authority personnel or the public, the

1 following requirements and procedures for entering into the
2 contract or agreement to remedy the condition shall be in lieu of
3 those provided in article three, chapter five-a of this code or any
4 legislative rule promulgated pursuant thereto:

5 (i) If the cost under the contract or agreement involves an
6 expenditure of more than \$1,000, but \$10,000 or less, the authority
7 shall award the contract to or enter into the agreement with the
8 lowest responsible bidder based upon at least three oral bids made
9 pursuant to the requirements of the contract or agreement.

10 (ii) If the cost under the contract or agreement, other than
11 one for compensation for personal services, involves an expenditure
12 of more than \$10,000, but \$100,000 or less, the authority shall
13 award the contract to or enter into the agreement with the lowest
14 responsible bidder based upon at least three bids, submitted to the
15 authority in writing on letterhead stationery, made pursuant to the
16 requirements of the contract or agreement.

17 (D) Notwithstanding any other provision of this code to the
18 contrary, a contract or lease for the operation of a railroad
19 project constructed and owned by the authority or an agreement for
20 cooperation in the acquisition or construction of a railroad
21 project pursuant to section sixteen of this article is not subject
22 to the provisions of article three, chapter five-a of this code or
23 any legislative rule promulgated pursuant thereto and the authority
24 may enter into the contract or lease or the agreement pursuant to
25 negotiation and upon such terms and conditions and for a period of
26 time as it finds to be reasonable and proper under the
27 circumstances and in the best interests of proper operation or of
28 efficient acquisition or construction of the railroad project.

1 (E) The authority may reject any and all bids. A bond with
2 good and sufficient surety, approved by the authority, is required
3 of all contractors in an amount equal to at least fifty percent of
4 the contract price, conditioned upon the faithful performance of
5 the contract.

6 (12) Appoint a director and employ managers, superintendents
7 and other employees and retain or contract with consulting
8 engineers, financial consultants, accountants, attorneys and other
9 consultants and independent contractors as are necessary in its
10 judgment to carry out the provisions of this article and fix the
11 compensation or fees thereof. All expenses thereof are payable
12 from the proceeds of ~~Railroad Maintenance~~ State Rail Authority
13 revenue bonds or notes issued by the authority, from revenues and
14 funds appropriated for this purpose by the Legislature or from
15 grants from the federal government which may be used for such
16 purpose.

17 (13) Receive and accept from any state or federal agency
18 grants for or in aid of the construction of any railroad project or
19 for research and development with respect to railroads and receive
20 and accept aid or contributions from any source of money, property,
21 labor or other things of value, to be held, used and applied only
22 for the purposes for which the grants and contributions are made.

23 (14) Engage in research and development with respect to
24 railroads.

25 (15) Purchase fire and extended coverage and liability
26 insurance for any railroad project and for the principal office and
27 suboffices of the authority, insurance protecting the authority and
28 its officers and employees against liability, if any, for damage to

1 property or injury to or death of persons arising from its
2 operations and be a member of, and to participate in, the state
3 workers' compensation program.

4 (16) Charge, alter and collect rates, rentals and other
5 charges for the use or services of any railroad project as provided
6 in this article.

7 (17) Do all acts necessary and proper to carry out the powers
8 expressly granted to the authority in this article.

9 (b) In addition, the authority has the power to:

10 (1) Acquire rail properties both within and not within the
11 jurisdiction of the Interstate Commerce Commission and rail
12 properties within the purview of the federal Regional Rail
13 Reorganization Act of 1973, any amendments to it and any other
14 relevant federal legislation.

15 (2) Enter into agreements with owners of rail properties for
16 the acquisition of rail properties or use, or both, of rail
17 properties upon the terms, conditions, rates or rentals that can
18 best effectuate the purposes of this article.

19 (3) Acquire rail properties and other property of a railroad
20 in concert with another state or states as is necessary to ensure
21 continued rail service in this state.

22 (4) Administer and coordinate the state plan.

23 (5) Provide in the state plan for the equitable distribution
24 of federal rail service continuation subsidies among state, local
25 and regional transportation authorities.

26 (6) Promote, supervise and support safe, adequate and
27 efficient rail services.

28 (7) Employ sufficiently trained and qualified personnel for

1 these purposes.

2 (8) Maintain adequate programs of investigation, research,
3 promotion and development in connection with the purposes and to
4 provide for public participation therein.

5 (9) Provide satisfactory assurances on behalf of the state
6 that fiscal control and fund accounting procedures will be adopted
7 by the state necessary to assure proper disbursement of and
8 accounting for federal funds paid to the state as rail service
9 continuation subsidies.

10 (10) Comply with the regulations of the Secretary of
11 Transportation of the United States Department of Transportation
12 affecting federal rail service continuation programs.

13 (11) Do all things otherwise necessary to maximize federal
14 assistance to the state under Title IV of the federal Regional Rail
15 Reorganization Act of 1973 and to qualify for rail service
16 continuation subsidies pursuant to the federal Regional Rail
17 Reorganization Act of 1973.

18 (c) Additional authority in regard to the Maryland Area
19 Regional Commuter.

20 (1) The Rail Authority is hereby granted, has and may exercise
21 all aforementioned powers necessary or appropriate to coordinate
22 all activities with the Maryland Transit Administration to assure
23 the continued operation of the Maryland Area Regional Commuter into
24 the eastern panhandle of the state.

25 (2) In addition to the authority provided in subdivision (1)
26 of this subsection, the Rail Authority shall negotiate agreements
27 with the State of Maryland or the Maryland Transit Administration
28 for the continued operation of the commuter rail operation between

1 Maryland and the Washington D.C. metropolitan area and West
2 Virginia. A commuter rail operation agreement shall provide for
3 quantity and quality of commuter rail service, including certain
4 minimum daily service at least equivalent to the level service on
5 the effective date of the amendments to this subsection enacted in
6 the Regular Session of the Legislature 2013, unless daily ridership
7 diminishes significantly from said date. The agreement may provide
8 for the payment of track access fees attributed to commuter rail
9 operation within the boundaries of the State. Any payments of track
10 access fees pursuant to the agreement shall be paid from the
11 special fund created in section twenty-four of this article as
12 provided by appropriation of the Legislature.

13 **§29-18-24. Creation of the West Virginia Commuter Rail Access Fund.**

14 There is hereby established a special fund in the State
15 Treasury known as the "West Virginia Commuter Rail Access Fund."
16 The fund shall be administered by the Director and shall consist of
17 appropriations by the Legislature. Subject to Legislative
18 appropriation, the Director shall administer the fund to pay track
19 access fees pursuant to the agreement required by section six of
20 this article. Balances in the fund at the end of any fiscal year
21 shall not expire, but shall be expended for those purposes in
22 ensuing fiscal years.