

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 103**

5 (SENATORS SNYDER, MILLER AND BEACH, *original sponsors*)

6 _____
7 [Passed April 13, 2013; in effect ninety days from passage.]
8 _____

9
10
11 AN ACT to amend and reenact §29-18-3 and §29-18-6 of the Code of
12 West Virginia, 1931, as amended; and to amend said code by
13 adding thereto a new section, designated §29-18-24, all
14 relating to commuter rail access in West Virginia; providing
15 authority for the State Rail Authority to negotiate an
16 agreement with the State of Maryland for operation of commuter
17 rail in West Virginia; providing terms of minimum daily
18 service requirements in the agreement; providing for the
19 payment of track access fees pursuant to the agreement; and
20 creating a special fund to pay track access fees.

21 *Be it enacted by the Legislature of West Virginia:*

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

1 as follows:

2 **ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.**

3 **§29-18-3. Definitions.**

4 As used in this article unless the context clearly requires a
5 different meaning:

6 (1) "Authority" means the West Virginia State Rail Authority
7 created by this article, the duties, powers, responsibilities and
8 functions of which are specified in this article.

9 (2) "Bond" or "state rail authority bond" means a revenue
10 bond or rate issued by the State Rail Authority to effectuate the
11 intents and purposes of this article.

12 (3) "Commuter rail" means a transit mode that is an electric
13 or diesel propelled railway for urban passenger train service
14 consisting of local short distance travel operating between a
15 central city and adjacent suburbs. Service must be operated on a
16 regular basis by or under contract with a transit operator for the
17 purpose of transporting passengers within urbanized areas or
18 between urbanized areas and outlying areas. The rail service,
19 using either locomotive-hauled or self-propelled railroad passenger
20 cars, is generally characterized by multitrip tickets, specific
21 station-to-station fares or railroad employment practices and
22 usually has only one or two stations in the central business
23 district. It does not include heavy rail rapid transit or light
24 rail/streetcar transit service. Intercity rail service is excluded

1 except for that portion of service operated by or under contract
2 with a public transit agency for predominantly commuter services.
3 Only the predominantly commuter service portion of an intercity
4 route is eligible for inclusion when determining commuter rail
5 route miles.

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

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

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

22 (7) "Owner" means and includes all individuals,
23 copartnerships, associations, corporations, companies,
24 transportation companies, public service corporations, the United

1 States or any agency or instrumentality thereof, common carriers by
2 rail and railroad companies having any title or interest in any
3 rail properties authorized to be acquired, leased or used by this
4 article.

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

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

11 (10) "Rail properties" means assets or rights owned, leased or
12 otherwise controlled by a railroad or other person which are used,
13 or useful, in rail transportation service: *Provided*, That rail
14 properties does not include any properties owned, leased, or
15 otherwise controlled by a railroad not in reorganization, unless it
16 consents to such properties' inclusion in the particular
17 transaction.

18 (11) "Rail service" means both freight and passenger service.

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

22 (13) "Railroad project" means the initiation, acquisition,
23 construction, maintenance, repair, equipping or operation of rail
24 properties or rail service, or the provisions of loans or grants to

1 or with government agencies, or to persons for such purposes, by
2 the authority.

3 **§29-18-6. Powers, duties and responsibilities of authority**
4 **generally.**

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

8 (a) The authority may:

9 (1) Adopt and, from time to time, amend and repeal bylaws
10 necessary and proper for the regulation of its affairs and the
11 conduct of its business and propose rules for legislative approval
12 in accordance with the provisions of article three of this chapter
13 to implement and make effective its powers and duties.

14 (2) Adopt an official seal.

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

17 (4) Sue and be sued in its own name and plead and be impleaded
18 in its own name and particularly to enforce the obligations and
19 covenants made under sections ten, eleven and sixteen of this
20 article. Any actions against the authority shall be brought in the
21 circuit court of Kanawha County. The location of the principal
22 office of the authority shall be determined by the Governor.

23 (5) Make loans and grants to governmental agencies and persons
24 for carrying out railroad projects by any governmental agency or

1 person and, in accordance with chapter twenty-nine-a of this code,
2 propose rules for legislative approval and procedures for making
3 such loans and grants.

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

9 (7) Make available the use or services of any railroad project
10 to one or more persons, one or more governmental agencies or any
11 combination thereof.

12 (8) Issue State Rail Authority bonds and notes and refunding
13 bonds of the state, payable solely from revenues as provided in
14 section ten of this article unless the bonds are refunded by
15 refunding bonds for the purpose of paying any part of the cost of
16 one or more railroad projects or parts thereof.

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

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

1 (11) (A) Make and enter into all contracts and agreements and
2 execute all instruments necessary or incidental to the performance
3 of its duties and the execution of its powers including, but not
4 limited to, the power to make contracts and agreements in
5 accordance with the provisions set forth in paragraph (B) of this
6 subdivision.

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

10 The authority shall propose rules for legislative approval in
11 accordance with the provisions of article three, chapter
12 twenty-nine-a of this code which set forth the methods for
13 determining value of rolling stock or equipment to be purchased in
14 accordance with the provisions of paragraph (B) of this
15 subdivision.

16 (C) Where rolling stock, equipment or trackage of the
17 authority is in need of immediate maintenance, repair or
18 reconstruction in order to avoid a cessation of its operations,
19 economic loss, the inability to provide essential service to
20 customers or danger to authority personnel or the public, the
21 following requirements and procedures for entering into the
22 contract or agreement to remedy the condition shall be in lieu of
23 those provided in article three, chapter five-a of this code or any
24 legislative rule promulgated pursuant thereto:

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

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

13 (D) Notwithstanding any other provision of this code to the
14 contrary, a contract or lease for the operation of a railroad
15 project constructed and owned by the authority or an agreement for
16 cooperation in the acquisition or construction of a railroad
17 project pursuant to section sixteen of this article is not subject
18 to the provisions of article three, chapter five-a of this code or
19 any legislative rule promulgated pursuant thereto and the authority
20 may enter into the contract or lease or the agreement pursuant to
21 negotiation and upon such terms and conditions and for a period of
22 time as it finds to be reasonable and proper under the
23 circumstances and in the best interests of proper operation or of
24 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 State Rail Authority revenue bonds or notes
13 issued by the authority, from revenues and funds appropriated for
14 this purpose by the Legislature or from grants from the federal
15 government which may be used for such purpose.

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

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

24 (15) Purchase fire and extended coverage and liability

1 insurance for any railroad project and for the principal office and
2 suboffices of the authority, insurance protecting the authority and
3 its officers and employees against liability, if any, for damage to
4 property or injury to or death of persons arising from its
5 operations and be a member of, and to participate in, the state
6 workers' compensation program.

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

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

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

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

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

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

- 1 (4) Administer and coordinate the state plan.
- 2 (5) Provide in the state plan for the equitable distribution
3 of federal rail service continuation subsidies among state, local
4 and regional transportation authorities.
- 5 (6) Promote, supervise and support safe, adequate and
6 efficient rail services.
- 7 (7) Employ sufficiently trained and qualified personnel for
8 these purposes.
- 9 (8) Maintain adequate programs of investigation, research,
10 promotion and development in connection with the purposes and to
11 provide for public participation therein.
- 12 (9) Provide satisfactory assurances on behalf of the state
13 that fiscal control and fund accounting procedures will be adopted
14 by the state necessary to assure proper disbursement of and
15 accounting for federal funds paid to the state as rail service
16 continuation subsidies.
- 17 (10) Comply with the regulations of the Secretary of
18 Transportation of the United States Department of Transportation
19 affecting federal rail service continuation programs.
- 20 (11) Do all things otherwise necessary to maximize federal
21 assistance to the state under Title IV of the federal Regional Rail
22 Reorganization Act of 1973 and to qualify for rail service
23 continuation subsidies pursuant to the federal Regional Rail
24 Reorganization Act of 1973.

1 (c) Additional authority in regard to the Maryland Area
2 Regional Commuter.

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

8 (2) In addition to the authority provided in subdivision (1)
9 of this subsection, the Rail Authority shall negotiate agreements
10 with the State of Maryland or the Maryland Transit Administration
11 for the continued operation of the commuter rail operation between
12 Maryland and the Washington D. C. metropolitan area and West
13 Virginia. A commuter rail operation agreement shall provide for
14 quantity and quality of commuter rail service, including certain
15 minimum daily service at least equivalent to the level service on
16 the effective date of the amendments to this subsection enacted in
17 the Regular Session of the Legislature, 2013, unless daily
18 ridership diminishes significantly from said date. The agreement
19 may provide for the payment of track access fees attributed to
20 commuter rail operation within the boundaries of the state. Any
21 payments of track access fees pursuant to the agreement shall be
22 paid from the special fund created in section twenty-four of this
23 article as provided by appropriation of the Legislature.

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

1 **Fund.**

2 There is hereby established a special fund in the State
3 Treasury known as the West Virginia Commuter Rail Access Fund. The
4 fund shall be administered by the director and shall consist of
5 appropriations by the Legislature. Subject to legislative
6 appropriation, the director shall administer the fund to pay track
7 access fees pursuant to the agreement required by section six of
8 this article. Balances in the fund at the end of any fiscal year
9 shall not expire, but shall be expended for those purposes in
10 ensuing fiscal years.