

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 414

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 23, 2017; Referred
to the Committee on Transportation and Infrastructure; and
then to the Committee on Government Organization]

1 A BILL to repeal §17-16B-1, §17-16B-2, §17-16B-3, §17-16B-4, §17-16B-5, §17-16B-6, §17-16B-
2 7, §17-16B-7a , §17-16B-7b, §17-16B-8, §17-16B-9, §17-16B-10, §17-16B-11, §17-16B-
3 12, §17-16B-13, §17-16B-14, §17-16B-15, §17-16B-16, §17-16B-17, §17-16B-18, §17-
4 16B-19, §17-16B-20, §17-16B-21 and §17-16B-22 of the Code of West Virginia, 1931, as
5 amended; to repeal §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-3a, §29-2A-4, §29-2A-5,
6 §29-2A-6, §29-2A-7, §29-2A-8, §29-2A-9, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-
7 11b, §29-2A-11c, §29-2A-11d, §29-2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-
8 14, §29-2A-17, §29-2A-18, §29-2A-19, §29-2A-20, §29-2A-21, §29-2A-22, §29-2A-23,
9 §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and §29-2A-28 of said code; to repeal §29-
10 18-1, §29-18-2, §29-18-3, §29-18-4, §29-18-4a, §29-18-5, §29-18-6, §29-18-7, §29-18-8,
11 §29-18-9, §29-18-10, §29-18-11, §29-18-12, §29-18-13, §29-18-14, §29-18-15, §29-18-
12 16, §29-18-17, §29-18-18, §29-18-19, §29-18-20, §29-18-21, §29-18-22, §29-18-23, §29-
13 18-24 and §29-18-25 of said code; to amend and reenact §5F-2-1 of said code; and to
14 amend said code by adding thereto a new article, designated §17-16F-1, §17-16F-2, §17-
15 16F-3, §17-16F-4, §17-16F-5, §17-16F-6, §17-16F-7, §17-16F-8, §17-16F-9, §17-16F-10,
16 §17-16F-11, §17-16F-12, §17-16F-13, §17-16F-14, §17-16F-15, §17-16F-16, §17-16F-
17 17, §17-16F-18, §17-16F-19, §17-16F-20, §17-16F-21, §17-16F-22, §17-16F-23, §17-
18 16F-24, §17-16F-25, §17-16F-26, §17-16F-27, §17-16F-28, §17-16F-29, §17-16F-30,
19 §17-16F-31 and §17-16F-32, all relating to the creation of the Division of Multimodal
20 Transportation; combining the powers and duties and eliminating certain references to the
21 Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics
22 Commission; providing for legislative findings and creation of the division; transferring
23 employees, equipment, assets, liabilities, contracts, agreements, functions and duties to
24 the division; providing for all property currently held by the Public Port Authority, the West
25 Virginia State Rail Authority and the state Aeronautics Commission to be transferred to
26 the division; authorizing the Secretary of the Department of Transportation to appoint the

27 director; providing for qualifications for the director; establishing general powers and duties
28 of the director; defining terms; establishing the powers and duties of the division generally;
29 requiring division to promote, supervise and support safe, adequate and efficient
30 transportation, preserve rail, water, highway and airway facilities and promote economic
31 development and tourism; authorizing division to work cooperatively with similar entities
32 within and without the state; providing for siting, development and operation of facilities;
33 authorizing employment of trained and qualified staff and consultants and compensating
34 therefor; providing the right to enter into contracts and agreements; authorizing acquisition
35 of various types and interests in property to be held in the name of the state; authorizing
36 use of eminent domain; authorizing acquisition and disposal of property by various means;
37 authorizing interagency cooperation; authorizing division to act on behalf of the state in
38 planning, financing, development, construction and operation of port, railroad and
39 aeronautic projects or facilities; reporting annually to Legislature on status of projects,
40 operations, finances and related information; authorizing study and assessment of state
41 transportation needs; authorizing use of various financing options including issuing
42 revenue bonds and receipt of grants and loans; authorizing division to make grants and
43 loans to governmental agencies and persons for multimodal transportation projects;
44 permitting collection of reasonable fees and charges connected to making and servicing
45 loans, notes, bonds and other obligations; granting rule-making authority to the division;
46 continuing all rules, policies and orders of the combined entities until revised and reissued
47 by the division; requiring strategic plan and reports to the Governor and the Legislature;
48 requiring collection and analysis of shipping through state ports; providing for
49 confidentiality of collected information and providing criminal penalty for violation;
50 providing that division employees may not have direct or indirect financial interest in
51 contracts, sale of property of the division and providing criminal penalty for violation;
52 providing that activities of division are for public purpose; authorizing the division to use

53 certain property or facilities of a public utility, common carrier, public road, highway or
54 railroad for certain public projects; requiring the division to relocate any such property or
55 facilities; providing for rules regarding relocation or removal of railroad or public utility
56 located on division property; requiring the division to pay for said relocation or removal;
57 encouraging participation of private enterprise in construction and operation of facilities;
58 authorizing lease back to division; authorizing development of foreign trade zones, free
59 trade zones, ports of entry and customs zones; providing for specific duties related to port
60 projects; authorizing the division to act on behalf of the state in developing, operating,
61 improving and maintaining ports; authorizing the division to coordinate and cooperate with
62 other port entities; creating the West Virginia Multimodal Operations Fund and
63 transference of funds and liabilities of the West Virginia Public Port Authority Operations
64 Fund; eliminating local port authority districts; providing for specific duties related to rail
65 projects; authorizing the exercise of powers necessary to qualify for federal subsidies;
66 authorizing various means to carry out rail projects that are consistent with state plan with
67 other entities; providing authority for the division to establish, fund, construct, reconstruct,
68 acquire, repair, replace, operate, maintain and make available to other entities railroad
69 projects; providing that research and development of railroads may be conducted;
70 providing that contracts may be entered into to acquire various rolling stock, equipment or
71 trackage and providing the requirements therefor; providing for the authority to enter into
72 agreements that are beneficial to railroad projects notwithstanding other code provisions,
73 including the authority to reject bids; authorizing division to purchase various types of
74 insurance; authorizing the collection of fees for use of rail projects; providing for the
75 administration and coordination of a state plan, including the distribution of federal
76 subsidies; providing for investigation, research, promotion and development with public
77 participation; authorizing the provision of fiscal assurances and adoption of accounting
78 procedures necessary to continue subsidies; authorizing compliance with applicable

79 federal regulations; authorizing all actions necessary to maximize federal assistance for
80 rail subsidies; providing powers necessary to coordinate with the Maryland Transit
81 Administration for continued operation in the state, including negotiation and contracting
82 authority; providing that any commuter rail operation agreement will meet certain service
83 standards; providing that any track access fees to be paid pursuant to the agreement shall
84 be paid from the West Virginia Commuter Rail Access Fund; authorizing sale or transfer
85 of interest in rail other property with federal approval when required; authorizing
86 assistance to entities seeking federal railroad service certification, including the provision
87 of any necessary assurances or guarantees; authorizing division to retain attorney or
88 others to title ownership of rail properties within the state; requiring rail properties offered
89 for sale within the state to be offered first to the state; providing that division may acquire
90 railroad rights in other states and may cooperate with other states in so purchasing any
91 rail properties; providing for the division to give consideration to county or municipality
92 interest in acquiring abandoned property interest and providing for the division to acquire
93 any such abandoned property for subsequent conveyance to a county or municipality;
94 authorizing the division to apply for and utilize federal funds or loans in carrying out its
95 purposes of this article; authorizing the purchase of any railroad rolling stock, equipment
96 and machinery necessary for the operation and maintenance of state rail properties and
97 authorizing contracts with the Division of Highways for maintenance or purchase of
98 vehicles; authorizing maintenance, rebuilding or relocation of state rail properties and
99 authorizing expenditures for the modernization, rebuilding and relocation of any rail
100 properties owned by the state or private carrier; providing for contracting with domestic or
101 foreign entities to provide, maintain or improve rail transportation service on state rail
102 properties; providing for transfer of rail properties to other entities within the state when
103 permitted by the Governor; authorizing the division to resolve conflicts when multiple
104 entities want to utilize the same rail property; providing for proceeds from the sale of state

105 rail property to be deposited in Railroad Maintenance Fund; terminating Railroad
106 Maintenance Authority Fund and creating a Railroad Maintenance Fund for proceeds and
107 expenditures related to division's purpose; authorizing expenditure from any fund for study
108 of proposed rail projects and use of funds from Railroad Maintenance Fund for study and
109 engineering costs; authorizing the issuance of railroad maintenance revenue bonds and
110 notes for costs of rail projects, including issuance of renewal notes and bond refund, with
111 aggregate amount of all issues of bonds and notes outstanding at one time not exceeding
112 amount capable of being serviced by revenues received; providing that issues of bonds
113 or notes are negotiable instruments and are obligations of the division and are payable
114 out of the revenues which are pledged for such payment; providing for maturity date, terms
115 of execution, sale, redemption and delivery; authorizing the establishment of various
116 conditions necessary to secure sufficient funds to protect bonds or notes; providing that
117 person executing bonds or notes is not personally liable therefor; providing for trust
118 agreement to secure bonds issued by division and creating conditions therefor, not
119 including mortgage of any rail project; allocating expenses of bond issuance or trust
120 agreement to rail projects; providing for civil action for bondholders seeking to enforce
121 rights granted; providing that bonds are payable from division revenues and are not a debt
122 of state or political subdivision; restricting division from incurring debt on behalf of state or
123 political subdivision; authorizing use of proceeds from bonds to carry out division's powers
124 and prohibiting commingling with other funds; providing for the investment of excess funds
125 by West Virginia State Board of Investments; authorizing division to collect rents or
126 revenues for use of rail projects; providing for cooperation with other governmental
127 agencies to effect acquisition of rail project or bond issuance; authorizing division to
128 maintain rail projects in good repair; providing that railroad maintenance bonds are lawful
129 investments for various entities; continuing West Virginia Commuter Rail Access Fund
130 which is administered by division director; requiring division to establish a state rail plan

131 that complies with federal requirements for funding; providing for specific duties related to
 132 aeronautics projects; authorizing division to advance development of aeronautics in
 133 cooperation with municipalities; authorizing rules necessary for public safety related to
 134 airports and aeronautics; providing for the expenditure of funds for various needs of Civil
 135 Air Patrol; authorizing division to fund grants for public airport authorities; authorizing
 136 division to receive federal funding to support airports or air navigation facilities; and
 137 providing for procedures and conditions for use of federal funds.

Be it enacted by the Legislature of West Virginia:

1 That §17-16B-1, §17-16B-2, §17-16B-3, §17-16B-4, §17-16B-5, §17-16B-6, §17-16B-7,
 2 §17-16B-7a , §17-16B-7b ,§17-16B-8, §17-16B-9, §17-16B-10, §17-16B-11, §17-16B-12, §17-
 3 16B-13, §17-16B-14, §17-16B-15, §17-16B-16, §17-16B-17, §17-16B-18, §17-16B-19, §17-16B-
 4 20, §17-16B-21 and §17-16B-22 of the Code of West Virginia, 1931, as amended, be repealed;
 5 that §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-3a, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-
 6 2A-8, §29-2A-9, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-11b, §29-2A-11c, §29-2A-11d, §29-
 7 2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-14, §29-2A-17, §29-2A-18, §29-2A-19, §29-
 8 2A-20, §29-2A-21, §29-2A-22, §29-2A-23, §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and
 9 §29-2A-28 of said code be repealed; that §29-18-1, §29-18-2, §29-18-3, §29-18-4, §29-18-4a,
 10 §29-18-5, §29-18-6, §29-18-7, §29-18-8, §29-18-9, §29-18-10, §29-18-11, §29-18-12, §29-18-13,
 11 §29-18-14, §29-18-15, §29-18-16, §29-18-17, §29-18-18, §29-18-19, §29-18-20, §29-18-21, §29-
 12 18-22, §29-18-23, §29-18-24 and §29-18-25 of said code be repealed; that §5F-2-1 of said code
 13 be amended and reenacted; and that said code be amended by adding a new article, designated
 14 §17-16F-1, §17-16F-2, §17-16F-3, §17-16F-4, §17-16F-5, §17-16F-6, §17-16F-7, §17-16F-8,
 15 §17-16F-9, §17-16F-10, §17-16F-11, §17-16F-12, §17-16F-13, §17-16F-14, §17-16F-15, §17-
 16 16F-16, §17-16F-17, §17-16F-18, §17-16F-19, §17-16F-20, §17-16F-21, §17-16F-22, §17-16F-
 17 23, §17-16F-24, §17-16F-25, §17-16F-26, §17-16F-27, §17-16F-28, §17-16F-29, §17-16F-30,
 18 §17-16F-31 and §17-16F-32, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF
STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated or
2 related entities and funds associated with any agency or board, are incorporated in and
3 administered as a part of the Department of Administration:

4 (1) Building Commission provided in article six, chapter five of this code;

5 (2) Public Employees Insurance Agency provided in article sixteen, chapter five of this
6 code;

7 (3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this
8 code;

9 (4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of
10 this code;

11 (5) West Virginia Public Employees Grievance Board provided in article three, chapter six-
12 c of this code;

13 (6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-
14 nine of this code;

15 (7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this
16 code;

17 (8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this
18 code;

19 (9) Division of Personnel provided in article six, chapter twenty-nine of this code;

20 (10) The West Virginia Ethics Commission provided in article two, chapter six-b of this
21 code;

22 (11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this
23 code; and

24 (12) Real Estate Division provided in article ten, chapter five-a of this code.

25 (b) The following agencies and boards, including all of the allied, advisory, affiliated or
26 related entities and funds associated with any agency or board, are incorporated in and
27 administered as a part of the Department of Commerce:

28 (1) Division of Labor provided in article one, chapter twenty-one of this code, which
29 includes:

30 (A) Occupational Safety and Health Review Commission provided in article three-a,
31 chapter twenty-one of this code; and

32 (B) Board of Manufactured Housing Construction and Safety provided in article nine,
33 chapter twenty-one of this code;

34 (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-
35 two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and
36 Training for purposes of administrative support and liaison with the office of the Governor:

37 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
38 Committee provided in article six, chapter twenty-two-a of this code;

39 (B) Board of Miner Training, Education and Certification provided in article seven, chapter
40 twenty-two-a of this code; and

41 (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this
42 code;

43 (3) The West Virginia Development Office provided in article two, chapter five-b of this
44 code;

45 (4) Division of Natural Resources and Natural Resources Commission provided in article
46 one, chapter twenty of this code;

47 (5) Division of Forestry provided in article one-a, chapter nineteen of this code;

48 (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this
49 code; and

50 (7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

51 (A) Division of Unemployment Compensation;

52 (B) Division of Employment Service;

53 (C) Division of Workforce Development; and

54 (D) Division of Research, Information and Analysis;

55 (8) Division of Energy provided in article two-f, chapter five-b of this code; and

56 (9) Division of Tourism and the Tourism Commission provided in article two, chapter five-
57 b of this code.

58 (c) The Economic Development Authority provided in article fifteen, chapter thirty-one of
59 this code is continued as an independent agency within the executive branch.

60 (d) The Water Development Authority and the Water Development Authority Board
61 provided in article one, chapter twenty-two-c of this code is continued as an independent agency
62 within the executive branch.

63 (e) The following agencies and boards, including all of the allied, advisory and affiliated
64 entities, are transferred to the Department of Environmental Protection for purposes of
65 administrative support and liaison with the office of the Governor:

66 (1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

67 (2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this
68 code;

69 (3) Environmental Quality Board, or its successor board, provided in article three, chapter
70 twenty-two-b of this code;

71 (4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

72 (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-
73 two-c of this code;

74 (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this
75 code; and

76 (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c
77 of this code.

78 (f) The following agencies and boards, including all of the allied, advisory, affiliated or
79 related entities and funds associated with any agency or board, are incorporated in and
80 administered as a part of the Department of Education and the Arts:

81 (1) Library Commission provided in article one, chapter ten of this code;

82 (2) Division of Culture and History provided in article one, chapter twenty-nine of this code;

83 and

84 (3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this
85 code.

86 (g) The Educational Broadcasting Authority provided in article five, chapter ten of this
87 code, is part of the Department of Education and the Arts for purposes of administrative support
88 and liaison with the office of the Governor.

89 (h) The following agencies and boards, including all of the allied, advisory, affiliated or
90 related entities and funds associated with any agency or board, are incorporated in and
91 administered as a part of the Department of Health and Human Resources:

92 (1) Human Rights Commission provided in article eleven, chapter five of this code;

93 (2) Division of Human Services provided in article two, chapter nine of this code;

94 (3) Bureau for Public Health provided in article one, chapter sixteen of this code;

95 (4) Office of Emergency Medical Services and Emergency Medical Service Advisory
96 Council provided in article four-c, chapter sixteen of this code;

97 (5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

98 (6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of
99 this code;

100 (7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

101 (8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

102 (i) The following agencies and boards, including all of the allied, advisory, affiliated or
103 related entities and funds associated with any agency or board, are incorporated in and
104 administered as a part of the Department of Military Affairs and Public Safety:

105 (1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

106 (2) Armory Board provided in article six, chapter fifteen of this code;

107 (3) Military Awards Board provided in article one-g, chapter fifteen of this code;

108 (4) West Virginia State Police provided in article two, chapter fifteen of this code;

109 (5) Division of Homeland Security and Emergency Management and Disaster Recovery
110 Board provided in article five, chapter fifteen of this code and Emergency Response Commission
111 provided in article five-a of said chapter;

112 (6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

113 (7) Division of Justice and Community Services provided in article nine-a, chapter fifteen
114 of this code;

115 (8) Division of Corrections provided in chapter twenty-five of this code;

116 (9) Fire Commission provided in article three, chapter twenty-nine of this code;

117 (10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter
118 thirty-one of this code;

119 (11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this
120 code.

121 (j) The following agencies and boards, including all of the allied, advisory, affiliated or
122 related entities and funds associated with any agency or board, are incorporated in and
123 administered as a part of the Department of Revenue:

124 (1) Tax Division provided in chapter eleven of this code;

125 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

126 (3) Lottery Commission and position of Lottery Director provided in article twenty-two,
127 chapter twenty-nine of this code;

128 (4) Insurance Commissioner provided in article two, chapter thirty-three of this code;

129 (5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen,
130 chapter eleven of this code and article two, chapter sixty of this code;

131 (6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-
132 a of this code;

133 (7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

134 (8) Division of Banking provided in article two, chapter thirty-one-a of this code;

135 (9) The State Budget Office provided in article two of this chapter code;

136 (10) The Municipal Bond Commission provided in article three, chapter thirteen of this
137 code;

138 (11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

139 (12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this
140 code.

141 (k) The following agencies and boards, including all of the allied, advisory, affiliated or
142 related entities and funds associated with any agency or board, are incorporated in and
143 administered as a part of the Department of Transportation:

144 (1) Division of Highways provided in article two-a, chapter seventeen of this code;

145 (2) Parkways, Economic Development and Tourism Authority provided in article sixteen-
146 a, chapter seventeen of this code;

147 (3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

148 (4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this
149 code; and

150 ~~(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;~~

151 ~~(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and~~

152 ~~(7) Public Port Authority provide in article eighteen, chapter seventeen of this code.~~

153 West Virginia Division of Multimodal Transportation provided in article sixteen-f, chapter
154 seventeen of this code.

155 (l) The Veterans' Council provided in article one, chapter nine-a of this code, including all
156 of the allied, advisory, affiliated or related entities and funds associated with it is, incorporated in
157 and administered as part of the Department of Veterans' Assistance.

158 (m) Except for powers, authority and duties that have been delegated to the secretaries
159 of the departments by the provisions of section two of this article, the position of administrator and
160 the powers, authority and duties of each administrator and agency are not affected by the
161 enactment of this chapter.

162 (n) Except for powers, authority and duties that have been delegated to the secretaries of
163 the departments by the provisions of section two of this article, the existence, powers, authority
164 and duties of boards and the membership, terms and qualifications of members of the boards are
165 not affected by the enactment of this chapter. All boards that are appellate bodies or are
166 independent decision makers shall not have their appellate or independent decision-making
167 status affected by the enactment of this chapter.

168 (o) Any department previously transferred to and incorporated in a department by prior
169 enactment of this section means a division of the appropriate department. Wherever reference is
170 made to any department transferred to and incorporated in a department created in section two,
171 article one of this chapter, the reference means a division of the appropriate department and any
172 reference to a division of a department so transferred and incorporated means a section of the
173 appropriate division of the department.

174 (p) When an agency, board or commission is transferred under a bureau or agency other
175 than a department headed by a secretary pursuant to this section, that transfer is solely for
176 purposes of administrative support and liaison with the office of the Governor, a department
177 secretary or a bureau. Nothing in this section extends the powers of department secretaries under

178 section two of this article to any person other than a department secretary and nothing limits or
179 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
180 code.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16F. WEST VIRGINIA DIVISION OF MULTIMODAL TRANSPORTATION.

§17-16F-1. Legislative findings and creation of division.

1 (a) The Legislature finds and declares that there is a need to streamline the execution of
2 implementation of the state's intermodal transportation goals and reduce costs related thereto by
3 consolidating existing intermodal authorities to a single division, known as the "West Virginia
4 Division of Multimodal Transportation," under the Secretary of Transportation pursuant to the
5 provisions of chapter five-f of this code. The Department of Transportation through the West
6 Virginia Division of Multimodal Transportation is hereby designated as the agency of this state
7 responsible for administering all federal and state programs related to public ports, railroads,
8 aeronautics, airports and air navigation facilities.

9 (b) On July 1, 2017, the Public Port Authority, the West Virginia State Rail Authority and
10 the state Aeronautics Commission are reestablished, reconstituted and continued as the West
11 Virginia Division of Multimodal Transportation, an agency of the state. The purpose of the division
12 is to administer all federal and state programs related to public ports, railroad transportation and
13 commerce, aeronautics, airports and air navigation facilities in the State of West Virginia. The
14 powers and duties heretofore imposed upon the Public Port Authority, the West Virginia State Rail
15 Authority and the state Aeronautics Commission are hereby transferred to and imposed upon the
16 West Virginia Division of Multimodal Transportation and its director in the manner prescribed by
17 this article.

18 (c) On July1, 2017, persons employed by the Public Port Authority, the West Virginia State
19 Rail Authority and the state Aeronautics Commission, the duties and functions of which have been

20 transferred to the West Virginia Division of Multimodal Transportation, are hereby assigned,
21 transferred and by affiliation are taken into the classified service. It is the intent of this article to
22 consolidate into the West Virginia Division of Multimodal Transportation those entities and
23 employees performing functions which will be facilitated by their consolidation. The Department
24 of Transportation shall provide appropriate office locations necessary to fulfill the functions of the
25 division.

26 (d) On the effective date of this article, all real property interests, vehicles, equipment
27 contracts or agreements, interests under any existing insurance policy and records belonging to
28 the Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics
29 Commission shall be transferred to the West Virginia Division of Multimodal Transportation. Any
30 state funds, special revenue funds and all accounts created for the benefit or use of the Public
31 Port Authority, the West Virginia State Rail Authority and the state Aeronautics Commission are
32 hereby transferred to the West Virginia division of State Multimodal Transportation.

§17-16F-2. Director of division; qualifications; powers and duties.

1 (a) The Secretary of the Department of Transportation shall appoint the director of the
2 division. The director shall be a person knowledgeable of multimodal transportation in the state,
3 including public ports, railroads and aeronautics.

4 (b) The director shall:

5 (1) Consistent with the provisions of this article, administer the operations of the division,
6 allocating the functions and activities of the division among sections as the director may establish;

7 (2) Supervise payrolls and audit payrolls, reports or transactions for conformity with the
8 provisions of this article;

9 (3) Plan, evaluate, administer and implement multimodal transportation programs and
10 policies in the state as set forth in this article;

11 (4) Assist the Governor and Secretary of the Department of Transportation in multimodal
12 transportation matters; and

13 (5) Make an annual report to the Governor and Legislature and all other special or periodic
14 reports as may be required.

§17-16BF-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context indicates another or different meaning or intent:

3 (a) "Aeronautics" means the art and science of flight, including, but not limited to,
4 transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft
5 power plants and accessories, including the repair, packing and maintenance of parachutes; and
6 the design, establishment, construction, extension, operation, improvement, repair or
7 maintenance of airports or other air navigation facilities.

8 (b) "Aircraft" means any contrivance now known, or hereafter invented, used or designed
9 for navigation of or flight in the air.

10 (c) "Airmen" means any individual who engages, as the person in command, or as pilot,
11 mechanic or member of the crew, in the navigation of the aircraft while under way and any
12 individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft
13 engines, propellers or appliances and any individual who serves in the capacity of aircraft
14 dispatcher or air-traffic control-tower operator. It does not include any individual employed outside
15 the United States, or any individual employed by a manufacturer of aircraft, aircraft engines,
16 propellers or appliances to perform duties as inspector or mechanic in connection therewith, or
17 any individual performing inspection or mechanical duties in connection with aircraft owned or
18 operated by him.

19 (d) "Air navigation" or "navigation" means the operation or navigation of aircraft in the air
20 space over this state, or upon any airport within this state.

21 (e) "Air navigation facility" means any facility other than one owned or controlled by the
22 federal government used in, available for use in, or designed for use in aid of air navigation,
23 including airports, and any structures, mechanisms, lights, beacons, markers, communications

24 system or other instrumentalities or devices used or useful as an aid or constituting an advantage
25 or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient
26 operation or maintenance of an airport, and any combination of any or all of such facilities.

27 (f) "Airport" means any area of land or water which is used, or intended for use, for the
28 landing and take off of aircraft and any appurtenant areas which are used, or intended for use, for
29 airport buildings or other airport facilities or rights-of-way, together with all airport buildings and
30 facilities located thereon.

31 (g) "Airport hazard" means any structure, object of natural growth or use of land which
32 obstructs the air space required for the flight of aircraft in landing or taking off at any airport or is
33 otherwise hazardous to such landing or taking off.

34 (h) "Bond" means a revenue bond or rate issued by the division to effectuate the intents
35 and purposes of this article.

36 (i) "Commuter rail" means a transit mode that is an electric or diesel propelled railway for
37 urban passenger train service consisting of local short distance travel operating between a central
38 city and adjacent suburbs. Service must be operated on a regular basis by or under contract with
39 a transit operator for the purpose of transporting passengers within urbanized areas or between
40 urbanized areas and outlying areas. The rail service, using either locomotive-hauled or self-
41 propelled railroad passenger cars, is generally characterized by multitrip tickets, specific station-
42 to-station fares or railroad employment practices and usually has only one or two stations in the
43 central business district. It does not include heavy rail rapid transit or light rail/streetcar transit
44 service. Intercity rail service is excluded except for that portion of service operated by or under
45 contract with a public transit agency for predominantly commuter services. Only the predominantly
46 commuter service portion of an intercity route is eligible for inclusion when determining commuter
47 rail route miles.

48 (j) "Heavy rail" means a transit mode that is an electric railway with the capacity for a heavy
49 volume of traffic. It is characterized by high speed and rapid acceleration passenger rail cars

50 operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other
51 vehicular and foot traffic are excluded, sophisticated signaling and high platform loading.

52 (k) "Income" means and includes all money accruing to the division from any source.

53 (l) "Intermodal transportation" means the successive transport of goods or passengers
54 using more than one mode of transportation, including air, rail, ship, or roadway.

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

60 (n) "Multimodal transportation" means, for the purposes of this article, the consideration
61 or connection of various modes of transportation, including air, rail, ship or roadway, with the goal
62 of unifying and developing transportation in the state.

63 (o) "Municipality" means any county, city, town, village or other political subdivision of this
64 state. "Municipal" means pertaining to a municipality as herein defined.

65 (p) "Operation fund" means the special West Virginia Public Port Operation Fund as
66 created by section twelve of this article.

67 (q) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of
68 aircraft in the airspace over this state or upon the ground within this state.

69 (r) "Owner" means and includes all individuals, copartnerships, associations, corporations,
70 companies, transportation companies, public service corporations, the United States or any
71 agency or instrumentality thereof, common carriers by rail and railroad companies having any title
72 or interest in any rail properties authorized to be acquired, leased or used by this article.

73 (s) "Person" means any individual, firm, copartnership, corporation, partnership, company,
74 foreign or domestic association, including railroads, joint stock association or body politic and
75 includes any trustee, receiver, assignee or other similar representative thereof.

76 (t) "Port" or "public port" means ports, airports, wayports, terminals, buildings, roadways,
77 rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such
78 structures, equipment, facilities or improvements as are necessary or incident thereto.

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

82 (v) "Public port development" or "public port project" means any activities which are
83 undertaken with respect to public ports.

84 (w) "Rail properties" means assets or rights owned, leased or otherwise controlled by a
85 railroad or other person which are used, or useful, in rail transportation service: *Provided, That*
86 rail properties does not include any properties owned, leased, or otherwise controlled by a railroad
87 not in reorganization, unless it consents to such properties' inclusion in the particular transaction.

88 (x) "Rail service" means both freight and passenger service.

89 (y) "Railroad" means a common carrier by railroad as defined in section 10102 of the
90 Interstate Transportation Act (49 U. S. C. 10102).

91 (z) "Railroad project" means the initiation, acquisition, construction, maintenance, repair,
92 equipping or operation of rail properties or rail service, or the provisions of loans or grants to or
93 with government agencies, or to persons for such purposes, by the division.

94 (aa) "Wayport" means an airport used primarily as a location at which passengers and
95 cargo may be transferred between connecting flights of air carriers engaged in air commerce; but
96 also allows passengers to initiate and terminate flights, and shipments of cargo to originate and
97 terminate at the airport or similar type facility.

98 (bb) "West Virginia Commuter Rail Access Fund" means the special West Virginia
99 commuter rail access fund as created by section twenty-seven of this article.

100 (cc) "West Virginia Railroad Maintenance Fund" means the West Virginia railroad
101 maintenance fund as created by section seventeen of this article.

102 (dd) The singular of any of the above defined terms shall include the plural and plural the
103 singular.

§17-16F-4. Powers and duties of division.

1 The division shall perform any and all acts necessary and proper to carry out the purposes
2 of this article and is granted the following powers and duties:

3 (a) To promote, supervise and support safe, adequate and efficient transportation
4 throughout the state;

5 (b) To initiate preservation of railroad, waterway, highway and airway facilities, to promote
6 economic development and tourism in this state;

7 (c) To meet and cooperate with similar division, authorities or bodies of any of the several
8 states contiguous with this state, whose purpose in their respective states is to establish an
9 interstate or intermodal transportation network;

10 (d) To take all steps appropriate and necessary to effect siting, development and operation
11 of public ports, railroads or airport facilities within the state;

12 (e) To employ managers, superintendents and other sufficiently trained and qualified
13 personnel and retain or contract with consulting engineers, financial consultants, accountants,
14 attorneys and other consultants and independent contractors as are necessary in its judgment to
15 carry out the provisions of this article and fix the compensation or fees thereof. All expenses
16 thereof are payable from the proceeds of revenue bonds or notes issued by the division, from
17 revenues and funds appropriated for this purpose by the Legislature or from grants from the
18 federal government which may be used for such purpose;

19 (f) To make and enter into all contracts and agreements with any federal, state, county,
20 municipal agency or private entity and execute all instruments necessary or incidental to the
21 performance of its duties and the execution of its powers including, but not limited to, the power
22 to make contracts and agreements in accordance with the provisions set forth in this article;

23 (g) To acquire, purchase, lease, construct, own, hold, operate, maintain, equip, use and

24 control, by eminent domain or other means, any land, property, rights, franchises, easements,
25 ports, and such terminals, buildings, roadways, rights-of-way, rails and such structures,
26 equipment, facilities, any and every kind or character of motive powers and conveyances or
27 appliances necessary or proper to carry goods, wares and merchandise over, along, upon or
28 through the railway, highway, waterway or airway or other conveyance of such transportation
29 system, excluding pipelines or improvements, as are necessary or incident to carry out the
30 provisions of this article, upon such terms and at such price as may be considered by it to be
31 reasonable and to take title in the name of the state;

32 (h) To acquire, by gift or purchase, lease, sell or otherwise dispose of real and personal
33 property in the exercise of its powers and the performance of its duties as set forth in this article;

34 (i) To act on behalf of the state and to represent the state in the planning, financing,
35 development, construction and operation of any port, railroad or aeronautics project or any facility
36 related to any such project, with the concurrence of the affected public agency. Other state
37 agencies and local governmental entities in this state shall cooperate to the fullest extent the
38 division deems appropriate to effectuate the duties of the division;

39 (j) To act as agent for the United States of America, or any agency, department,
40 corporation or instrumentality thereof, in any manner coming within the purposes or powers of the
41 division;

42 (k) The division may expend, out of any funds available for the purpose, such moneys as
43 are necessary for the study of any proposed railroad project and may use its engineering and
44 other forces, including consulting engineers for the purpose of effecting the study. All expenses
45 incurred in conducting the study and necessary engineering shall be paid from the funds
46 established in section seventeen of this article.

47 (l) To report annually to the Legislature on December 31 of each year on the status of
48 projects, operations, financial condition and other necessary information relating to the statewide
49 intermodal transportation system and public port activities in accordance with this article;

50 (m) To initiate meetings with political subdivisions of the state to assess specific
51 transportation needs and determine the needs of the state as a whole in terms of transportation,
52 as well as consider feasibility studies for the purpose of determining the best site locations for
53 transportation centers, terminals, railroads, airports, ports and harbors and foreign trade zones;

54 (n) To apply for and accept loans, grants or gifts of money, property or service from the
55 government of the United States or the State of West Virginia or any political subdivision thereof
56 or from any public or private sources available for any and all of the purposes authorized in this
57 article, or imposed thereon by any such federal agency, the State of West Virginia, or any political
58 subdivision thereof, or any public or private lender or donor, to give such evidences of
59 indebtedness as may be required, and to permit the state Board of Investments to invest, as
60 provided by this code, any funds received by the division pursuant to the provisions of this code;

61 (o) To make loans and grants, out of any appropriation made to the division by the
62 Legislature or out of any funds at its disposal, to governmental agencies and persons for carrying
63 out any multimodal transportation projects by any governmental agency or person in accordance
64 with rules adopted under this article;

65 (p) To issue revenue bonds or request other appropriate state agencies to issue and
66 administer revenue bonds to finance port, railroad or aeronautics projects; and

67 (q) To collect reasonable fees and charges in connection with making and servicing loans,
68 notes, bonds, obligations, commitments and other evidence of indebtedness, and in connection
69 with providing technical, consulting and project assistance services.

§17-16F-5. Rules of division.

1 (a) All rules promulgated by the Public Port Authority, the West Virginia State Rail Authority
2 or the state Aeronautics Commission in effect at the time of creation of the division shall continue
3 in full force and effect until revised by the division.

4 (b) The director of the division may make and promulgate rules for the government and
5 conduct of personnel, for the orderly and efficient administration and supervision of the multimodal

6 transportation division and for the effective and expeditious performance and discharge of the
7 duties and responsibilities placed upon the division by law. Where appropriate, rules of the
8 division shall be promulgated as legislative rules pursuant to the provisions of chapter twenty-
9 nine-a of this code.

§17-16F-6. Annual report.

1 (a) The division shall prepare and file a comprehensive report on December 31, 2017, and
2 annually thereafter, with the Governor and the Legislature setting forth the overall strategic plan
3 both short term and long term for accomplishing the purposes set forth in this article. Incidental
4 to the development of a comprehensive strategic plan for intermodal transportation, the division
5 shall analyze the intermodal shipment of products and passengers through the state, and shall
6 be authorized to collect and analyze such information, which is maintained in the ordinary course
7 of business by the person, firm or corporation providing such information, pertaining to the
8 transportation of products and passengers which has been moved by rail, water, highway or air
9 to and from points within and without this state:

10 (b) Any such information and data supplied to the division shall be for exclusive use of the
11 division. Such information is deemed confidential and is not subject to disclosure under the
12 Freedom of Information Act. The division shall not publicly disclose this information and data to
13 any person, firm, corporation or agent. It is unlawful for any employee of this state to divulge or
14 make known in any manner any information obtained pursuant to this subsection or disclose
15 information concerning the personal or business affairs of any individual or the business of any
16 single firm or corporation, or disclose any particulars set forth or disclosed in any report or other
17 information provided to the division.

18 (c) Any employee, or former employee, of this state who violates subsection (b) of this
19 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
20 \$1,000 or confined in the regional jail for not more than one year, or both, together with costs of
21 prosecution.

§17-16F-7. Financial interest in contracts prohibited; penalty.

1 No director or employee of the division may be financially interested, directly or indirectly,
2 in any contract of any person with the division, or in the sale of any property, real or personal, to
3 or from the division. This section does not apply to contracts or purchases of property, real or
4 personal, between the division and any governmental agency. If any director or employee of the
5 division has such financial interest in a contract or sale of property prohibited hereby, he or she
6 is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$1,000, or
7 confined in a regional jail not more than one year, or both fined and confined.

§17-16F-8. Public purpose of activities; property of public utilities and common carriers.

1 (a) The exercise of the powers granted to the division by this article and the acquisition of
2 any lands or interests therein pursuant to this article, the planning, acquisition, establishment,
3 construction, improvement, maintenance and operation of public port, railroad, airport or air
4 navigation facilities, whether by the state separately or jointly with any municipalities, and the
5 exercise of any other powers herein granted to the division are hereby declared to be public and
6 governmental functions, exercised for a public purpose, and matters of public necessity. All lands
7 and other property and privileges acquired and used by or on behalf of the state in the manner
8 and for the purposes enumerated in this article shall and are hereby declared to be acquired and
9 used for public and governmental purposes and as a matter of public necessity.

10 (b) The division may take or disturb property or facilities belonging to any public utility or
11 to a common carrier, which property or facilities are required for the proper and convenient
12 operation of such public utility or common carrier, if provision is made for the restoration,
13 relocation or duplication of such property or facilities elsewhere at the sole cost of the division.

14 (c) The division may make reasonable rules for the installation, construction, maintenance,
15 repair, renewal, relocation and removal of railroad or public utility facilities in, on, over or under
16 any public port, railroad, airport or air navigation facility project. Whenever the division determines
17 that it is necessary that any such facilities installed or constructed in, on, over or under property

18 of the division pursuant to such rules and be relocated, the railroad or public utility owning or
19 operating such facilities shall relocate or remove them in accordance with the order of the division.
20 The cost and expenses of such relocation or removal, including the cost of installing such facilities
21 in a new location, the cost of any lands or any rights or interests in lands and the cost of any other
22 rights acquired to accomplish such relocation or removal, may be paid by the division as a part of
23 the cost of such project. In case of any such relocation or removal of facilities, the railroad or
24 public utility owning or operating them, and its successors or assigns, may maintain and operate
25 such facilities, with the necessary appurtenances in the new location in, on, over or under the
26 property of the division for as long a period and upon the same terms as it had the right to maintain
27 and operate such facilities in their former location.

§17-16F-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.

1 (a) The division shall foster and encourage the participation of private enterprise in the
2 development of railroad, waterway, highway and airway facilities to the fullest extent it deems
3 practicable in the interest of limiting the necessity of construction and operation of such facilities
4 by the division. In this respect, the division may advertise and solicit for the construction,
5 operation, maintenance or a combination thereof of any facility included in the development plan
6 in accordance to plans, specifications, policies or guidance prepared by the division.

7 (b) It is further provided that in the event division considers it advisable and practicable, it
8 may include certain facilities in the development plan to be installed by private enterprise and
9 leased back to the division on an installment contract or option to purchase: *Provided*, That any
10 such lease back arrangement must be financially feasible and any bonds or loans utilized to enter
11 into such lease back arrangement shall be repayable in full from the expected rentals to be
12 generated by such facility.

§17-16F-10. Foreign trade zones; free trade zones; ports of entry and customs zones.

1 The division is empowered and directed to develop, maintain and operate foreign trade

2 zones, free trade zones, ports of entry and customs zones under such terms and conditions as
 3 are or may be prescribed by federal law, and to keep foreign trade zone status for, and to assist
 4 in the applications for foreign trade zone status of political subdivisions and eligible private
 5 corporations under federal law.

§17-16F-11. Additional powers and duties of division related to port projects

1 The division has the following additional powers and duties related to its execution of
 2 duties related to any port project or any facility related to any such project:

3 (a) The division is hereby designated and empowered to act on behalf of the state on
 4 submitting siting proposals for public ports and shall seek coordination, cooperation and feasibility
 5 studies from local and area port authority districts, committees and entities.

6 (b) The division is empowered to construct, reconstruct, improve, maintain, repair and
 7 operate infrastructure projects at the designated port sites;

8 (c) The division shall take affirmative steps to coordinate freely all aspects of the
 9 submission of a siting proposal for any port project, and to coordinate fully the development of
 10 any project or any facility related to any project with the federal government agency.

§17-16F-12. Special West Virginia Public Port Operations Fund; West Virginia Multimodal

Division Operations Fund.

1 The current revenue account, known as the special West Virginia Public Port Authority
 2 Operations Fund created by prior enactment of section seven, article sixteen-b of this chapter, is
 3 continued and shall be known as The West Virginia Multimodal Division Operations Fund which
 4 shall be administered by the director of the division. At the end of each fiscal year, any
 5 unexpended funds in this account shall be appropriated and available for expenditure for the
 6 subsequent fiscal year.

§17-16F-13. Designation of local port authority districts, powers and duties; plan for
development.

1 (a) Upon application by a local governmental entity, groups of local governmental entities,

2 or joint venture of local government entity or entities and private industry, the division may grant
3 authority for the creation of a local inland port authority district. In authorizing such entities, political
4 subdivisions of this state are authorized to join with other political subdivisions of this and sister
5 states to form a local port authority. In deciding on a local port district designation, consideration
6 shall be given to the following:

7 (1) Areas which have entered into a joint venture with private industry;

8 (2) Areas for which the political subdivision(s) seeking designation has made or will make
9 the greatest effort, both financially and otherwise, to encourage the establishment of facilities to
10 enhance the efficiency and cost of the movement of goods and services to and from markets in
11 West Virginia, or will make the greatest effort to encourage the construction and completion of
12 infrastructure projects, including all types of transportation systems.

13 (b) A local port authority district as provided in this article has the authority to establish a
14 local board of directors, and has powers only as provided for by the state board of directors. In no
15 event may the powers of a local port authority district supersede the powers of the state authority.

16 Any board of directors of a port authority district shall prepare or cause to be prepared a
17 plan for the future development, construction and improvement of its services and facilities.

§17-16F-14. Additional powers and duties of division related to railroad projects.

1 (a) The division shall facilitate railroad transportation and commerce within the state by
2 exercising those powers of the state necessary to qualify for rail services continuation subsidies
3 pursuant to the provisions of the federal Regional Rail Reorganization Act of 1973 and any
4 amendment thereto and any regulations promulgated thereunder;

5 (b) The division may carry out railroad projects or cause railroad projects to be carried out
6 pursuant to a lease, sublease or agreement with any person or governmental agency; may make
7 loans and grants to or with governmental agencies or to persons for railroad projects; and may
8 issue bonds of this state; payable solely from revenues, to pay the cost of such projects. A railroad
9 project shall not be undertaken unless it has been determined by the division to be consistent with

10 any applicable comprehensive plan for railroad projects approved by the division;

11 (c) The division may establish, fund, construct, reconstruct, acquire, repair, replace,
12 operate and maintain railroads and railroad projects;

13 (d) The division may make available the use or services of any railroad project to one or
14 more persons, one or more governmental agencies or any combination thereof;

15 (e) The division may engage in research and development with respect to railroads.

16 (f) The division may make and enter into contracts and agreements to acquire rolling stock
17 or equipment with a value of \$1 million or less exempt from the provisions of article three, chapter
18 five-a of this code. The division shall propose rules for legislative approval in accordance with
19 the provisions of article three, chapter twenty-nine-a of this code which set forth the methods for
20 determining value of rolling stock or equipment to be purchased.

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

27 (i) If the cost under the contract or agreement involves an expenditure of more than
28 \$1,000, but \$10,000 or less, the division shall award the contract to or enter into the agreement
29 with the lowest responsible bidder based upon at least three oral bids made pursuant to the
30 requirements of the contract or agreement.

31 (ii) If the cost under the contract or agreement, other than one for compensation for
32 personal services, involves an expenditure of more than \$10,000, but \$500,000 or less, the
33 division shall award the contract to or enter into the agreement with the lowest responsible bidder
34 based upon at least three bids, submitted to the division in writing on letterhead stationery, made
35 pursuant to the requirements of the contract or agreement.

36 (2) Notwithstanding any other provision of this code to the contrary, a contract or lease for
37 the operation of a railroad project constructed and owned by the division or an agreement for
38 cooperation in the acquisition or construction of a railroad project authorized by this article is not
39 subject to the provisions of article three, chapter five-a of this code or any legislative rule
40 promulgated pursuant thereto and the division may enter into the contract or lease or the
41 agreement pursuant to negotiation and upon such terms and conditions and for a period of time
42 as it finds to be reasonable and proper under the circumstances and in the best interests of proper
43 operation or of efficient acquisition or construction of the railroad project.

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

47 (g) The division may purchase fire and extended coverage and liability insurance for any
48 railroad project and for any offices of the division, insurance protecting the division and its officers
49 and employees against liability, if any, for damage to property or injury to or death of persons
50 arising from its operations and be a member of, and to participate in, the state workers'
51 compensation insurance;

52 (h) The division may charge, alter and collect rates, rentals and other charges for the use
53 or services of any railroad project as provided in this article;

54 (i) The division may purchase railroad tracks being abandoned by any common carrier;

55 (j) The division may acquire rail properties both within and not within the jurisdiction of the
56 Interstate Commerce Commission and rail properties within the purview of the federal Regional
57 Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation;

58 (k) The division may enter into agreements with owners of rail properties for the acquisition
59 of rail properties or use, or both, of rail properties upon the terms, conditions, rates or rentals that
60 can best effectuate the purposes of this article;

61 (l) The division may acquire rail properties and other property of a railroad in concert with

62 another state or states as is necessary to ensure continued rail service in this state;

63 (m) The division may provide in the state plan for the equitable distribution of federal rail
 64 service continuation subsidies among state, local and regional transportation authorities;

65 (n) The division may maintain adequate programs of investigation, research, promotion
 66 and development in connection with the purposes and to provide for public participation therein;

67 (o) The division may provide satisfactory assurances on behalf of the state that fiscal
 68 control and fund accounting procedures will be adopted by the state necessary to assure proper
 69 disbursement of and accounting for federal funds paid to the state as rail service continuation
 70 subsidies;

71 (p) The division may comply with the regulations of the Secretary of Transportation of the
 72 United States Department of Transportation affecting federal rail service continuation programs.

73 (q) The division may do all things otherwise necessary to maximize federal assistance to
 74 the state under Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for
 75 rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of
 76 1973.

§17-16F-15. Additional authority in regard to the Maryland area regional commuter.

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

5 (b) In addition to the authority provided in this section, the division shall negotiate
 6 agreements with the state of Maryland or the Maryland Transit Administration for the continued
 7 operation of the commuter rail operation between Maryland and the Washington D. C.
 8 metropolitan area and West Virginia. A commuter rail operation agreement shall provide for
 9 quantity and quality of commuter rail service, including certain minimum daily service at least
 10 equivalent to the level service on July 12, 2013, unless daily ridership diminishes significantly

11 from said date. The agreement may provide for the payment of track access fees attributed to
12 commuter rail operation within the boundaries of the state. Any payments of track access fees
13 pursuant to the agreement shall be paid from the fund created in section twenty-seven of this
14 article as provided by appropriation of the Legislature.

§17-16F-16. Rail operations; purchases.

1 (a) The division may sell, transfer or lease all, or any part, of the rail properties and other
2 property acquired under the provisions of this article to any responsible person, firm or corporation
3 for continued operation of a railroad or other public purpose: *Provided*, That approval for the
4 continued operation or other public purpose, is granted by the Interstate Commerce Commission
5 of the United States, whenever approval is required. The sale, transfer or lease shall be for a price
6 and subject to any further terms and conditions which the division feels are necessary and
7 appropriate to effectuate the purposes of this article.

8 (b) After acquiring any railroad lines within the state, the division shall assist any
9 responsible person, firm or corporation to secure, as promptly as possible, any order or certificate
10 required by the Interstate Commerce Commission for the performance of railroad service. The
11 division shall also give any assurances or guarantees which are necessary or desirable to carry
12 out the purposes of this article.

13 (c) The division may take whatever steps are necessary in order to determine the absolute
14 fee simple title ownership of all rail properties of any railroad within the state. The determination
15 may include the status of the rail properties with respect to easements, rights-of-way, leases,
16 reversionary rights, fee simple title ownership and any and all related title matters. The division
17 may retain attorneys, experts or other assistants, and issue any contracts as are necessary to
18 make the title determination.

19 (d) All rail properties within the state offered for sale by any railway corporation after the
20 date of enactment of this article shall be offered for sale to the state in the first instance.

21 (e) The division may cooperate with other states in connection with the purchase of any

22 rail properties within this state. The division may also acquire railroad rights in other states and
23 rail properties lying in other states in order to carry out the intentions and purposes of this article.
24 In carrying out the powers and duties conferred by this article, the division may enter into general
25 contractual arrangements, including joint purchasing and leasing of rail properties with other
26 states.

27 (f) In weighing the varied interests of the residents of this state, the division shall give
28 consideration to the individual interest of any county or municipality expressing a desire to acquire
29 a portion, or all, of the abandoned real estate located within its jurisdiction. The division may
30 exercise its powers under this article to acquire the abandoned property for subsequent
31 conveyance to the county or municipality.

32 (g) The division may utilize federal funds, grants, gifts or donations which are available
33 and any sums that are appropriated in carrying out the purposes of this article. The division may
34 also apply for discretionary or other funds available under the provisions of the federal Regional
35 Rail Reorganization Act of 1973 or other federal programs.

36 (h) The division may apply for an acquisition and modernization loan, or a guarantee of a
37 loan, pursuant to the federal Regional Rail Reorganization Act of 1973, or any other federal
38 programs, within the limit of funds appropriated for those purposes.

39 (i) The division is authorized to purchase any railroad rolling stock, equipment and
40 machinery necessary for the operation and maintenance of any rail properties purchased by it on
41 behalf of the state, with any funds made available for this purpose. The division may also acquire
42 and have available a pool of equipment and machinery which may be utilized by the operators of
43 the rail properties for the purpose of track maintenance and other related railroad activities upon
44 terms and conditions determined by the division. Notwithstanding the provisions of sections forty-
45 eight through fifty-three, article three, chapter five-a of this code to the contrary, the division may
46 enter into contracts or agreements for the lease or purchase and maintenance of any vehicles
47 required for its purposes with the Division of Highways. For those purposes, the Division of

48 Highways is authorized and empowered to enter into contracts or agreements for the lease or
49 purchase and maintenance of any vehicles with the division.

50 (j) The division may contract for the rebuilding or relocation of any rail properties acquired
51 pursuant to this article, within the provisions of the federal Regional Rail Reorganization Act of
52 1973, or any other applicable legislation. The division may also spend any sums appropriated, as
53 well as any other available funds, for the modernization, rebuilding and relocation of any rail
54 properties owned by the state or by a private carrier. The division may do any maintenance on
55 any rail properties owned by the state as is necessary in the public interest.

56 (k) The division may contract with any domestic or foreign person, firm, corporation,
57 agency or government to provide, maintain or improve rail transportation service on the rail
58 properties acquired by the state under this article.

59 (l) Whenever the division determines that any rail properties acquired by the state are no
60 longer needed for railroad purposes, it may, with the permission of the Governor, permanently or
61 temporarily transfer the rail properties to any other state department or agency or political
62 subdivision of the state, which shall utilize the properties for a public purpose. Whenever more
63 than one department or agency or political subdivision wishes to utilize the property, the division
64 shall resolve such a conflict and make a prompt determination of the reasonable and proper order
65 of priority, taking into consideration any applicable state plans, policies or objectives. If no state
66 department or agency or political subdivision wants the properties, the division may sell them,
67 with the proceeds deposited to the Rail Access Fund established by this article.

§17-16F-17. Railroad Maintenance Authority Fund; Rail Maintenance Fund.

1 The special revenue account, known as the Railroad Maintenance Authority Fund,
2 previously created by prior enactment of section eight, article eighteen, chapter twenty-nine of
3 this code shall be closed and all funds and obligations transferred to the Railroad Maintenance
4 Fund, which is hereby created. The Railroad Maintenance Fund shall be administered by the
5 director. Expenditures are authorized from collections, but are to be made only in accordance with

6 appropriation by the Legislature and in accordance with the provisions of article three, chapter
7 twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this
8 code. Any balance remaining in the special revenue account at the end of any state fiscal year
9 does not revert to the General Revenue Fund but remains in the special revenue account and
10 shall be used solely in a manner consistent with this article. All costs and expenses incurred
11 pursuant to this article, including administrative, shall be paid from those funds.

§17-16F-18. Division empowered to issue bonds, renewal notes and refunding bonds;
requirements and manner of such issuance.

1 (a) The division is hereby empowered to raise the cost of one or more railroad projects or
2 parts thereof by the issuance from time to time of railroad maintenance revenue bonds and notes
3 of the state in such principal amount as the division deems necessary, but the aggregate amount
4 of all issues of bonds and notes outstanding at one time for all projects authorized hereunder may
5 not exceed that amount capable of being serviced by revenues received from such projects.

6 (b) The division may, from time to time, issue renewal notes, issue bonds to pay the notes
7 and whenever it deems refunding expedient, refund any bonds by the issuance of railroad
8 maintenance revenue refunding bonds of the state, whether the bonds to be refunded have or
9 have not matured, and issue bonds partly to refund bonds then outstanding and partly for any
10 other authorized purpose. The refunding bonds shall be sold and the proceeds applied to the
11 purchase, redemption or payment of the bonds to be refunded. Except as may otherwise be
12 expressly provided by the division, every issue of its bonds or notes are obligations of the division
13 payable out of the revenues of the division, which are pledged for such payment, without
14 preference or priority of the first bonds issued, subject only to any agreements with the holders of
15 particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from
16 the time the pledge is made and the revenue so pledged and thereafter received by the division
17 is immediately subject to the lien of such pledge without any physical delivery thereof or further
18 act and the lien of any such pledge is valid and binding as against all parties having claims of any

19 kind in tort, contract or otherwise against the division irrespective of whether the parties have
20 notice thereof.

21 (c) All bonds and notes have and are hereby declared to have all the qualities of negotiable
22 instruments.

23 (d) The bonds and notes authorized by the division, shall bear such date and shall mature
24 at such time, in the case of any note or any renewals thereof not exceeding five years from the
25 date of issue of the original note, and in the case of any bond not exceeding fifty years from the
26 date of issue, as the authorization may provide. The bonds and notes shall bear interest at a rate,
27 be in denominations, be in the form, either coupon or registered, carry registration privileges, be
28 payable in a medium of payment, at place and be subject to any terms of redemption that the
29 division may authorize. The bonds and notes of the division may be sold by the division, at public
30 or private sale, at or not less than the price the division determines. The bonds and notes shall
31 be executed by the director of the division, who may use a facsimile signature. The official seal of
32 the division or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually
33 or by facsimile signature, by the director of the division, and any coupons attached thereto shall
34 bear the signature or facsimile signature of the director of the division. In case any director whose
35 signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to
36 be director before delivery of the bonds or notes, the signature or facsimile is nevertheless
37 sufficient for all purposes the same as if he or she had remained in office until delivery and in case
38 the seal of the division has been changed after a facsimile has been imprinted on such bonds or
39 notes the facsimile seal will continue to be sufficient for all purposes.

40 (e) Any authorization of any bonds or notes or any issue thereof may contain provisions,
41 subject to agreements with bondholders or noteholders as may then exist, which provisions shall
42 be a part of the contract with the holders thereof, as to pledging all or any part of the revenues of
43 the division to secure the payment of the bonds or notes or of any issue thereof; the use and
44 disposition of revenues of the division; a covenant to fix, alter and collect rates, rentals and other

45 charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance
46 and repairs, pay principal of and interest on bonds or notes secured by the pledge of such
47 revenues and provide any reserves that may be required by the applicable authorization or trust
48 agreement; the setting aside of reserve funds, sinking funds or replacement and improvement
49 funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds
50 or notes to and among the funds referred to or provided for in the authorization of issuance of the
51 bonds or notes; the use, lease, sale or other disposition of any railroad project or any other assets
52 of the division; limitations on the purpose to which the proceeds of sale of bonds or notes may be
53 applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue
54 thereof; notes issued in anticipation of the issuance of bonds, the agreement of the division to do
55 all things necessary for the authorization, issuance and sale of such bonds in such amounts that
56 may be necessary for the timely retirement of the notes; limitations on the issuance of additional
57 bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the
58 refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract
59 with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes
60 the holders of which must consent thereto and the manner in which such consent may be given;
61 limitations on the amount of moneys to be expended by the division for operating, administrative
62 or other expenses of the division; securing any bonds or notes by a trust agreement; and any
63 other matters, of like or different character, which in any way affect the security or protection of
64 the bonds or notes.

65 (f) No person executing the bonds or notes is liable personally on the bonds or notes or
66 be subject to any personal liability or accountability by reason of the issuance thereof.

§17-16F-19. Trustee for bondholders; contents of trust agreement.

1 (a) In the discretion of the division, any railroad maintenance bonds or notes or railroad
2 maintenance refunding bonds issued by the division under this article may be secured by a trust
3 agreement between the division and a corporate trustee, which trustee may be any trust company

4 or banking institution having the powers of a trust company within or without this state.

5 (b) Any such trust agreement may pledge or assign revenues of the division to be received,
6 but shall not convey or mortgage any railroad project or any part thereof. Any such trust
7 agreement or any authorization providing for the issuance of such bonds or notes may contain
8 such provisions for protecting and enforcing the rights and remedies of the bondholders or
9 noteholders as are reasonable and proper and not in violation of law, including covenants setting
10 forth the duties of the division in relation to the acquisition of property, the construction,
11 improvement, maintenance, repair, operation and insurance of the railroad project in connection
12 with which such bonds or notes are authorized, the rentals or other charges to be imposed for the
13 use or services of any railroad project, the custody, safeguarding, and application of all moneys
14 and provisions for the employment of consulting engineers in connection with the construction or
15 operation of such railroad project. Any banking institution or trust company incorporated under
16 the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues
17 shall furnish such indemnifying bonds or pledge such securities as are required by the division.
18 Any such trust agreement may set forth the rights and remedies of the bondholders and
19 noteholders and of the trustee and may restrict individual rights of action by bondholders and
20 noteholders as customarily provided in trust agreements or trust indentures securing similar
21 bonds. Such trust agreement may contain such other provisions as the division deems reasonable
22 and proper for the security of the bondholders or noteholders. All expenses incurred in carrying
23 out the provisions of any trust agreement may be treated as a part of the cost of the operation of
24 the railroad project. Any trust agreement or authorization of the issuance of railroad maintenance
25 revenue bonds may provide the method whereby the general administrative overhead expenses
26 of the division shall be allocated among the several projects acquired or constructed by it as a
27 factor of the operating expenses of each such project.

§17-16F-20. Legal remedies of bondholders and trustees.

1 Any holder of railroad maintenance revenue bonds issued under the authority of this article

2 or any of the coupons appertaining thereto and the trustee under any trust agreement, except to
3 the extent the rights given by this article may be restricted by the applicable authorization or trust
4 agreement, may by civil action, mandamus or other proceedings, protect and enforce any rights
5 granted under the laws of this state or granted under this article, by the trust agreement or by the
6 authorization of issuance of bonds, and may enforce and compel the performance of all duties
7 required by this article, or by the trust agreement or authorization, to be performed by the division
8 or any employee thereof, including the fixing, charging and collecting of sufficient rentals or other
9 charges.

**§17-16F-21. Bonds and notes not debt of state, county, municipality or of any political
subdivision; expenses incurred pursuant to article.**

1 (a) Railroad maintenance revenue bonds and notes and railroad maintenance revenue
2 refunding bonds issued under authority of this article and any coupons in connection therewith do
3 not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any
4 county, municipality or any other political subdivision of this state, and the holders or owners
5 thereof have no right to have taxes levied by the Legislature or taxing authority of any county,
6 municipality or any other political subdivision of this state for the payment of the principal thereof
7 or interest thereon, but such bonds and notes are payable solely from the revenues and funds
8 pledged for their payment as authorized by this article unless the notes are issued in anticipation
9 of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of
10 this article, which bonds or refunding bonds are payable solely from revenues and funds pledged
11 for their payment as authorized by this article. All bonds and notes shall contain on the face thereof
12 a statement to the effect that the bonds or notes, as to both principal and interest, are not debts
13 of the state or any county, municipality or political subdivision thereof, but are payable solely from
14 revenues and funds pledged for their payment.

15 (b) All expenses incurred in carrying out the provisions of this article are payable solely
16 from funds provided under authority of this article. This article does not authorize the division to

17 incur indebtedness or liability on behalf of or payable by the state or any county, municipality or
18 political subdivision thereof.

§17-16F-22. Use of funds by division; restrictions.

1 All moneys, properties and assets acquired by the division, whether as proceeds from the
2 sale of railroad maintenance revenue bonds or as revenues or other source which are attributable
3 to a railroad project or purpose, shall be held by it in trust for the purposes of carrying out its
4 powers and duties, and shall be used and reused in accordance with the purposes and provisions
5 of this article. Such moneys may at no time be commingled with other public funds. Such moneys,
6 except as otherwise provided in any authorization of the issuance of railroad maintenance
7 revenue bonds or in any trust agreement securing the same, or except when invested pursuant
8 to section twenty-three of this article, shall be kept in appropriate depositories and secured as
9 provided and required by law. The authorization of the issuance of bonds of any issue or the trust
10 agreement securing bonds shall provide that any person to whom, or any banking institution or
11 trust company to which, moneys are paid shall act as trustee of such moneys and hold and apply
12 them for the purposes hereof, subject to the conditions this article and the authorization or trust
13 agreement provide.

§17-16F-23. Investment of funds by division.

1 Funds of the division in excess of current needs, except as otherwise provided in any
2 authorization for the issuance of its railroad maintenance revenue bonds or in any trust agreement
3 securing the same, may be invested by the West Virginia State Board of Investments as
4 authorized to invest under article six, chapter twelve of this code. Income from all such
5 investments of moneys in any fund shall be credited to such funds as the division determines,
6 subject to the provisions of any authorization or trust agreement and such investments may be
7 sold at such times as the division determines.

§17-16F-24. Rentals and other revenues from railroad projects; contracts and leases of
division; cooperation of other governmental agencies; bonds of such agencies.

1 (a) The division may charge, alter and collect rates, rentals or other charges for the use
2 or services of any project, and contract in the manner provided by this section with one or more
3 persons, one or more governmental agencies, or any combination thereof, desiring the use or
4 services thereof, and fix the terms, conditions, rates, rentals or other charges for use or services.
5 The rentals or other charges are not be subject to supervision, or regulation by any other division,
6 authority, department, commission, board, bureau or agency of the state, and the contract may
7 provide for acquisition by a person or governmental agency of all or any part of a railroad project
8 for consideration payable over the period of the contract or otherwise as the division in its sole
9 discretion determines to be appropriate, but subject to the provisions of any authorized issue of
10 railroad maintenance revenue bonds or notes or railroad maintenance revenue refunding bonds
11 of the division or any trust agreement securing the same. Any governmental agency which has
12 power to construct, operate and maintain railroad projects may enter into a contract or lease with
13 the division whereby the use or services of any railroad project of the division will be made
14 available to such governmental agency and pay for such use or services such rentals or other
15 charges as may be agreed to by such governmental agency and the division.

16 (b) Any governmental agency or agencies or combination thereof may cooperate with the
17 division in the acquisition or construction of a railroad project and shall enter into such agreements
18 with the division as are necessary, with a view to effective cooperative action and safeguarding
19 of the respective interests of the parties thereto, which agreements shall provide for such
20 contributions by the parties thereto in such proportion as may be agreed upon and such other
21 terms as may be mutually satisfactory to the parties, including without limitation the authorization
22 of the construction of the project by one of the parties acting as agent for all of the parties and the
23 ownership and control of the project by the division to the extent necessary or appropriate for
24 purposes of the issuance of railroad maintenance revenue bonds by the division. Any
25 governmental agency may provide such contribution as is required under such agreements by
26 the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or

27 notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection
28 thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the
29 issuance of bonds or notes in anticipation of the collection thereof, and by the payment of such
30 appropriated money or the proceeds of such bonds or notes to the division pursuant to such
31 agreements.

32 (c) Any governmental agency, pursuant to a favorable vote of the electors in an election
33 held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide
34 real estate and interests in real estate for a railroad project, whether or not the governmental
35 agency at the time of such election had the authority to pay the proceeds from such bonds or
36 notes issued in anticipation thereof to the division as provided in this section, may issue such
37 bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the division
38 in accordance with an agreement between such governmental agency and the division: *Provided,*
39 That the legislative authority of the governmental agency finds and determines that the railroad
40 project to be acquired or constructed by the division in cooperation with such governmental
41 agency will serve the same public purpose and meet substantially the same public need as the
42 facility otherwise proposed to be acquired or constructed by the governmental agency with the
43 proceeds of such bonds or notes.

§17-16F-25. Maintenance, operation and repair of projects.

1 Each railroad project, when constructed and placed in operation, shall be maintained and
2 kept in good condition and repair by the division or the division shall cause the project to be
3 maintained and kept in good condition and repair. Each project shall be operated by division
4 employees pursuant to a contract or lease with a governmental agency or person. All public or
5 private property damaged or destroyed in carrying out the provisions of this article and in the
6 exercise of the powers granted hereunder with regard to any project shall be restored or repaired
7 and placed in its original condition, as nearly as practicable, or adequate compensation made
8 therefor out of funds provided in accordance with the provisions of this article.

§17-16F-26. Railroad maintenance bonds lawful investments.

1 The provisions of article six, chapter twelve of this code to the contrary notwithstanding,
2 all railroad maintenance revenue bonds issued pursuant to this article are lawful investments for
3 the West Virginia State Board of Investments and are also lawful investments for banking
4 institutions, societies for savings, building and loan associations, savings and loan associations,
5 deposit guarantee associations, trust companies, insurance companies, including domestic for
6 life and domestic not for life insurance companies.

§17-16F-27. West Virginia Commuter Rail Access Fund.

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

§17-16F-28. State rail plan required.

1 (a) The division shall establish, administer and coordinate a state plan for rail
2 transportation and local rail services. In establishing and updating the plan, the division may
3 request input from freight and rail passenger associations.

4 (b) The plan shall, at a minimum, comply with the provisions of the laws of the United
5 States and any regulations made thereunder relating to capturing and administering federal
6 moneys for rail transportation, local rail services, and intermodal facilities as deemed necessary
7 by the division.

**§17-16F-29. Additional powers and duties of division related to aeronautics, airport and
air navigation projects.**

1 The division shall encourage, foster and assist in the development of aeronautics in this
2 state and encourage the establishment of airports and air navigation facilities. It shall cooperate

3 with and assist the federal government, the municipalities of this state and other persons in the
4 development of aeronautics and shall act to coordinate the aeronautical activities of these bodies
5 and persons. Municipalities are authorized to cooperate with the division in the development of
6 aeronautics and aeronautics facilities in this state. The division is hereby given the power and
7 authority to make such rules as it may consider necessary and advisable for the public safety,
8 governing the designing, laying out, locating, building, equipping and operating of all airports and
9 the conduct of all other phases of aeronautics.

§17-16F-30. Expenses of civil air patrol; division may expend funds pursuant to rules.

1 (a) The division, in addition to all other powers and functions authorized by law, may
2 expend state funds: (1) For educational purposes of the civil air patrol, including, but not limited
3 to, the purchase of civil air patrol aviation education training aid books, materials and equipment;
4 (2) to defray maintenance, repair and replacement costs of civil air patrol aircraft; (3) to purchase
5 and obtain supplies and equipment for the civil air patrol; and (4) to maintain the communications
6 network for the civil air patrol.

7 (b) No expenditure of state funds for these purposes may be made unless the purchase
8 order is first approved by the division in accordance with the division's rules relating to the
9 expenditure. Only funds specifically appropriated by the Legislature for these purposes may be
10 expended by the division and funds appropriated shall be expended for no other purposes.

§17-16F-31. State financial assistance for county, municipal and regional airports.

1 The division, out of any appropriation made to it by the Legislature or out of any funds at
2 its disposal, may make funds available by grant or otherwise to counties, municipalities and
3 regional airport authorities, created under the provisions of chapter eight of this code, for the
4 planning, acquisition, construction, improvement, maintenance, or operation of airports owned or
5 operated or to be owned or operated by such counties, municipalities or regional airport
6 authorities. Acceptance of any moneys so made available to any such county, municipality or
7 regional airport authority, shall constitute consent by the recipient that a reasonable use of such

8 airport may be made, upon request of the division, by the United States government, the state, or
9 any of their respective agencies, including the National Guard of West Virginia for state purposes
10 related or incidental to aeronautics. Such financial assistance may be furnished in connection with
11 federal or other financial aid for the same purpose.

§17-16F-32. Federal aid.

1 (a) The division is authorized to accept, receive and receipt for federal moneys and other
2 moneys, either public or private, for and in behalf of this state, or any municipality thereof, for the
3 planning, acquisition, construction, improvement, maintenance and operation of airports and
4 other air navigation facilities, whether such work is to be done by the state or by a municipality,
5 or jointly, aided by grants of aid from the United States, upon the terms and conditions as are or
6 may be prescribed by the laws of the United States and any regulations made thereunder, and it
7 is hereby designated as the agency of the state, and is authorized to and may act as agent of any
8 municipality of this state upon the request of the municipality, in accepting, receiving and
9 receipting moneys in its behalf for airports or other air navigation facility purposes, and in
10 contracting for the planning, acquisition, construction, improvement, maintenance or operation of
11 airports or other air navigation facilities, financed, either in whole or in part, by federal moneys;
12 and any municipality is authorized to and may enter into an agreement with the division
13 prescribing the terms and conditions of such agency in accordance with federal laws and
14 regulations and with this article. Moneys paid over by the United States government shall be
15 retained by the state or paid over to the municipalities under the terms and conditions that may
16 be imposed by the United States government in making the grants.

17 (b) All contracts for the planning, acquisition, construction, improvement, maintenance and
18 operation of airports, or other air navigation facilities made by the division, either as the agent of
19 the state or as the agent of any municipality therein, shall be made pursuant to the laws of this
20 state governing the making of like contracts: *Provided*, That where the planning, acquisition,
21 construction, improvement, maintenance and operation of any airport or other air navigation

22 facility is financed wholly or partially with federal moneys, the division, as agent of the state or of
23 any municipality thereof, may let contracts in the manner prescribed by the federal authorities,
24 acting under the laws of the United States, and any regulations made thereunder, notwithstanding
25 any other state law to the contrary.

26 (c) All moneys accepted for disbursement by the division pursuant to this section shall be
27 deposited in the State Treasury, and, unless otherwise prescribed by the division from which the
28 money is received, kept in separate funds, designated according to the purposes for which the
29 moneys were made available, and held by the state in trust for such purposes. All such moneys
30 are hereby appropriated for the purposes for which they were made available and shall be
31 expended in accordance with federal laws and regulations and with the provisions of this article.
32 The division is authorized, whether acting for this state or as the agent of any municipality therein,
33 when requested by the United States government or any agency or department thereof, or when
34 requested by the state or municipality for which the money has been made available, to disburse
35 the moneys for the designated purposes, but this shall not preclude any other authorized method
36 of disbursement.

37 (d) The state or any municipality therein is authorized to cooperate with the government
38 of the United States, and any agency or department thereof, in the acquisition, construction,
39 improvement, maintenance and operation of airports and other air navigation facilities in this state
40 and is authorized to accept federal aid, either by way of outright grant or by matching the same,
41 in whole or in part, as may be required, and to comply with the provisions of the laws of the United
42 States and any regulations made thereunder for the expenditure of federal moneys upon such
43 airports and other navigation facilities.

NOTE: The purpose of this bill is to create the Division of Multimodal Transportation under the Secretary of Transportation and to combine the employees, equipment, assets, liabilities and duties previously executed by the Public Port Authority, the state Aeronautics Commission and the West Virginia State Rail Authority.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.