

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 619

BY SENATOR MAYNARD

[Introduced March 15, 2017; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §17-16B-6 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §29-18-7 of said code, all relating to the acquisition of idled railways
 3 properties by the West Virginia Railroad Maintenance Authority to be used by local
 4 recreational authorities.

Be it enacted by the Legislature of West Virginia:

1 That §17-16B-6 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §29-18-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-6. Powers and duties of authority.

1 (a) The authority is granted the following powers and duties:

2 (1) The authority shall initiate meetings with political subdivisions of the state to assess
 3 specific transportation needs and shall determine the needs of the state as a whole in terms of
 4 transportation, as well as consider feasibility studies for the purpose of determining the best site
 5 locations for transportation centers, terminals, ports and harbors and foreign trade zones.

6 The authority shall give first consideration to selected high priority opportunities as set
 7 forth in the document entitled "Development of an Inland Port Authority", as submitted to the
 8 Governor's office of community and industrial development on March 2, 1989.

9 (2) On or before December 1, 1991, the authority shall prepare and file a comprehensive
 10 report with the Governor and the Legislature setting forth the overall strategic plan both short term
 11 and long term for accomplishing the purposes set forth in this article.

12 (3) The public port authority shall coordinate with the West Virginia Parkways, Economic
 13 Development and Tourism Authority or other parkways authority, established pursuant to article
 14 sixteen-a, chapter seventeen of this code, in the exercise of its powers and duties hereunder and
 15 development of appropriate intermodal transportation within the state.

16 (b) The authority has the following additional powers and duties:

17 (1) The powers of a body corporate, including the power to sue and be sued, to make
18 contracts, and to adopt and use a common seal and to alter the same as may be deemed
19 expedient;

20 (2) Acquire, purchase, install, lease, construct, own, hold, operate, maintain, equip, use
21 and control ports, as defined herein, and such terminals, buildings, roadways, rights-of-way, rails
22 and such structures, equipment, facilities or improvements as are necessary or incident to carry
23 out the provisions of this article, and in connection therewith shall have the further right to lease,
24 install, construct, acquire, own, maintain, control and use any and every kind or character of
25 motive powers and conveyances or appliances necessary or proper to carry goods, wares and
26 merchandise over, along, upon or through the railway, highway, waterway or airway or other
27 conveyance of such transportation system, excluding pipelines;

28 (3) To apply for and accept loans, grants or gifts of money, property or service from any
29 federal agency or the State of West Virginia or any political subdivision thereof or from any public
30 or private sources available for any and all of the purposes authorized in this article, or imposed
31 thereon by any such federal agency, the State of West Virginia, or any political subdivision thereof,
32 or any public or private lender or donor, and to give such evidences of indebtedness as may be
33 required;

34 (4) To act as agent for the United States of America, or any agency, department,
35 corporation or instrumentality thereof, in any manner coming within the purposes or powers of the
36 board;

37 (5) To initiate preservation of railroad, waterway, highway and airway facilities, to promote
38 economic development and tourism of a specific nature in this state;

39 (6) To meet and cooperate with similar authorities or bodies of any of the several states
40 contiguous with this state, whose purpose in their respective states is to establish an interstate or
41 intermodal transportation network;

42 (7) To enter into agreements, contracts or other transactions with any federal, state,
43 county, municipal agency or private entity;

44 (8) To report annually to the Legislature by December 1, of each year on the status of
45 projects, operations, financial condition and other necessary information relating to the statewide
46 tourist intermodal transportation system and public port authority activities;

47 (9) To enter into agreements or contracts with the West Virginia railroad maintenance
48 authority for the preservation, operation and use of railroad lines;

49 (10) The authority is hereby designated and empowered to act on behalf of the state on
50 submitting siting proposals for public ports;

51 (11) The authority is empowered to take all steps appropriate and necessary to effect
52 siting, development and operation of public ports within the state;

53 (12) To construct, reconstruct, improve, maintain, repair and operate infrastructure
54 projects at the designated port sites as determined by the public port authority;

55 (13) To receive and accept from any federal agency grants for or in aid of the construction
56 of any project, and to receive and accept aid or contributions from any sources of either money,
57 property, labor or other things of value, to be held, used and applied only for the purposes for
58 which such grants and contributions may be made;

59 (14) The authority is authorized and empowered to acquire by purchase, whenever it shall
60 deem such purchase expedient, any land, property, rights, rights-of-way, franchises, easements
61 and other interests in lands as it may deem necessary or convenient for the construction or
62 operation of any project upon such terms and at such price as may be considered by it to be
63 reasonable and to take title in the name of the state; and for the purpose of acquiring any lands,
64 rights or easements deemed necessary or incidental for the purposes of the authority, the
65 authority has the right of eminent domain to the same extent and to be exercised in the same
66 manner as now or hereafter provided by law for such right of eminent domain by cities,
67 incorporated towns, and other municipal corporations;

68 (15) The authority is hereby designated and empowered to act on behalf of the state and
69 to represent the state in the planning, financing, development, construction and operation of any
70 port project or any facility related to any such project, with the concurrence of the affected public
71 agency. Other state agencies and local governmental entities in this state, including the West
72 Virginia Housing Development Fund, shall cooperate to the fullest extent the authority deems
73 appropriate to effectuate the duties of the authority. If requested to do so by the authority, the
74 West Virginia Housing Development Fund shall, subject to the provisions of article eighteen,
75 chapter thirty-one of the Code of West Virginia, 1931, as amended, including, without limitation,
76 the approval of its board of directors, issue or use its best efforts to issue, either in its own name
77 or on behalf of the authority, such bonds and notes as may be required to finance the planning,
78 development, construction and operation of any project or any facility related to any project. In
79 the event such bonds or notes are issued by the West Virginia Housing Development Fund, the
80 authority shall enter into all such agreements as the West Virginia Housing Development Fund
81 may determine are necessary to pledge revenues from projects or other funds of the authority
82 sufficient to pay such bonds and notes and to pay all related fees, costs and expenses;

83 (16) The authority shall initiate meetings with local and area port authority districts,
84 committees and entities in the development of possible port site designations. The authority shall
85 seek coordination, cooperation and feasibility studies from local and area port authority districts,
86 committees and entities;

87 (17) The authority shall take affirmative steps to coordinate freely all aspects of the
88 submission of a siting proposal for any port project, and to coordinate fully the development of
89 any project or any facility related to any project with the federal government agency;

90 (18) To do any and all things necessary to carry out and accomplish the purposes of this
91 article, including issuing revenue bonds or requesting other appropriate state agencies to issue
92 and administer public port revenue bonds to finance projects;

93 (19) To assist and encourage the West Virginia Railroad Maintenance Authority to

94 purchase railroad tracks being abandoned by any common carrier, and to financially assist the
95 Railroad Maintenance Authority in making such purchase or, to assist the West Virginia Railroad
96 Maintenance Authority in acquiring the use of idled railroad tracks and properties, by lease or
97 other means, to be used by local authorities for recreational activities;

98 (20) To collect reasonable fees and charges in connection with making and servicing
99 loans, notes, bonds, obligations, commitments and other evidence of indebtedness, and in
100 connection with providing technical, consultive and project assistance services; and

101 (21) To do any and all things necessary to carry out and accomplish the purposes of this
102 article.

103 (c) Incidental to the development of a comprehensive strategic plan for intermodal
104 transportation, the executive director and staff of the authority shall analyze the shipment of
105 products through the ports of the state for the purpose of expediting such shipments, and shall be
106 authorized to collect and analyze such information, which is maintained in the ordinary course of
107 business by the person, firm or corporation providing such information, pertaining to the
108 transportation of products which has been moved by rail, water, highway or air to and from points
109 within and without this state:

110 (1) Any such information and data supplied to the executive director of the authority shall
111 be for exclusive use of the executive director and the staff of the authority. Such information is
112 deemed confidential and is not subject to disclosure under the freedom of information act. Neither
113 the executive director nor any staff member of the authority shall publicly disclose this information
114 and data to any member of the board of the authority, nor to any person, firm, corporation or
115 agent. It shall be unlawful for any officer or employee of this state to divulge or make known in
116 any manner any information obtained pursuant to this subsection or disclose information
117 concerning the personal or business affairs of any individual or the business of any single firm or
118 corporation, or disclose any particulars set forth or disclosed in any report or other information
119 provided to the authority.

120 (2) Any officer or employee (or former officer or employee) of this state who violates this
121 subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more
122 than \$1,000 or imprisoned for not more than one year, or both, together with costs of prosecution.

123 (3) In carrying out the functions theretofore described, the authority shall be deemed to be
124 performing an essential governmental function as an instrumentality of the State of West Virginia.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-7. Operations; purchases.

1 (a) The authority 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 authority feels are necessary and
7 appropriate to effectuate the purposes of this article.

8 (b) After acquiring any railroad lines within the state, the authority 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 authority shall also give any assurances or guarantees which are necessary or desirable to carry
12 out the purposes of this article.

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

18 necessary to 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 authority may cooperate with other states in connection with the purchase of any
22 rail properties within this state. The authority 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 authority 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 authority 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 authority 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 authority 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 authority 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 authority may apply for an acquisition and modernization loan, or a guarantee of
37 a loan, pursuant to Section 403 of the federal Regional Rail Reorganization Act of 1973, or any
38 other federal programs, within the limit of funds appropriated for those purposes.

39 (i) The authority 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 authority 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 authority. Notwithstanding the provisions of sections forty-
45 eight through fifty-three, article three, chapter five-a of this code to the contrary, the authority 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 authority.

50 (j) The authority 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 authority may also spend any sums appropriated,
53 as 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 authority may do any maintenance on
55 any rail properties owned by the state as is necessary in the public interest.

56 (k) The authority 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 authority 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 authority
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 authority may sell them,
67 with the proceeds deposited to the special railroad fund established by this article. A public
68 hearing is required prior to the transfer or sale of any rail properties by the authority.

69 (m) The authority may contract with any domestic or foreign person, firm, corporation,

70 agency or government to lease idled railroad tracks and properties to be used by local authorities
71 for recreational activities. Any lease so acquired shall contain provisions that: (1) The owner of
72 the railway property is to be held harmless from all liability resulting from the use of the property
73 by the local authority; (2) if the owner of the railway property requires the property for future use,
74 there shall be a mutually agreed upon time period for the railroad property to be returned by the
75 recreation authority to the owner: *Provided*, That this period may not be less than one year; and
76 (3) if the railroad property contains idled, unusable railroad tracks and the owner desires to repair
77 the tracks for future use by the owner, the period of the lease may not be less than ten years.

NOTE: The purpose of this bill is to permit the acquisition of idled railways properties by the West Virginia Railroad Maintenance Authority, by lease, to be used by local recreational authorities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.