WEST virginia legislature

2024 regular session

Enrolled

Senate Bill 874

By Senators Jeffries, Martin, Hamilton, Hunt, Oliverio, Roberts, Swope, Chapman, and Plymale

[Passed March 8, 2024; in effect 90 days from passage]

AN ACT to amend and reenact §17-16F-1, §17-16F-3, §17-16F-4, and §17-16F-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §17-16F-10a, §17-16F-10b, and §17-16F-10c, all relating to the West Virginia Division of Multimodal Transportation Facilities; providing for additional legislative findings; modifying definitions; authorizing division to create local port authority districts; authorizing division to propose legislative rules for application process for creation of local port authority districts; providing that political subdivisions and certain joint ventures may create local port authority districts in accordance with a certain procedure; establishing an application and approval process for creation of local port authority districts; directing division to make certain considerations relating to creation of local port authority districts; providing for creation of board of directors for local port authority districts and membership composition; authorizing board to exercise certain powers; limiting eminent domain powers to the Division itself and prohibiting its imposition directly by local port authority districts; and directing board to prepare a certain annual plan.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 16F. WEST VIRGINIA DIVISION OF MULTIMODAL TRANSPORTATION FACILITIES.**

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

(a) The Legislature finds and declares that there is a need to streamline the execution and implementation of the state’s multimodal transportation goals and reduce related costs by consolidating existing multimodal authorities to a single division, known as the West Virginia Division of Multimodal Transportation Facilities, under the Secretary of Transportation pursuant to the provisions of chapter 5F of this code. The Department of Transportation, through the West Virginia Division of Multimodal Transportation Facilities, is designated as the agency of this state responsible for administering all federal and state programs related to public ports, railroads, aeronautics, airports, and air navigation facilities.

(b) The Legislature further finds and declares that the establishment of local port authority districts will enhance the efficiency and cost of the movement of goods and services to and from markets in this state and will encourage the construction and completion of local infrastructure projects for all types of transportation systems.

(c) On July 1, 2022, the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission are reestablished, reconstituted, and continued as the West Virginia Division of Multimodal Transportation Facilities, an agency of the state. The purpose of the division is to administer all federal and state programs related to public ports, railroad transportation and commerce, public transit, aeronautics, airports, and air navigation facilities in the State of West Virginia, and thereby to encourage and facilitate growth and economic development opportunities utilizing such transport facilities. The powers and duties heretofore imposed upon the Public Port Authority, the West Virginia State Rail Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to and imposed upon the West Virginia Division of Multimodal Transportation Facilities in the manner prescribed by this article.

(d) It is the intent of this article to consolidate into the West Virginia Division of Multimodal Transportation Facilities those entities and employees performing functions which will be facilitated by their consolidation. The Department of Transportation shall provide appropriate office locations necessary to fulfill the functions of the division.

(e) On the effective date of this article, all real property interests, vehicles, equipment contracts or agreements, interests under any existing insurance policy, and records belonging to the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission shall be transferred to the West Virginia Division of Multimodal Transportation Facilities. Any state funds, special revenue funds, and all accounts created for the benefit or use of the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to the West Virginia Division of Multimodal Transportation Facilities in accordance with the provisions of this article.

§17-16F-3. Definitions.

As used in this article, unless the context indicates another or different meaning or intent:

“Aeronautics” means the art and science of flight, including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities.

“Aircraft” means any contrivance now known, or hereafter invented, used, or designed for navigation of, or flight in the air whether manned or unmanned.

“Air navigation” means the operation or navigation of aircraft in the air space over this state or upon any airport within this state.

“Air navigation facility” means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, air navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

“Airport” means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

“Bond” means a revenue bond or rate issued by the division to effectuate the intents and purposes of this article.

“Commissioner” means the chief operating officer and administrative head of the Multimodal Division, when such person is appointed by the Secretary of Transportation.

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

“Development plan” means a document which details the overall strategy of the division for the proper planning and sustainable development of an area and consists of a written statement and accompanying maps.

“Division” means the West Virginia Division of Multimodal Transportation Facilities.

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

“Income” means and includes all money accruing to the division or part thereof from any source.

“Intermodal transportation” means the successive transport of goods or passengers using more than one mode of transportation, including air, rail, ship, or roadway.

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

“Multimodal transportation” means the consideration or connection of various modes of transportation, including air, rail, ship, or roadway.

“Operation fund” means the special West Virginia Public Port Operation Fund as created by §17-16F-12 of this code.

“Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

“Owner” means and includes all individuals, co-partnerships, associations, corporations, companies, transportation companies, public service corporations, the United States or any of its agencies or instrumentalities, common carriers by rail and railroad companies having any title or interest in any rail properties authorized to be acquired, leased, or used by this article.

“Person” means any individual, firm, corporation, partnership, company, foreign or domestic association, including railroads, joint stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative.

“Political subdivision” means any county commission, municipality, city, town, village, or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties, cities, or towns.

“Port” or “public port” means ports, airports, wayports, terminals, buildings, roadways, rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such structures, equipment, facilities, or improvements as are necessary.

“Predominantly commuter services” means that for any given trip segment (i.e., distance between two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week.

“Public port development” or “public port project” means any activities which are undertaken with respect to public ports.

“Rail properties” means assets or rights owned, leased, or otherwise controlled by a railroad or other person which are used, or useful, in rail transportation service: *Provided*, That rail properties do not include any properties owned, leased, or otherwise controlled by a railroad not in reorganization, unless it consents to such properties’ inclusion in the particular transaction.

“Rail service” means both freight and passenger service.

“Railroad” means a common carrier by railroad as defined in Section 10102 of the Interstate Transportation Act (49 U.S.C. § 10102).

“Railroad project” means the initiation, acquisition, construction, maintenance, repair, equipping, or operation of rail properties or rail service, or the provisions of loans or grants to or with government agencies, or to persons for such purposes, by the division.

“Secretary” means the Secretary of Transportation.

“Wayport” means an airport used primarily as a location at which passengers and cargo may be transferred between connecting flights of air carriers engaged in air commerce, but also allows passengers to initiate and terminate flights and shipments of cargo to originate and terminate at the airport or similar type facility.

“West Virginia Commuter Rail Access Fund” means the special West Virginia Commuter Rail Access Fund created by §17-16F-27 of this code.

“West Virginia Railroad Maintenance Fund” means the West Virginia Railroad Maintenance Fund created by §17-16F-17 of this code.

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

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

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

(2) To preserve roadway, railroad, waterway, and airway facilities;

(3) To help facilitate economic development in this state utilizing transportation facilities;

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

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

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

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

(8) To acquire, purchase, lease, construct, own, hold, operate, maintain, equip, use, and control, by eminent domain or other means, any land, property, rights, franchises, easements, ports, and such terminals, buildings, roadways, rights-of-way, rails and such structures, equipment, facilities, any and every kind or character of motive powers and conveyances or appliances necessary or proper to carry goods, wares, and merchandise over, along, upon, or through the railway, waterway or airway, or other conveyance of such transportation system, excluding pipelines or improvements, as are necessary or incident to carry out the provisions of this article, upon such terms and at such price as may be considered by it to be reasonable and to take title in the name of the state;

(9) To lease, sell, or otherwise dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article;

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

(11) To act as agent for the United States of America, or any of its agencies, departments, corporations, or instrumentalities, in any manner coming within the purposes or powers of the division;

(12) To expend funds available for the purpose of studying any proposed railroad project, which may include consulting with engineers. All expenses incurred in conducting the study and necessary engineering shall be paid from the funds established in §17-16F-17 of this code;

(13) To report annually to the Legislature by December 31 of each year the status of projects, operations, financial condition, and other necessary information relating to the statewide multimodal transportation system and activities in accordance with this article and any report may be made electronically with paper copies provided upon request to any member of the Legislature;

(14) To meet with political subdivisions of the state to assess both specific and general transportation needs of the state in terms of transportation, as well as consider feasibility studies for the purpose of determining the best site locations for transportation centers, terminals, railroads, airports, ports and harbors, and foreign trade zones;

(15) To authorize creation of local port authority districts;

(16) To apply for and accept loans, grants or gifts of money, property, or service from the United States, any political subdivision, any public or private sources available, or any public or private lender or donor, to give such evidence of indebtedness as may be required and to permit the state Board of Investments to invest, as provided by this code, any funds received by the division pursuant to the provisions of this code;

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

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

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

(20) To act, through the Department of Transportation, the division is hereby designated as the agency of this state responsible for administering all federal and state programs relating to public transportation and public transit facilities.

§17-16F-5. Rules of division.

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

(b) The division, upon consultation with the Secretary of the Department of Transportation, may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code to implement the purposes of this article, including an application process for the creation of local port authority districts. The division may promulgate any necessary emergency rules to implement the provisions of this article pursuant to the provisions of §29A-3-15 of this code.

§17-16F-10a. Authorization to create a local port authority district.

A political subdivision of this state, a joint venture of two or more political subdivisions, a joint venture of political subdivisions and a private entity or entities, or a joint venture of political subdivisions and any bordering state may create a local port authority district in accordance with the procedure set forth in §17-16F-10b of this of this code.

§17-16F-10b. Application to division for approval to create local port authority district.

The division shall create an application and approval process for creation of a local port authority district. In deciding on a local port authority district designation, the division shall consider areas which have entered into a joint venture with private industry and areas which have made or will make the greatest effort, both financially and otherwise, to encourage the establishment of facilities to enhance the efficiency and cost of the movement of goods and services to and from markets in West Virginia, or will make the greatest effort to encourage the construction and completion of infrastructure projects, including all types of transportation systems.

**§17-16F-10c. Creation of board of directors for local port authority district; powers and duties.**

(a) A local port authority district may appoint a board of directors to administer the district. Board members shall be appointed from political subdivisions and the private sector and, at a minimum, represent the following areas:

(1) One member from each political subdivision and each private entity comprising the local port authority district;

(2) One member from the congressional district in which the local port authority district is located who shall represent the public interest generally;

(3) At least two members that have recognized ability and practical experience in transportation;

(4) At least two members with recognized ability and practical experience in economic development, freight, or logistics;

(5) At least one member that has recognized ability and practical experience in international trade;

(6) At least one member with recognized ability and practical experience in business management, economics, or accounting; and

(7) Two members representing the public at large.

(b) The board may exercise all powers necessary and proper to implement the purpose of the local port authority district so long as those powers do not exceed or supersede the powers of the division; *Provided*, That the power of eminent domain may only be exercised by the division itself and not by any local port authority district.

(c) The board shall prepare and submit a plan by October 31 of each year with the division for future development, construction, and improvement of its services and facilities.