WEST VIRGINIA CODE CHAPTER 17 ARTICLE 16F

WV Legislature

§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.

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§17-16F-2. Secretary's Powers and duties.

The Secretary of the Department of Transportation or his or her designee shall be the chief operating officer of the division who shall:

(1) Administer the operations of the division, consistent with the provisions of this article, by allocating the functions, activities, and personnel of the division among the various sections;

(2) Coordinate with the Secretary of the Department of Economic Development and any other applicable departments or agencies to facilitate economic development utilizing transportation facilities;

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

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

(5) Utilize professional staff within the Department of Transportation to assist in the operations of the division and authorize reimbursement therefor;

(6) Assist the Governor in multimodal transportation matters; and

(7) Make a report by June 30, and every year thereafter, to the Governor and all other special or periodic reports as may be required and post all reports on its website. Reports to the Legislature are not required; however, upon request of any member or committee, a report must be provided and may be provided electronically. Paper copies of any report shall be provided upon request.

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§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

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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.

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"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.

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§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;

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(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

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(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.

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§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.

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§17-16F-6. Advisory Boards.

(a) The division may convene advisory boards composed of members with subject-matter expertise and experience in the various modes of transportation under the purview of the division.

(b) Any such advisory board may advise the division on issues and assist the division as requested.

(c) The Secretary of the Department of Transportation shall be the chairperson of any such advisory board: Provided, That the secretary may appoint a designee to act in his or her stead at meetings.

(d) The Secretary of the Department of Transportation shall not receive any compensation for serving as chairperson. Any appointed members of a board shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the discharge of official duties. All compensation and expenses incurred shall be payable from funds applicable to the advisory board from the corresponding section within the division or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the section beyond the extent to which moneys are available from funds of the section or from such appropriations.

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§17-16F-7. Annual report.

(a) The division shall prepare and file a comprehensive report annually by December 31 with the Governor and the Joint Committee on Government and Finance setting forth the overall strategic plan for both short term and long term for goals and accomplishments of the purposes set forth in this article. Incidental to the development of a comprehensive strategic plan for multimodal transportation, the division shall analyze the intermodal shipment of products and passengers through the state, and shall be authorized to collect and analyze such information, which is maintained in the ordinary course of business by the person, firm, or corporation providing such information, pertaining to the transportation of products and passengers which has been moved by rail, water, or air to and from points within and without this state.

(b) Any such information and data supplied to the division shall be for exclusive use of the division. Such information is deemed confidential and is not subject to disclosure under the Freedom of Information Act, §29B-1-1 *et seq*. of this code. The division shall not publicly disclose this information and data to any person, firm, corporation, or agent. It is unlawful for any employee of this State to divulge or make known in any manner any information obtained pursuant to this subsection or disclose information concerning the personal or business affairs of any individual or the business of any single firm or corporation, or disclose any particulars set forth or disclosed in any report or other information provided to the division. Violation of this subsection by any employee or former employee will result in a misdemeanor, and upon conviction thereof, is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, together with costs of prosecution.

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§17-16F-8. Financial interest in contracts prohibited; penalty.

No employee of the division may be financially interested, directly or indirectly, in any contract of any person with the division, or in the sale of any property, real or personal, to or from the division. This section does not apply to contracts or purchases of property, real or personal, between the division and any governmental agency. Violation of this subsection by a division employee will result in a misdemeanor, and upon conviction thereof, is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, together with costs of prosecution.

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§17-16F-9. Public purpose of activities; property of public utilities and common carriers.

(a) The division is authorized to acquire any lands or interests pursuant to this article. The planning, acquisition, establishment, construction, improvement, maintenance, and operation of public port, railroad, transit, airport, or air navigation facilities, whether by the state separately or jointly with any municipalities and the exercise of any other powers granted to the division are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this article are declared to be acquired and used for governmental purposes and as a matter of public necessity.

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

(c) The division shall make reasonable policies for the installation, construction, maintenance, repair, renewal, relocation, and removal of railroad or public utility facilities in, on, over or under any public port, railroad, airport, or air navigation facility project. Whenever the division determines that any such facilities installed or constructed in, on, over, or under property of the division pursuant to such policies must be relocated, the railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the order of the division. The cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, the cost of any lands or any rights or interests in lands and the cost of any other rights acquired to accomplish such relocation or removal, may be paid by the division as a part of the cost of such project.

(d) When relocating or removing facilities, the railroad or public utility owning or operating them, and its successors or assigns, shall maintain, and operate such facilities, with the necessary appurtenances in the new location in, on, over, or under the property of the division for as long a period and upon the same terms as it had the right to maintain and operate such facilities in their former location.

(e) In the condemnation of property authorized by this section, the division shall proceed in the name of the State in the manner provided by chapter 54 of this code.

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§17-16F-10. Construction and operation of facilities by private enterprise; leasing of facilities by division.

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

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

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§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.

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§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.

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§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.

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§17-16F-11. Foreign trade zones; free trade zones; ports of entry and customs zones.

The division shall develop, maintain, and operate foreign trade zones, free trade zones, ports of entry and customs zones under such terms and conditions as are or may be prescribed by federal law, and to keep foreign trade zone status for, and to assist in the applications for foreign trade zone status of political subdivisions and eligible private corporations under federal law.

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§17-16F-12. Special West Virginia Public Port Operations Fund; West Virginia Multimodal Division Operations Fund; other funds transferred to the Division of Multimodal Transportation.

(a) The special West Virginia Public Port Authority Operations Fund created by prior enactment of §17-16B-7 of this code, is continued and shall be known as the West Virginia Multimodal Division Fund. The moneys in the fund shall only be expended to fulfill the provisions of this article. At the end of each fiscal year, any unexpended funds in this account shall be appropriated and available for expenditure for the subsequent fiscal year.

(b) Any fund utilized for any purpose within the State Aeronautics Commission, the Division of Public Transit, the Public Port Authority, or the State Rail Authority shall be transferred to the Division of Multimodal Transportation and continued until such time when the division determines a fund is unnecessary or may be better managed by combining certain funds to best serve the interests of the division and the public.

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§17-16F-13. Additional powers and duties of division related to railroad projects.

(a) The secretary shall appoint necessary staff to oversee and manage the facilities and operations of the state rail section. Staff are covered by the Department of Transportation merit- based personnel system and the Classification and Compensation Career Plan. The division shall facilitate railroad transportation and commerce within the state by exercising those powers of the state necessary to qualify for rail services continuation subsidies pursuant to the provisions of the federal Fixing America's Surface Transportation Act of 2015 and any future amendments and regulations from the federal government.

(b) The division shall carry out railroad projects or direct railroad projects to be carried out pursuant to a lease, sublease, or agreement with any person or governmental agency; shall make loans and grants to or with governmental agencies or to persons for railroad projects; and shall issue bonds of this state, payable solely from revenues, to pay the cost of such projects. The division will not undertake a railroad project unless it is consistent with any applicable development plans for railroad projects previously approved.

(c) The division shall establish, fund, construct, reconstruct, acquire, repair, replace, operate, and maintain railroads and railroad projects.

(d) The division shall make available the use of services of any railroad project to one or more persons, one or more governmental agencies or any combination.

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

(f) The division shall make and enter into contracts and agreements to acquire rolling stock or equipment with a value of $1 million or less exempt from the provisions of §5A-3-1 *et seq*. of this code. The secretary may propose rules for promulgation for adoption by the Legislature in accordance with the provisions of §29A-3-1 *et seq*. of this code which set forth the methods for determining value of rolling stock or equipment to be purchased and any other rules as may be needed.

(1) Where rolling stock, equipment or trackage of the division is in need of immediate maintenance, repair, or reconstruction to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers, or would otherwise be a danger to rail personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in §5A-3-1 *et seq*. of this code or any pursuant promulgated legislative rule:

(A) If the cost under the contract or agreement involves an expenditure of more than $1,000, but $50,000 or less, the division shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement; or

(B) If the cost under the contract or agreement, other than one for compensation for

personal services, involves an expenditure of more than $50,000, but $150,000 or less, the division shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the division in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(2) Notwithstanding any provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the division or an agreement for cooperation in the acquisition or construction of a railroad project authorized by this article is not subject to the provisions of §5A- 3-1 *et seq*. of this code or any promulgated legislative rule and the division shall enter into the contract or lease or the agreement pursuant to negotiation and upon such terms and conditions and for a period of time as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of the railroad project.

(3) The division may reject any bids. A bond with good and sufficient surety, approved by the division, is required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract.

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

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

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

(j) The division shall acquire rail properties both within and not within the jurisdiction of the Surface Transportation Board and rail properties within the purview of the federal Fixing America's Surface Transportation Act of 2015, any amendments to it, and any other relevant federal legislation.

(k) The division shall assume the agreements and contracts currently in effect for the State Rail Authority and may enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon the terms, conditions, rates, or rentals that can best effectuate the purposes of this article.

(l) The division shall acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

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

(n) The division shall maintain adequate programs of investigation, research, promotion, and

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development in connection with the purposes of the division and to provide for public participation.

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

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

(q) The division shall maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 or any current or future federal statutes and to qualify for rail service continuation subsidies pursuant to the federal Fixing America's Surface Transportation Act of 2015 or any future federal statutes.

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§17-16F-14. Additional authority regarding the Maryland Area Regional Commuter.

(a) The division shall coordinate all activities with the Maryland Transit Administration for the operation of the commuter rail operation between Maryland, the Washington, D.C. metropolitan area, and West Virginia. Any payments of track access fees pursuant to the agreement shall be paid from the fund created in §17-16F-27 of this code as provided by appropriation of the Legislature.

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§17-16F-15. Rail operations; purchases.

(a) The division may sell, transfer, or lease all, or any part of, the rail properties and other property acquired under the provisions of this article to any responsible person, firm, or corporation for continued operation of a railroad or other public purpose: *Provided*, That approval for the continued operation or other public purpose, is granted by the Surface Transportation Board of the United States, whenever approval is required. The sale, transfer, or lease shall be for a price and subject to any further terms and conditions which the division deems necessary and appropriate to this article.

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

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

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

(e) The division shall cooperate with other states when purchasing rail properties within this state. The division shall also acquire railroad rights in other states and rail properties lying in other states to carry out the intentions and purposes of this article. In carrying out the powers and duties conferred by this article, the division shall enter into general contractual arrangements, including joint purchasing and leasing of rail properties with other states.

(f) In weighing the varied interests of the residents of this state, the division shall consider the individual interest of any county or municipality expressing a desire to acquire a portion, or all, of the abandoned real estate located within its jurisdiction. The division may acquire the abandoned property for subsequent conveyance to the county or municipality.

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

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

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(i) The division may purchase any railroad rolling stock, equipment, and machinery necessary for the operation and maintenance of any rail properties purchased by it on behalf of the state, with any funds made available for this purpose. The division may also acquire and have available a pool of equipment and machinery which may be utilized by the operators of the rail properties for the purpose of track maintenance and other related railroad activities upon terms and conditions determined appropriate. Notwithstanding any the provisions of this code to the contrary, the division and the Commissioner of the Division of Highways may enter into contracts or agreements for the lease or purchase and maintenance of any vehicles required for its purposes.

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

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

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

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§17-16F-16. Railroad Maintenance Fund.

The Railroad Maintenance Fund heretofore created is hereby continued and shall be administered by the division. Expenditures are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon fulfillment of the provisions of §11B-2-1 *et seq*. of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with the state rail portions of this article. All costs and expenses incurred pursuant to this article for state rail, including administrative, shall be paid from those funds. The division may expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed railroad project and may use its engineering and other forces, including consulting engineers for the purpose of effecting such study. All such expenses incurred by such study and engineering shall be paid from the Railroad Maintenance Fund.

WV Legislature

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

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

(b) The division, with approval of the secretary, may issue renewal notes, issue bonds to pay the notes and whenever it deems refunding expedient, refund any bonds by the issuance of railroad maintenance revenue refunding bonds of the state, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose. The refunding bonds shall be sold, and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. Except as may otherwise be expressly provided by the division, every issue of its bonds or notes pursuant to this section are obligations of the division payable out of the revenues of the State Rail Section, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made, and the revenue so pledged and thereafter received by the division is immediately subject to the lien of such pledge without any physical delivery or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the division irrespective of whether the parties have notice.

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

(d) The bonds and notes authorized by the division, with approval of the secretary, shall bear the date and shall mature at such time, in the case of any note or any renewals not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding 50 years from the date of issue, as the authorization may provide. The bonds and notes shall bear interest at a rate, be in denominations, be in the form, either coupon or registered, carry registration privileges, be payable in a medium of payment, at place and be subject to any terms of redemption that the division may authorize. The bonds and notes shall be sold by the division at public or private sale, at or not less than the price the division determines. The bonds and notes shall be executed by the commissioner. The official seal of, or a facsimile, shall be affixed or printed and attested, manually or by facsimile signature, by the commissioner, which may be made by facsimile or electronic signature. Any coupons attached shall bear the signature, facsimile signature, or electronic signature of the commissioner. In case the commissioner whose signature, a facsimile signature, or an electronic signature, appears on any bonds, notes or coupons ceases to be commissioner before delivery of the bonds or notes, the signature, facsimile or electronic signature is

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nevertheless sufficient for all purposes the same as if he or she had remained in their respective positions until delivery and in case the seal of the commissioner has been changed after a facsimile has been imprinted on such bonds or notes the facsimile seal will continue to be sufficient for all purposes.

(e) Any authorization of any bonds or notes or any issue shall contain provisions, subject to agreements with bondholders or noteholders as may then exist, as part of the contract with the holders, as to pledging all or any part of the revenues of the State Rail Section to secure the payment of the bonds or notes or of any issue; the use and disposition of revenues of the State Rail Section; a covenant to fix, alter and collect rates, rentals and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide any reserves that may be required by the applicable authorization or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the authorization of issuance of the bonds or notes; the use, lease, sale or other disposition of any railroad project or any other assets of the division; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue; notes issued in anticipation of the issuance of bonds, the agreement of the commissioner to do all things necessary for the authorization, issuance and sale of such bonds in such amounts that may be necessary for the timely retirement of the notes; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the division for operating, administrative or other expenses of the division; securing any bonds or notes by a trust agreement; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

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

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§17-16F-18. Trustee for bondholders; contents of trust agreement.

(a) In the discretion of the commissioner, any railroad maintenance bonds or notes or railroad maintenance refunding bonds issued by them under this article may be secured by a trust agreement between the commissioner and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

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

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§17-16F-19. Legal remedies of bondholders and trustees.

Any holder of railroad maintenance revenue bonds issued under the authority of this article or any of the appertaining coupons and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable authorization or trust agreement, may by civil action, mandamus, or other proceedings, protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the authorization of issuance of bonds, and may enforce and compel the performance of all duties required by this article, or by the trust agreement or authorization, to be performed by the commissioner, division or any employee, including the fixing, charging and collecting of sufficient rentals or other charges.

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§17-16F-20. Bonds and notes not debt of state, county, municipality, or of any political subdivision; expenses incurred pursuant to article.

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

(b) All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. The division is not authorized to incur indebtedness or liability on behalf of or payable by the state or any county, municipality, or political subdivision.

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§17-16F-21. Use of funds by division; restrictions.

All moneys, properties and assets acquired by the division, whether as proceeds from the sale of railroad maintenance revenue bonds or as revenues or other source which are attributable to a railroad project or purpose, shall be held by it in trust for the purposes of carrying out his or her powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys may at no time be commingled with other public funds. Such moneys, except as otherwise provided in any authorization of the issuance of railroad maintenance revenue bonds or in any trust agreement securing the same, or except when invested pursuant to §17-16F-23 of this code, shall be kept in appropriate depositories and secured as provided and required by law. The authorization of the issuance of bonds of any issue or the trust agreement securing bonds shall provide that any person to whom, or any banking institution or trust company to which, moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and the authorization or trust agreement provide.

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§17-16F-22. Investment of funds by division.

Funds of the State Rail Section in excess of current needs, except as otherwise provided in any authorization for the issuance of railroad maintenance revenue bonds or in any trust agreement securing the same, may be invested by the West Virginia Investment Management Board as authorized to invest under §12-6-1 *et seq*. of this code. Income from all such investments of moneys in any fund shall be credited to such funds as the commissioner determines, subject to the provisions of any authorization or trust agreement and such investments may be sold at such times as the commissioner, determines.

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§17-16F-23. Rentals and other revenues from railroad projects; contracts and leases of division; cooperation of other governmental agencies; bonds of such agencies.

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

(b) Any governmental agency or agencies shall cooperate with the division in the acquisition or construction of a railroad project and shall enter into such agreements with the division when necessary, facilitating cooperation and safeguarding the respective interests of the parties, which agreements shall provide for such contributions by the parties in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including without limitation the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the division to the extent necessary or appropriate for purposes of the issuance of railroad maintenance revenue bonds by the commissioner. Any governmental agency may provide contributions as is required under the agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection, and by the payment of such appropriated money or the proceeds of such bonds or notes to the division pursuant to such agreements.

(c) Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a railroad project, whether or not the governmental agency at the time of such election had the authority to pay the proceeds from such bonds or notes issued in anticipation to the division as provided in this section, may issue such bonds or notes in anticipation of the issuance and pay the proceeds to the division in accordance with an agreement between such governmental agency and the division: *Provided*, That the legislative authority of the governmental agency finds and determines

that the railroad project to be acquired or constructed by the division in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

WV Legislature

§17-16F-24. Maintenance, operation, and repair of projects; reports to Governor and Legislature.

(a) Each railroad project, when constructed and placed in operation, shall be maintained, and kept in good condition by the division. Each project shall be operated by the division's employees pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed while carrying out the provisions of this article shall be restored or repaired to its original condition, or as nearly as practicable or adequate compensation made out of funds provided in accordance with the provisions of this article.

(b) As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the Governor and the Joint Committee on Government and Finance. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects. Any report under this section may be made electronically and paper copies may be provided upon request.

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§17-16F-25. Railroad maintenance bonds lawful investments.

By the provisions of §12-6-1 *et seq*. of this code, notwithstanding any code section to the contrary, all railroad maintenance revenue bonds issued pursuant to this article are lawful investments for the West Virginia Investment Management Board and are also lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

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§17-16F-26. West Virginia Commuter Rail Access Fund.

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

WV Legislature

§17-16F-27. State rail plan required.

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

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

WV Legislature

§17-16F-28. Additional powers and duties of division related to aeronautics, airports, and air navigation projects.

(a) The secretary shall appoint necessary staff to oversee and manage the facilities and operations of the aeronautics section. Staff are covered by the Department of Transportation merit based system and the Career, Classification, and Compensation Plan. The division shall encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and air navigation facilities. The division shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics and shall act to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the division in developing aeronautics and aeronautics facilities in this state. The division is given the power and authority to make such policies as it may consider necessary and advisable for the public safety, governing the designing, laying out, locating, building, equipping, and operating of all airports and the conduct of all other phases of aeronautics.

WV Legislature

§17-16F-29. State financial assistance for county, municipal and regional airports.

The division, out of any appropriation funds made by the Legislature or any funds at its disposal, may make funds available by grant or otherwise to counties, municipalities, and regional airport authorities, created under the provisions of chapter 8 of this code, for the planning, acquisition, construction, improvement, maintenance, or operation of airports owned or operated or to be owned or operated by such counties, municipalities, or regional airport authorities. Acceptance of any moneys by any such county, municipality, or regional airport authority, shall constitute consent by the recipient that a reasonable use of such airport may be made, upon request of the division, by the United States, the state, or any of their respective agencies, including the National Guard of West Virginia for State purposes related or incidental to aeronautics. Such financial assistance may be furnished in connection with federal or other financial aid for the same purpose.

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§17-16F-30. Financial aid.

(a) The division shall cooperate with the United States, and any agency or department, in the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and may accept federal aid either outright or by way of matching, in whole or in part, as required, and when funds for matching are available to the division, comply with the provisions of the laws and regulations of the United States for the expenditure of federal moneys upon such airports and other air navigation facilities.

(b) The division may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and on behalf of this state, or any municipality, for the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws, rules, or regulations of the United States. The division shall be designated as the agency of the state and shall act as agent of any municipality upon the request of such municipality, in accepting, receiving, and receipting for such moneys on its behalf for airports or other air navigation facility purposes, and in contracting for the planning, acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed, either in whole or in part, by federal moneys. Any such municipality shall enter an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws and regulations and with this article. Such moneys paid by the United States shall be retained by the state or said municipalities under such terms and conditions as may be imposed by the United States in making such grants.

(c) All contracts for the planning, acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the division, either as the agent of the State or as the agent of any municipality, shall be made pursuant to the laws of this state: *Provided*, That where the planning, acquisition, construction, improvement, maintenance, and operation of any airport or other air navigation facility is financed wholly or partially with federal moneys, the division, as agent of the State or of any municipality, shall execute contracts in the manner prescribed by the federal laws, rule, or regulations, notwithstanding State law to the contrary.

(d) All moneys accepted for disbursement by the division pursuant to this section shall be deposited in the State Treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the State in trust. All such moneys are appropriated for the purposes for which the same were made available and shall be expended in accordance with federal laws and regulations and with the provisions of this article. The division shall, whether acting for this state or the agent of any municipality, when requested by the United States or any agency or department or by the state or municipality for which the money has been made available, disburse such moneys for the

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designated purposes, but this shall not preclude any other authorized method of disbursement.

(e) The state or municipality shall cooperate with the United States, and any agency or department, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and shall accept federal aid, either by way of outright grant or by matching the same, in whole or in part, as required to comply with the provisions of the laws and regulations of the United States for the expenditure of federal moneys upon such airports and other air navigation facilities.

WV Legislature

§17-16F-31. Establishment and operation of state airports.

(a) The commissioner is authorized on behalf of and in the name of the State, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, maintain, and operate airports and air navigation facilities within the state. For these purposes the director may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire such property, real or personal, as is necessary to permit safe and efficient operation of the airports and air navigation facilities. In like manner, the director may acquire existing airports and air navigation facilities: *Provided*, That he or she may not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality.

(b) The commissioner may by sale, lease, or otherwise, dispose of property, airport, air navigation facility, or portion thereof or interest therein. Any disposal by lease shall be made pursuant to the terms of §8-28-7 of this code. Any disposal by sale or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposal to any municipality or state government or the United States for aeronautical purposes incident thereto the sale or other disposal may be effected in such manner and upon such terms as the director determines are in the best interest of the state.

(c) Nothing contained in this article shall be construed to limit any right, power, or authority of the State or a municipality to regulate airport hazards by zoning.

(d) The commissioner may exercise any powers granted by this section jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

(e) In the condemnation of property authorized by this section, the director shall proceed in the name of the State in the manner provided by §54-1-1 *et seq*. of this code.

(f) The acquisition of any lands or interests therein pursuant to this article, the planning, acquisition, establishment, construction, improvement, maintenance, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipalities, and the exercise of any other powers herein granted to the director are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the State in the manner and for the purposes enumerated in this article shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

WV Legislature

§17-16F-32. Use of state and municipal facilities and services.

The division shall use the facilities and services of other agencies of the state and of the municipalities to the utmost extent possible, and such agencies and municipalities shall make available their facilities and services in furtherance of aeronautics in this state.

WV Legislature

§17-16F-33. Disposition of fees.

All fees or other moneys collected by the division under the provisions of this article shall be paid into the State Treasury in the manner provided in §12-2-1 *et seq*. of this code, and shall be deposited in a separate account and be used and expended only to carry out the provisions of this article. The fees or other moneys so paid into the State Treasury shall constitute and be treated as an excepted fund, and all the provisions of §12-2-2 of this code, applicable to the funds excepted from the general provisions for the deposit and payment of state funds, shall be applicable to the fund derived from collections made pursuant to the provisions of this article.

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§17-16F-34. Severability.

If any provision of this article or the application to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

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