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OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975

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# ENROLLED

*Committee Substitute  
For*

SENATE BILL NO. 388

(By Mr. *Fatfield and Mr. Jones, original sponsors*)

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PASSED *March 8,* 1975

In Effect *ninety days from* Passage

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COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 388

(By MR. HATFIELD and MR. JONES, *original sponsors*)

[Passed March 8, 1975; in effect ninety days from passage.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to creating a West Virginia railroad maintenance authority; setting forth purpose and duty of the authority, membership and term of authority members; granting power to issue bonds; prescribing function, duty, power and obligation of authority; establishment of railroad maintenance authority fund; authorizing collection of rates and rentals from railroad projects; setting forth unlawful acts and penalty.

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

That chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen, to read as follows:

### **ARTICLE 18. WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY.**

#### **§29-18-1. Short title.**

1 This article shall be known and cited as the "West Vir-  
2 ginia Railroad Maintenance Authority Act."

#### **§29-18-2. Declaration of policy and responsibility; purpose and intent of article; findings.**

1 It is hereby declared to be the public policy of the  
2 state of West Virginia and a responsibility of the state of

3 West Virginia, to facilitate railroad transportation and  
4 commerce within the state by exercising those powers  
5 of the state necessary to qualify for rail services continua-  
6 tion subsidies pursuant to the provisions of the federal  
7 Regional Rail Reorganization Act of one thousand nine  
8 hundred seventy-three and any amendment thereto and  
9 any rules or regulations promulgated thereunder.

10 The Legislature finds and hereby declares that this  
11 responsibility of the state cannot be effectively met with-  
12 out the establishment, funding, construction, reconstruc-  
13 tion, acquisition, repair, replacement, operation and  
14 maintenance of railroads and railroad projects.

**§29-18-3. Definitions.**

1 As used in this article unless the context clearly re-  
2 quires a different meaning:

3 (1) "Authority" means the West Virginia railroad  
4 maintenance authority created by this article, the duties,  
5 powers, responsibilities and functions of which are speci-  
6 fied in this article.

7 (2) "Bond" or "railroad maintenance authority bond"  
8 means a revenue bond or rate issued by the railroad  
9 maintenance authority to effectuate the intents and pur-  
10 poses of this article.

11 (3) "Railroad" means a common carrier by railroad as  
12 defined in section 1 (3) of Part I of the Interstate Com-  
13 merce Act (49 U.S.C. [1] 3).

14 (4) "Owner" means and includes all individuals, co-  
15 partnerships, associations, corporations, companies, trans-  
16 portation companies, public service corporations, the  
17 United States or any agency or instrumentality thereof,  
18 common carriers by rail and railroad companies having  
19 any title or interest in any rail properties authorized to  
20 be acquired, leased or used by this article.

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

23 (6) "Person" means individuals, corporations, part-  
24 nerships or foreign and domestic associations, inclu-  
25 ding railroads.

26 (7) "Rail properties" means assets or rights owned,  
27 leased, or otherwise controlled by a railroad or other per-

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28 son which are used, or useful, in rail transportation serv-  
29 ice: *Provided*, That rail properties does not include any  
30 properties owned, leased, or otherwise controlled by a  
31 railroad not in reorganization, unless it consents to such  
32 properties' inclusion in the particular transaction.

33 (8) "Rail service" means both freight and passenger  
34 service.

35 (9) "Railroad project" means the initiation, acquisi-  
36 tion, construction, maintenance, repair, equipping or op-  
37 eration of rail properties or rail service, or the provi-  
38 sions of loans or grants to or with government agencies,  
39 or to persons for such purposes, by the authority.

**§29-18-4. West Virginia railroad maintenance authority cre-  
ated; organization of authority; appointment of  
members; their term of office, compensation and  
expenses; director of authority.**

1 There is hereby created the West Virginia railroad  
2 maintenance authority. The authority is a governmental  
3 instrumentality of the state and a body corporate. The  
4 exercise by the authority of the powers conferred by this  
5 article and the carrying out of its purposes and duties  
6 shall be deemed and held to be, and are hereby deter-  
7 mined to be, essential governmental functions and for a  
8 public purpose.

9 The authority shall consist of seven members. The  
10 governor shall be a member *ex officio*. The other six  
11 members shall be appointed by the governor, by and with  
12 the advice and consent of the Senate, for a term of six  
13 years. Of the members of the authority first appointed, two  
14 shall be appointed for a term ending on the thirtieth day of  
15 June, one thousand nine hundred seventy-seven, two shall  
16 be appointed for a term ending two years thereafter and  
17 two shall be appointed for a term ending four years there-  
18 after. A person appointed to fill a vacancy occurring  
19 prior to the expiration of the term for which his prede-  
20 cessor was appointed shall be appointed only for the  
21 remainder of such term. Each authority member shall  
22 serve until the appointment and qualification of his  
23 successor. No more than three of the appointed authority  
24 members shall at any one time belong to the same politi-

25 cal party. Appointed authority members may be reap-  
26 pointed to serve additional terms.

27 All members of the authority shall be citizens of the  
28 state. Each appointed member of the board, before enter-  
29 ing upon his duties, shall comply with the requirements  
30 of article one, chapter six of this code and give bond in  
31 the sum of twenty-five thousand dollars in the manner  
32 provided in article two, chapter six of this code. The gov-  
33 ernor may remove any authority member for cause as  
34 provided in article six, chapter six of this code.

35 Annually the authority shall elect one of its appointed  
36 members as chairman and another as vice-chairman, and  
37 shall appoint a secretary-treasurer, who need not be a  
38 member of the authority. Four members of the authority  
39 shall constitute a quorum and the affirmative vote of four  
40 members shall be necessary for any action taken by vote  
41 of the authority. No vacancy in the membership of the  
42 authority shall impair the rights of a quorum by such  
43 vote to exercise all the rights and perform all the duties  
44 of the authority. The person appointed as secretary-  
45 treasurer, including an authority member if he is so  
46 appointed, shall give bond in the sum of fifty thousand  
47 dollars in the manner provided in article two, chapter  
48 six of this code.

49 The governor shall not receive any compensation for  
50 serving as an authority member. Each of the six ap-  
51 pointed members of the authority shall receive fifty dol-  
52 lars for each day or substantial part thereof actually  
53 spent in attending meetings of the board or in discharging  
54 or carrying out his duties and work as a member of the  
55 board. Each of the six appointed members shall be re-  
56 imbursed for all reasonable and necessary expenses ac-  
57 tually incurred in the performance of his duties as a  
58 member of such authority. All such compensation and  
59 expenses incurred shall be payable solely from funds of  
60 the authority or from funds appropriated for such pur-  
61 pose by the Legislature and no liability or obligation  
62 shall be incurred by the authority beyond the extent to  
63 which moneys are available from funds of the authority  
64 or from such appropriations.

65 There shall also be a director of the authority appointed  
66 by the authority.

**§29-18-5. Authority may construct, maintain, etc., railroad maintenance projects.**

1 To accomplish the public policies and purposes and to  
2 meet the responsibility of the state as set forth in this  
3 article, the West Virginia railroad maintenance authority  
4 may carry out railroad projects or cause railroad projects  
5 to be carried out pursuant to a lease, sublease or agree-  
6 ment with any person or governmental agency; may  
7 make loans and grants to or with governmental agencies  
8 or to persons for railroad projects; and may issue railroad  
9 authority bonds of this state; payable solely from reve-  
10 nues, to pay the cost of such projects. A railroad project  
11 shall not be undertaken unless it has been determined  
12 by the authority to be consistent with any applicable  
13 comprehensive plan for railroad projects approved by the  
14 authority. Any resolution of the authority authorizing  
15 a railroad project shall include a finding by the authority  
16 that such determinations have been made.

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

1 The West Virginia railroad maintenance authority is  
2 hereby granted, has and may exercise all powers neces-  
3 sary or appropriate to carry out and effectuate its cor-  
4 porate purpose.

5 (a) The authority shall have the power and capacity  
6 to:

7 (1) Adopt, and from time to time, amend and repeal  
8 bylaws necessary and proper for the regulation of its  
9 affairs and the conduct of its business and rules and  
10 regulations to implement and make effective its powers  
11 and duties, such rules and regulations to be promulgated  
12 in accordance with the provisions of chapter twenty-  
13 nine-a of this code.

14 (2) Adopt an official seal.

15 (3) Maintain a principal office and, if necessary, re-  
16 gional suboffices at locations properly designated or pro-  
17 vided.

18 (4) Sue and be sued in its own name and plead and  
19 be impleaded in its own name, and particularly to en-  
20 force the obligations and covenants made under sec-  
21 tions ten, eleven and sixteen of this article. Any actions  
22 against the authority shall be brought in the circuit  
23 court of Kanawha county in which the principal office  
24 of the authority shall be located.

25 (5) Make loans and grants to governmental agencies  
26 and persons for carrying out railroad projects by  
27 any such governmental agency or person and, in ac-  
28 cordance with chapter twenty-nine-a of this code, adopt  
29 rules and procedures for making such loans and  
30 grants.

31 (6) Acquire, construct, reconstruct, enlarge, improve,  
32 furnish, equip, maintain, repair, operate, lease or rent  
33 to, or contract for operation by a governmental agency  
34 or person, railroad projects, and, in accordance with  
35 chapter twenty-nine-a of this code, adopt rules and reg-  
36 ulations for the use of such projects.

37 (7) Make available the use or services of any rail-  
38 road project to one or more persons, one or more gov-  
39 ernmental agencies, or any combination thereof.

40 (8) Issue railroad maintenance authority bonds and  
41 notes and refunding bonds of the state, payable solely  
42 from revenues as provided in section ten of this article  
43 unless the bonds are refunded by refunding bonds,  
44 for the purpose of paying any part of the cost of  
45 one or more railroad projects or parts thereof.

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

50 (10) Acquire in the name of the state, by purchase or  
51 otherwise, on such terms and in such manner as it deems  
52 proper, or by the exercise of the right of eminent do-  
53 main in the manner provided in chapter fifty-four of  
54 this code, rail properties and appurtenant rights and  
55 interests necessary for carrying out railroad projects.

56 (11) Make and enter into all contracts and agree-  
57 ments and execute all instruments necessary or inci-

58 dental to the performance of its duties and the execution  
59 of its powers. When the cost under any such contract  
60 or agreement, other than compensation for personal serv-  
61 ices, involves an expenditure of more than two thousand  
62 dollars, the authority shall make a written contract  
63 with the lowest responsible bidder after public notice  
64 published as a Class II legal advertisement in compli-  
65 ance with the provisions of article three, chapter fifty-  
66 nine of this code, the publication area for such pub-  
67 lication to be the county wherein the work is to be per-  
68 formed or which is affected by the contract, which notice  
69 shall state the general character of the work and the  
70 general character of the materials to be furnished, the  
71 place where plans and specifications therefor may be  
72 examined and the time and place of receiving bids, but  
73 a contract or lease for the operation of a railroad project  
74 constructed and owned by the authority or an agree-  
75 ment for cooperation in the acquisition or construction of  
76 a railroad project pursuant to section sixteen of this  
77 article is not subject to the foregoing requirements and  
78 the authority may enter into such contract or lease or  
79 such agreement pursuant to negotiation and upon such  
80 terms and conditions and for such period as it finds  
81 to be reasonable and proper under the circumstances  
82 and in the best interests of proper operation or of  
83 efficient acquisition or construction of such railroad  
84 project. The authority may reject any and all bids. A  
85 bond with good and sufficient surety, approved by the  
86 authority, shall be required of all contractors in an  
87 amount equal to at least fifty percent of the contract  
88 price, conditioned upon the faithful performance of the  
89 contract.

90 (12) Appoint a director and employ managers, super-  
91 intendants and other employees and retain or contract  
92 with consulting engineers, financial consultants, account-  
93 ants, attorneys and such other consultants and inde-  
94 pendent contractors as are necessary in its judgment to  
95 carry out the provisions of this article, and fix the com-  
96 pensation or fees thereof. All expenses thereof shall  
97 be payable from the proceeds of railroad maintenance  
98 authority revenue bonds or notes issued by the authority,



99 from revenues and funds appropriated for such purpose  
100 by the Legislature or from grants from the federal gov-  
101 ernment which may be used for such purpose.

102 (13) Receive and accept from any state or federal  
103 agency, grants for or in aid of the construction of any  
104 railroad project or for research and development with  
105 respect to railroads and receive and accept aid or con-  
106 tributions from any source of money, property, labor  
107 or other things of value, to be held, used and applied  
108 only for the purposes for which such grants and contri-  
109 butions are made.

110 (14) Engage in research and development with respect  
111 to railroads.

112 (15) Purchase fire and extended coverage and lia-  
113 bility insurance for any railroad project and for the  
114 principal office and suboffices of the authority, insurance  
115 protecting the authority and its officers and employees  
116 against liability, if any, for damage to property or in-  
117 jury to or death of persons arising from its operations  
118 and be a member of, and to participate in, the state  
119 workmen's compensation program.

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

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

126 (b) In addition, the authority shall have the power  
127 to:

128 (1) Acquire rail properties both within and not with-  
129 in the jurisdiction of the interstate commerce com-  
130 mission and rail properties within the purview of the  
131 federal Regional Rail Reorganization Act of 1973, any  
132 amendments to it and any other relevant federal legis-  
133 lation.

134 (2) Enter into agreements with owners of rail prop-  
135 erties for the acquisition of rail properties or use or both  
136 of rail properties upon such terms, conditions, rates or  
137 rentals as can best effectuate the purposes of this ar-  
138 ticle.

139 (3) Acquire rail properties and other property of a  
140 railroad in concert with another state or states as is  
141 necessary to insure continued rail service in this state.

142 (4) Establish a state plan for rail transportation and  
143 local rail services.

144 (5) Administer and coordinate such state plan.

145 (6) Provide in such state plan for the equitable dis-  
146 tribution of federal rail service continuation subsidies  
147 among state, local and regional transportation authorities.

148 (7) Promote, supervise and support safe, adequate and  
149 efficient rail services.

150 (8) Employ sufficient trained and qualified personnel  
151 for these purposes.

152 (9) Maintain adequate programs of investigation,  
153 research, promotion and development in connection with  
154 such purposes and to provide for public participation  
155 therein.

156 (10) Provide satisfactory assurances on behalf of the  
157 state that fiscal control and fund accounting procedures  
158 will be adopted by the state necessary to assure proper  
159 disbursement of and accounting for federal funds paid  
160 to the state as rail service continuation subsidies.

161 (11) Comply with the regulations of the secretary of  
162 transportation of the United States department of trans-  
163 portation affecting federal rail service continuation pro-  
164 grams.

165 (12) Do all things otherwise necessary to maximize  
166 federal assistance to the state under Title IV of the  
167 federal Regional Rail Reorganization Act of 1973 and  
168 to qualify for rail service continuation subsidies pursuant  
169 to the federal Regional Rail Reorganization Act of 1973.

**§29-18-7. Operations; purchases.**

1 (a) The authority may sell, transfer or lease all, or  
2 any part, of the rail properties and other property ac-  
3 quired under the provisions of this article to any responsi-  
4 ble person, firm or corporation for continued operation  
5 of a railroad or other public purpose: *Provided*, That  
6 approval for the continued operation or other public pur-  
7 pose, is granted by the interstate commerce commission  
8 of the United States, whenever approval is required.

9 The sale, transfer or lease shall be for a price and subject  
10 to any further terms and conditions which the authority  
11 feels are necessary and appropriate to effectuate the pur-  
12 poses of this article.

13 (b) After acquiring any railroad lines within the state,  
14 the authority shall assist any responsible person, firm or  
15 corporation to secure, as promptly as possible, any order  
16 or certificate required by the interstate commerce com-  
17 mission for the performance of railroad service. The  
18 authority shall also give any assurances or guarantees  
19 which are necessary or desirable to carry out the purposes  
20 of this article.

21 (c) The authority may take whatever steps are neces-  
22 sary in order to determine the absolute fee simple title  
23 ownership of all rail properties of any railroad within  
24 the state. The determination may include the status of  
25 the rail properties with respect to easements, rights-  
26 of-way, leases, reversionary rights, fee simple title owner-  
27 ship and any and all related title matters. The authority  
28 may retain attorneys, experts or other assistants, and  
29 issue any contracts as are necessary to make the title  
30 determination.

31 (d) All rail properties within the state offered for  
32 sale by any railway corporation after the date of enact-  
33 ment of this article shall be offered for sale to the state  
34 in the first instance.

35 (e) The authority may cooperate with other states  
36 in connection with the purchase of any rail properties  
37 within this state. The authority may also acquire rail-  
38 road rights in other states and rail properties lying in  
39 other states in order to carry out the intentions and pur-  
40 poses of this article. In carrying out the powers and  
41 duties conferred by this article, the authority may enter  
42 into general contractual arrangements, including joint  
43 purchasing and leasing of rail properties with other states.

44 (f) In weighing the varied interests of the residents  
45 of this state, the authority shall give consideration to  
46 the individual interest of any county or municipality  
47 expressing a desire to acquire a portion, or all, of the  
48 abandoned real estate located within its jurisdiction. The  
49 authority may exercise its powers under this article to

50 acquire the abandoned property for subsequent convey-  
51 ance to the county or municipality.

52 (g) The authority may utilize federal funds, grants,  
53 gifts or donations which are available and any sums  
54 that are appropriated in carrying out the purposes of  
55 this article. The authority may also apply for discre-  
56 tionary or other funds available under the provisions of  
57 the federal Regional Rail Reorganization Act of 1973 or  
58 other federal programs.

59 (h) The authority may apply for an acquisition and  
60 modernization loan, or a guarantee of a loan, pursuant  
61 to Section 403 of the federal Regional Rail Reorganiza-  
62 tion Act of 1973 or any other federal programs, within  
63 the limit of funds appropriated for those purposes.

64 (i) The authority is authorized to purchase any rail-  
65 road rolling stock, equipment and machinery necessary  
66 for the operation and maintenance of any rail properties  
67 purchased by it on behalf of the state, with any funds  
68 made available for this purpose. The authority may also  
69 acquire and have available, a pool of equipment and  
70 machinery which may be utilized by the operators of  
71 the rail properties for the purpose of track maintenance  
72 and other related railroad activities, upon terms and  
73 conditions determined by the authority.

74 (j) The authority may contract for the rebuilding  
75 or relocation of any rail properties acquired pursuant  
76 to this article, within the provisions of the federal Re-  
77 gional Rail Reorganization Act of 1973 or any other  
78 applicable legislation. The authority may also spend  
79 any sums appropriated, as well as any other available  
80 funds, for the modernization, rebuilding and relocation  
81 of any rail properties owned by the state or by a private  
82 carrier. The authority may do any maintenance on any  
83 rail properties owned by the state as is necessary in the  
84 public interest.

85 (k) The authority may contract with any domestic  
86 or foreign person, firm, corporation, agency or govern-  
87 ment to provide, maintain or improve rail transportation  
88 service on the rail properties acquired by the state under  
89 this article.

90 (1) Whenever the authority determines that any rail  
91 properties acquired by the state are no longer needed  
92 for railroad purposes, it may, with the permission of  
93 the governor, permanently or temporarily transfer the  
94 rail properties to any other state department or agency  
95 or political subdivision of the state, which shall utilize  
96 the properties for a public purpose. Whenever more  
97 than one department or agency or political subdivision  
98 wishes to utilize the property, the authority shall resolve  
99 such a conflict and make a prompt determination of the  
100 reasonable and proper order of priority, taking into con-  
101 sideration any applicable state plans, policies or objec-  
102 tives. If no state department or agency or political sub-  
103 division wants the properties, the authority may sell  
104 them, with the proceeds deposited to the special rail-  
105 road fund established by this article. A public hearing  
106 is required prior to the transfer or sale of any rail prop-  
107 erties by the authority.

**§29-18-8. Creation of railroad maintenance authority fund.**

1 There is hereby created in the state treasury a West  
2 Virginia railroad maintenance authority fund. The au-  
3 thority shall deposit proceeds derived from action taken  
4 pursuant to this article and shall be the authority to use  
5 moneys in such fund to effectuate the provisions and  
6 purposes of this article.

**§29-18-9. Expenditure of funds for study and engineering of proposed projects.**

1 The authority may expend, out of any funds available  
2 for the purpose, such moneys as are necessary for the  
3 study of any proposed railroad project and may use its  
4 engineering and other forces, including consulting engi-  
5 neers for the purpose of effecting such study. All such  
6 expenses incurred by such study and engineering shall  
7 be paid from the funds established in section eight of this  
8 article.

**§29-18-10. Authority empowered to issue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

1 The authority is hereby empowered to raise the cost of

2 one or more railroad projects or parts thereof by the  
3 issuance from time to time of railroad maintenance rev-  
4 enue bonds and notes of the state in such principal  
5 amount as the authority deems necessary, but the aggre-  
6 gate amount of all issues of bonds and notes outstanding  
7 at one time for all projects authorized hereunder shall not  
8 exceed that amount capable of being serviced by revenues  
9 received from such projects.

10 The authority may, from time to time, issue renewal  
11 notes, issue bonds to pay such notes and whenever it  
12 deems refunding expedient, refund any bonds by the  
13 issuance of railroad maintenance revenue refunding bonds  
14 of the state, whether the bonds to be refunded have or  
15 have not matured, and issue bonds partly to refund bonds  
16 then outstanding and partly for any other authorized  
17 purpose. The refunding bonds shall be sold and the pro-  
18 ceeds applied to the purchase, redemption or payment of  
19 the bonds to be refunded. Except as may otherwise be  
20 expressly provided by the authority, every issue of its  
21 bonds or notes shall be obligations of the authority pay-  
22 able out of the revenues of the authority, which are  
23 pledged for such payment, without preference or priority  
24 of the first bonds issued, subject only to any agreements  
25 with the holders of particular bonds or notes pledging  
26 any particular revenues. Such pledge shall be valid and  
27 binding from the time the pledge is made and the revenue  
28 so pledged and thereafter received by the authority  
29 shall immediately be subject to the lien of such pledge  
30 without any physical delivery thereof or further act and  
31 the lien of any such pledge shall be valid and binding  
32 as against all parties having claims of any kind in tort,  
33 contract or otherwise against the authority irrespective  
34 of whether such parties have notice thereof.

35 All such bonds and notes shall have and are hereby  
36 declared to have all the qualities of negotiable instru-  
37 ments.

38 The bonds and notes shall be authorized by resolution  
39 of the authority, shall bear such date and shall mature at  
40 such time, in the case of any such note or any renewals  
41 thereof not exceeding five years from the date of issue of

42 such original note, and in the case of any such bond not  
43 exceeding fifty years from the date of issue, as such reso-  
44 lution may provide. The bonds and notes shall bear in-  
45 terest at such rate, be in such denominations, be in such  
46 form, either coupon or registered, carry such registration  
47 privileges, be payable in such medium of payment, at such  
48 place and be subject to such terms of redemption as the  
49 authority may authorize. The bonds and notes of the  
50 authority may be sold by the authority, at public or pri-  
51 vate sale, at or not less than the price the authority  
52 determines. The bonds and notes shall be executed by the  
53 chairman and vice-chairman of the authority, both of  
54 whom may use facsimile signatures. The official seal of  
55 the authority or a facsimile thereof shall be affixed there-  
56 to or printed thereon and attested, manually or by fac-  
57 simile signature, by the secretary-treasurer of the au-  
58 thority, and any coupons attached thereto shall bear the  
59 signature or facsimile signature of the chairman of the  
60 authority. In case any officer whose signature, or a fac-  
61 simile of whose signature, appears on any bonds, notes  
62 or coupons ceases to be such officer before delivery of such  
63 bonds or notes, such signature or facsimile is neverthe-  
64 less sufficient for all purposes the same as if he had re-  
65 mained in office until such delivery and in case the seal  
66 of the authority has been changed after a facsimile has  
67 been imprinted on such bonds or notes such facsimile  
68 seal will continue to be sufficient for all purposes.

69 Any resolution authorizing any bonds or notes or any  
70 issue thereof may contain provisions, subject to such  
71 agreements with bondholders or noteholders as may then  
72 exist, which provisions shall be a part of the contract with  
73 the holders thereof, as to pledging all or any part of the  
74 revenues of the authority to secure the payment of the  
75 bonds or notes or of any issue thereof; the use and dis-  
76 position of revenues of the authority; a covenant to fix,  
77 alter and collect rates, rentals and other charges so that  
78 pledged revenues will be sufficient to pay the costs of  
79 operation, maintenance and repairs, pay principal of and  
80 interest on bonds or notes secured by the pledge of such  
81 revenues and provide such reserves as may be required  
82 by the applicable resolution or trust agreement; the set-

83 ting aside of reserve funds, sinking funds or replacement  
84 and improvement funds and the regulation and disposition  
85 thereof; the crediting of the proceeds of the sale of bonds  
86 or notes to and among the funds referred to or provided  
87 for in the resolution authorizing the issuance of the bonds  
88 or notes; the use, lease, sale or other disposition of any  
89 railroad project or any other assets of the authority;  
90 limitations on the purpose to which the proceeds of sale  
91 of bonds or notes may be applied and pledging such pro-  
92 ceeds to secure the payment of the bonds or notes or of  
93 any issue thereof; notes issued in anticipation of the  
94 issuance of bonds, the agreement of the authority to do  
95 all things necessary for the authorization, issuance and  
96 sale of such bonds in such amounts as may be necessary  
97 for the timely retirement of such notes; limitations on  
98 the issuance of additional bonds or notes; the terms upon  
99 which additional bonds or notes may be issued and se-  
100 cured; the refunding of outstanding bonds or notes; the  
101 procedure, if any, by which the terms of any contract  
102 with bondholders or noteholders may be amended or  
103 abrogated, the amount of bonds or notes the holders of  
104 which must consent thereto and the manner in which  
105 such consent may be given; limitations on the amount of  
106 moneys to be expended by the authority for operating,  
107 administrative or other expenses of the authority; secur-  
108 ing any bonds or notes by a trust agreement; and any  
109 other matters, of like or different character, which in any  
110 way affect the security or protection of the bonds or notes.

111 Neither the members of the authority nor any person  
112 executing the bonds or notes shall be liable personally on  
113 the bonds or notes or be subject to any personal liability  
114 or accountability by reason of the issuance thereof.

**§29-18-11. Trustee for bondholders; contents of trust agree-  
ment.**

1 In the discretion of the authority, any railroad mainte-  
2 nance bonds or notes or railroad maintenance refunding  
3 bonds issued by the authority under this article may  
4 be secured by a trust agreement between the authority  
5 and a corporate trustee, which trustee may be any trust



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

8 Any such trust agreement may pledge or assign reve-  
9 nues of the authority to be received, but shall not convey  
10 or mortgage any railroad project or any part thereof.  
11 Any such trust agreement or any resolution providing  
12 for the issuance of such bonds or notes may contain such  
13 provisions for protecting and enforcing the rights and  
14 remedies of the bondholders or noteholders as are reason-  
15 able and proper and not in violation of law, including  
16 covenants setting forth the duties of the authority in  
17 relation to the acquisition of property, the construction,  
18 improvement, maintenance, repair, operation and insur-  
19 ance of the railroad project in connection with which  
20 such bonds or notes are authorized, the rentals or other  
21 charges to be imposed for the use or services of any  
22 railroad project, the custody, safeguarding, and applica-  
23 tion of all moneys and provisions for the employment  
24 of consulting engineers in connection with the construc-  
25 tion or operation of such railroad project. Any banking  
26 institution or trust company incorporated under the laws  
27 of this state which may act as depository of the proceeds  
28 of bonds or notes or of revenues shall furnish such  
29 indemnifying bonds or pledge such securities as are re-  
30 quired by the authority. Any such trust agreement may  
31 set forth the rights and remedies of the bondholders  
32 and noteholders and of the trustee and may restrict in-  
33 dividual rights of action by bondholders and noteholders  
34 as customarily provided in trust agreements or trust  
35 indentures securing similar bonds. Such trust agreement  
36 may contain such other provisions as the authority deems  
37 reasonable and proper for the security of the bondholders  
38 or noteholders. All expenses incurred in carrying out  
39 the provisions of any such trust agreement may be treated  
40 as a part of the cost of the operation of the railroad  
41 project. Any such trust agreement or resolution au-  
42 thORIZING the issuance of railroad maintenance revenue  
43 bonds may provide the method whereby the general  
44 administrative overhead expenses of the authority shall  
45 be allocated among the several projects acquired or con-  
46 structed by it as a factor of the operating expenses of  
47 each such project.

**§29-18-12. Legal remedies of bondholders and trustees.**

1 Any holder of railroad maintenance revenue bonds  
2 issued under the authority of this article or any of the  
3 coupons appertaining thereto and the trustee under any  
4 trust agreement, except to the extent the rights given  
5 by this article may be restricted by the applicable resolu-  
6 tion or such trust agreement, may by civil action,  
7 mandamus or other proceedings, protect and enforce any  
8 rights granted under the laws of this state or granted  
9 under this article, by the trust agreement or by the  
10 resolution authorizing the issuance of such bonds, and  
11 may enforce and compel the performance of all duties  
12 required by this article, or by the trust agreement or  
13 resolution, to be performed by the authority or any  
14 officer thereof, including the fixing, charging and collect-  
15 ing of sufficient rentals or other charges.

**§29-18-13. Bonds and notes not debt of state, county, municipi-  
pality or of any political subdivision; expenses  
incurred pursuant to article.**

1 Railroad maintenance revenue bonds and notes and  
2 railroad maintenance revenue refunding bonds issued  
3 under authority of this article and any coupons in con-  
4 nection therewith shall not constitute a debt or a pledge  
5 of the faith and credit or taxing power of this state or  
6 of any county, municipality or any other political sub-  
7 division of this state, and the holders or owners thereof  
8 shall have no right to have taxes levied by the Legisla-  
9 ture or taxing authority of any county, municipality or  
10 any other political subdivision of this state for the pay-  
11 ment of the principal thereof or interest thereon, but  
12 such bonds and notes shall be payable solely from the  
13 revenues and funds pledged for their payment as au-  
14 thorized by this article unless the notes are issued in  
15 anticipation of the issuance of bonds or the bonds are  
16 refunded by refunding bonds issued under authority of  
17 this article, which bonds or refunding bonds shall be  
18 payable solely from revenues and funds pledged for their  
19 payment as authorized by this article. All such bonds  
20 and notes shall contain on the face thereof a statement  
21 to the effect that the bonds or notes, as to both principal  
22 and interest, are not debts of the state or any county,

23 municipality or political subdivision thereof, but are pay-  
24 able solely from revenues and funds pledged for their  
25 payment.

26 All expenses incurred in carrying out the provisions  
27 of this article shall be payable solely from funds provided  
28 under authority of this article. Such article does not  
29 authorize the authority to incur indebtedness or liability  
30 on behalf of or payable by the state or any county, munic-  
31 ipality or political subdivision thereof.

**§29-18-14. Use of funds by authority; restrictions thereon.**

1 All moneys, properties and assets acquired by the  
2 authority, whether as proceeds from the sale of railroad  
3 maintenance revenue bonds or as revenues or otherwise,  
4 shall be held by it in trust for the purposes of carrying  
5 out its powers and duties, and shall be used and reused  
6 in accordance with the purposes and provisions of this  
7 article. Such moneys shall at no time be commingled  
8 with other public funds. Such moneys, except as other-  
9 wise provided in any resolution authorizing the issuance  
10 of railroad maintenance revenue bonds or in any trust  
11 agreement securing the same, or except when invested  
12 pursuant to section thirteen of this article, shall be kept  
13 in appropriate depositories and secured as provided and  
14 required by law. The resolution authorizing the issu-  
15 ance of such bonds of any issue or the trust agreement  
16 securing such bonds shall provide that any officer to  
17 whom, or any banking institution or trust company  
18 to which, such moneys are paid shall act as trustee of  
19 such moneys and hold and apply them for the purposes  
20 hereof, subject to the conditions this article and such  
21 resolution or trust agreement provide.

**§29-18-15. Investment of funds by authority.**

1 Funds of the authority in excess of current needs, ex-  
2 cept as otherwise provided in any resolution authorizing  
3 the issuance of its railroad maintenance revenue bonds  
4 or in any trust agreement securing the same, may be  
5 invested by the authority in any security or securities in  
6 which the "West Virginia State Board of Investments"  
7 is authorized to invest under sections nine and ten, ar-  
8 ticle six, chapter twelve of this code, except those securi-

9 ties specified in subdivisions (f) and (g) of said section  
10 nine. Income from all such investments of moneys in  
11 any fund shall be credited to such funds as the authority  
12 determines, subject to the provisions of any such resolu-  
13 tion or trust agreement and such investments may be sold  
14 at such times as the authority determines.

**§29-18-16. Rentals and other revenues from railroad projects;  
contracts and leases of authority; cooperation of  
other governmental agencies; bonds of such agen-  
cies.**

1 The authority may charge, alter and collect rates,  
2 rentals or other charges for the use or services of any  
3 project, and contract in the manner provided by this  
4 section with one or more persons, one or more govern-  
5 mental agencies, or any combination thereof, desiring  
6 the use or services thereof, and fix the terms, condi-  
7 tions, rates, rentals or other charges for such use or  
8 services. Such rentals or other charges shall not be sub-  
9 ject to supervision or regulation by any other authority,  
10 department, commission, board, bureau or agency of the  
11 state, and such contract may provide for acquisition by  
12 such person or governmental agency of all or any part  
13 of such railroad project for such consideration payable  
14 over the period of the contract or otherwise as the au-  
15 thority in its sole discretion determines to be appropriate,  
16 but subject to the provisions of any resolution author-  
17 izing the issuance of railroad maintenance revenue  
18 bonds or notes or railroad maintenance revenue re-  
19 funding bonds of the authority or any trust agreement  
20 securing the same. Any governmental agency which  
21 has power to construct, operate and maintain railroad  
22 projects may enter into a contract or lease with the  
23 authority whereby the use or services of any railroad  
24 project of the authority will be made available to such  
25 governmental agency and pay for such use or services  
26 such rentals or other charges as may be agreed to  
27 by such governmental agency and the authority.

28 Any governmental agency or agencies or combination  
29 thereof may cooperate with the authority in the acqui-  
30 sition or construction of a railroad project and shall

31 enter into such agreements with the authority as are  
32 necessary, with a view to effective cooperative action  
33 and safeguarding of the respective interests of the  
34 parties thereto, which agreements shall provide for such  
35 contributions by the parties thereto in such proportion  
36 as may be agreed upon and such other terms as may  
37 be mutually satisfactory to the parties, including with-  
38 out limitation the authorization of the construction of  
39 the project by one of the parties acting as agent for all  
40 of the parties and the ownership and control of the pro-  
41 ject by the authority to the extent necessary or appro-  
42 priate for purposes of the issuance of railroad main-  
43 tenance revenue bonds by the authority. Any gov-  
44 ernmental agency may provide such contribution as is  
45 required under such agreements by the appropriation  
46 of money or, if authorized by a favorable vote of the  
47 electors to issue bonds or notes or levy taxes or assess-  
48 ments and issue notes or bonds in anticipation of the  
49 collection thereof, by the issuance of bonds or notes or  
50 by the levying of taxes or assessments and the issu-  
51 ance of bonds or notes in anticipation of the collection  
52 thereof, and by the payment of such appropriated money  
53 or the proceeds of such bonds or notes to the au-  
54 thority pursuant to such agreements.

55 Any governmental agency, pursuant to a favorable  
56 vote of the electors in an election held before or  
57 after the effective date of this section for the purpose  
58 of issuing bonds to provide funds to acquire, construct  
59 or equip, or provide real estate and interests in real  
60 estate for a railroad project, whether or not the gov-  
61 ernmental agency at the time of such election had the  
62 authority to pay the proceeds from such bonds or notes  
63 issued in anticipation thereof to the authority as pro-  
64 vided in this section, may issue such bonds or notes in  
65 anticipation of the issuance thereof and pay the pro-  
66 ceeds thereof to the authority in accordance with an  
67 agreement between such governmental agency and the  
68 authority: *Provided*, That the legislative authority of  
69 the governmental agency finds and determines that the  
70 railroad project to be acquired or constructed by the  
71 authority in cooperation with such governmental agency

72 will serve the same public purpose and meet sub-  
 73 stantially the same public need as the facility other-  
 74 wise proposed to be acquired or constructed by the  
 75 governmental agency with the proceeds of such bonds  
 76 or notes.

**§29-18-17. Maintenance, operation and repair of projects; re-  
 ports by authority to governor and Legislature.**

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

15 As soon as possible after the close of each fiscal year,  
 16 the authority shall make an annual report of its activi-  
 17 ties for the preceding fiscal year to the governor and  
 18 the Legislature. Each such report shall set forth a com-  
 19 plete operating and financial statement covering the  
 20 authority's operations during the preceding fiscal year.  
 21 The authority shall cause an audit of its books and ac-  
 22 counts to be made at least once each fiscal year by certi-  
 23 fied public accountants and the cost thereof may be  
 24 treated as a part of the cost of construction or of opera-  
 25 tions of its projects.

**§29-18-18. Railroad maintenance bonds lawful investments.**

1 The provisions of sections nine and ten, article six,  
 2 chapter twelve of this code to the contrary notwithstand-  
 3 ing, all railroad maintenance revenue bonds issued pur-  
 4 suant to this article shall be lawful investments for the  
 5 West Virginia state board of investments and shall also  
 6 be lawful investments for banking institutions, societies  
 7 for savings, building and loan associations, savings and

8 loan associations, deposit guarantee associations, trust  
9 companies, insurance companies, including domestic for  
10 life and domestic not for life insurance companies.

**§29-18-19. Exemption from taxation.**

1 The exercise of the powers granted to the authority by  
2 this article will be in all respects for the benefit of the  
3 people of the state, for the improvement of their health,  
4 safety, convenience, well-being and for the enhancement  
5 of their residential, agricultural, recreational, economic,  
6 commercial and industrial opportunities and is a public  
7 purpose. As the operation and maintenance of railroad  
8 projects will constitute the performance of essential  
9 governmental functions, the authority shall not be re-  
10 quired to pay any taxes or assessments upon any railroad  
11 project or upon any property acquired or used by the  
12 authority or upon the income therefrom. Such bonds and  
13 notes and all interest and income thereon shall be  
14 exempt from all taxation by this state, or any county,  
15 municipality, political subdivision or agency thereof,  
16 except inheritance taxes.

**§29-18-20. Acquisition of property by authority—Acquisition  
by purchase; governmental agencies authorized  
to convey, etc., property.**

1 The authority may acquire by purchase, whenever it  
2 deems such purchase expedient, any land, property, rights,  
3 rights-of-way, franchises, easements and other interests in  
4 lands it deems necessary or convenient for the construc-  
5 tion and operation of any railroad project upon such terms  
6 and at such prices it considers reasonable and can be  
7 agreed upon between the authority and the owner thereof,  
8 and take title thereto in the name of the state.

9 All governmental agencies, notwithstanding any con-  
10 trary provision of law, may lease, lend, grant or convey  
11 to the authority, at its request, upon such terms as the  
12 proper authorities of such governmental agencies deem  
13 reasonable and fair and without the necessity for an ad-  
14 vertisement, auction, order of court or other action or  
15 formality, other than the regular and formal action of the  
16 governmental agency concerned, any real property or  
17 interests therein, including improvements thereto or per-

18 sonal property which is necessary or convenient to the  
 19 effectuation of the authorized purposes of the authority,  
 20 including public roads and other real property or interests  
 21 therein, including improvements thereto or personal prop-  
 22 erty already devoted to public use.

**§29-18-21. Property of public utilities and common carriers.**

1 This section authorizes the authority to take or disturb  
 2 property or facilities belonging to any public utility or to  
 3 a common carrier, which property or facilities are re-  
 4 quired for the proper and convenient operation of such  
 5 public utility or common carrier, if provision is made for  
 6 the restoration, relocation or duplication of such property  
 7 or facilities elsewhere at the sole cost of the authority.

8 When the authority finds it necessary to change the lo-  
 9 cation of any portion of any public road, state highway,  
 10 railroad or public utility facility in connection with the  
 11 construction of a railroad project, it shall cause the same  
 12 to be reconstructed at such location as the unit or division  
 13 of government having jurisdiction over such road, high-  
 14 way, railroad or public utility facility deems most favor-  
 15 able. Such construction shall be of substantially the same  
 16 type and in as good condition as the original road, high-  
 17 way, railroad or public utility facility. The cost of such  
 18 reconstruction, relocation or removal and any damage  
 19 incurred in changing the location of any such road, high-  
 20 way, railroad or public utility facility shall be paid by  
 21 the authority as a part of the cost of such railroad project.

22 When the authority finds it necessary that any public  
 23 highway or portion thereof be vacated by reason of the  
 24 acquisition or construction of a railroad project, the au-  
 25 thority shall request the West Virginia commissioner of  
 26 highways, in writing, to vacate such highway or portion  
 27 thereof if the highway or portion thereof to be vacated is  
 28 part of the state road system, or, if the highway or portion  
 29 thereof to be vacated is under the jurisdiction of a county  
 30 or a municipality, the authority shall request the govern-  
 31 ing body of such county or municipality to vacate such  
 32 public road or portion thereof. The authority shall pay to  
 33 the West Virginia commissioner of highways or to the  
 34 county or municipality, as the case may be, as part of the



35 cost of such railroad project, any amounts required to be  
36 deposited with any court in connection with proceedings  
37 for the determination of compensation and damages and  
38 all amounts of compensation and damages finally de-  
39 termined to be payable as a result of such vacation.

40 The authority may make reasonable rules and regula-  
41 tions for the installation, construction, maintenance, re-  
42 pair, renewal, relocation and removal of railroad or public  
43 utility facilities in, on, over or under any railroad project.  
44 Whenever the authority determines that it is necessary  
45 that any such facilities installed or constructed in, on,  
46 over or under property of the authority pursuant to such  
47 rules and regulations be relocated, the railroad or public  
48 utility owning or operating such facilities shall relocate  
49 or remove them in accordance with the order of the au-  
50 thority. The cost and expenses of such relocation or re-  
51 moval, including the cost of installing such facilities in a  
52 new location, the cost of any lands or any rights or in-  
53 terests in lands and the cost of any other rights acquired  
54 to accomplish such relocation or removal, may be paid by  
55 the authority as a part of the cost of such railroad project.  
56 In case of any such relocation or removal of facilities, the  
57 railroad or public utility owning or operating them, and  
58 its successors or assigns, may maintain and operate such  
59 facilities, with the necessary appurtenances in the new  
60 location in, on, over or under the property of the author-  
61 ity for as long a period and upon the same terms as it had  
62 the right to maintain and operate such facilities in their  
63 former location.

**§29-18-22. Financial interest in contracts prohibited; penalty.**

1 No officer, member or employee of the authority shall  
2 be financially interested, directly or indirectly, in any  
3 contract of any person with the authority, or in the sale  
4 of any property, real or personal, to or from the authority.  
5 This section does not apply to contracts or purchases of  
6 property, real or personal, between the authority and any  
7 governmental agency. If any officer, member or employee  
8 of the authority has such financial interest in a contract or  
9 sale of property prohibited hereby, he shall be guilty of a  
10 misdemeanor, and, upon conviction thereof, shall be fined  
11 not more than one thousand dollars, or imprisoned in the

12 county jail not more than one year, or both fined and im-  
13 prisoned.

**§29-18-23. Meetings and records of authority to be kept public.**

1 All meetings of the authority shall be open to the public  
2 and the records of the authority shall be open to public  
3 inspection at all reasonable times, except as otherwise  
4 provided in this section. All final actions of the authority  
5 shall be journalized and such journal shall also be open  
6 to the inspection of the public at all reasonable times.

**§29-18-24. Liberal construction of article.**

1 The provisions of this article are hereby declared to be  
2 remedial and shall be liberally construed to effectuate its  
3 purposes and intents. *re*

*ok jcs*

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence C. Chestnut Jr.  
Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

James H. McCondy  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

J. B. Robertson  
President of the Senate

Lewis T. Thomas  
Speaker House of Delegates

The within approved this the 22<sup>nd</sup>  
day of March, 1975.

Arva. Prange Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/18/75

Time 4:55 p.m.