WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Comm. Sub. for
HOUSE BILL No. 2695

(By Mr. Speaker, Mr. Chambers, Mr. Murphy.)

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Passed .............................................. April 8, 1989

In Effect ........................................... July 1, 1989
AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b; to amend and reenact section seven, article three, chapter twenty-four; and to repeal article twenty-four, chapter twenty-nine, all relating to public port authority; creation; board of directors—members, officers, qualifications, terms, oath, compensation, quorum and delegation of power; executive director; appointment; powers and duties; compensation; purposes of authority; commerce; tourism; divisions; powers and duties of authority; special West Virginia public port authority operations fund; foreign trading zones; export trading company; division of tourist trains and transportation; disclaimer of any liability of the state of West Virginia; prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; prohibition against certain financial interests; criminal penalties; permit to abandon services; certificate; hearing upon intervention by consumer advocate; alternative service; and repeal tourist train and transportation board.

Be it enacted by the Legislature of West Virginia:
That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen-b; that section seven, article three, chapter twenty-four be amended and reenacted; and that article twenty-four, chapter twenty-nine be repealed, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-1. Creation of authority.

1 The West Virginia public port authority is hereby created and shall be under the supervision of the secretary of the department of transportation pursuant to the provisions of chapter five-f of this code.

§17-16B-2. Board of directors — Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.

(a) The governing and administrative powers of the authority shall be vested in a board of directors consisting of nine members, six of whom shall be appointed by the governor with the advice and consent of the Senate.

All directors of the authority shall be residents of the state of West Virginia. The directors shall annually elect from the representatives of the private sector as provided in subsection (b), one of their members as chairman. The directors shall annually elect one of their members as vice chairman, one as secretary and one as treasurer. The board may elect such other officers from its membership or from its staff as it deems proper, and prescribe their powers and duties. Appointments to fill a vacancy of one of the appointed members shall be made in the same manner as the original appointment.

(b) Six members of the board shall be from the private sector, with one member of the board from each congressional district of the state as of the effective date of this article, and shall represent the public interest generally. At least one member may be appointed that has recognized ability and practical experience in
transportation. At least one member may be appointed that has recognized ability and practical experience in banking and finance. At least one member may be appointed that has recognized ability and practical experience in international trade. At least one member may be appointed that has recognized ability and practical experience in business management or economics.

(c) The governor shall appoint two members of the board whose terms shall expire on the first day of July, one thousand nine hundred ninety; two members of the board whose term shall expire on the first day of July, one thousand nine hundred ninety-one; two members of the board whose term shall expire on the first day of July, one thousand nine hundred ninety-two. Their respective successors shall be appointed for terms of three years from the first day of July of the year of appointment. Each member shall serve until his successor is appointed and qualified.

One ex officio member of the board shall be the secretary of transportation or his designee.

One ex officio member of the board shall be the director of the department of commerce or his designee.

One ex officio member of the board shall be the director of the governor's office of community and industrial development or his designee.

(d) Each director, before entering upon his duties, shall take and subscribe to the oath or affirmation required by the West Virginia constitution. A record of each such oath or affirmation shall be filed in the office of the secretary of state.

(e) Members of the board shall not be entitled to compensation for their services but shall be reimbursed for all necessary expenses actually incurred in connection with the performance of their duties as members.

(f) Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the
board, except that the affirmative vote of at least six members is required for the approval of any resolution authorizing the issuance of any bonds pursuant to this article.

(g) No vacancy in the membership of the board impairs the right of a quorum to exercise all rights and perform all duties of the board. Any action taken by the board may be authorized by resolution at any regular or special meeting and shall take effect upon the date the chairman certifies the action of the authority by affixing his signature to the resolution unless some other date is otherwise provided in the resolution.

(h) The board may delegate to one or more of its members or to its officials, agents or employees such powers and duties as it may deem proper.

§17-16B-3. Executive director; appointment; powers and duties; compensation.

(a) The board of directors shall appoint an executive director of the authority.

(b) The executive director shall be paid a salary to be determined by the board of directors. The executive director shall be responsible for managing and administering the daily functions of the authority and for performing any and all other functions necessary or helpful for the effective functioning of the authority, together with all other functions and powers as may be delegated to him by the board. The executive director may, with the authorization of the board of director, employ support staff as deemed necessary to carry out the duties and responsibilities of the authority.

(c) The chairman of the board shall serve as temporary director of the authority until appointment of the executive director pursuant to this section.

§17-16B-4. Purposes of authority; commerce; tourism.

(a) Commercial activity.—The Legislature finds that the state of West Virginia must look to new opportunities to expand and diversity its economy and the general welfare and well-being of its people. The
Legislature further finds that if West Virginia is to keep and attract industry, it must provide for a modern and efficient transportation infrastructure that will allow and facilitate business to compete on a regional, national and international basis. The Legislature finds that West Virginia has the potential to establish an efficient and low cost system of intermodal transportation by linking together its abundant navigable waters and rivers, its rail systems, its interstate and modern highway system, and its airports into intermodal transportation network connected and served by various intermodal ports, terminals and facilities located at strategic regional sites throughout the state.

The Legislature further finds that it would be the purpose of these intermodal ports and terminals, under the direction of the West Virginia public port authority, or local port authority districts, to negotiate, coordinate and supervise the shipment of products and natural resources from the producers in West Virginia to both domestic and international markets, including passage through other states and through the seaports of other states to the seaports of foreign countries.

The Legislature further finds that it is the corollary purpose of the public port authority to assist state businesses to engage in export trade activities, both domestic and international, in furtherance of its powers and duties, including the formation of export trading companies and foreign trade zones.

(b) Tourism.—The Legislature finds that the same intermodal transportation network, as set forth in this section for commercial purposes, may also serve to enhance tourism in West Virginia by providing access and linkage to the various tourist and historic attractions around the state through the utilization of railroads, waterways, highways, airways and other forms of transportation.

The Legislature further finds that it would be the purpose of the public port authority to negotiate and coordinate the movement of tourists and travelers through the state by assisting the tourist and travel...
§ 17-16B-5. Divisions.

There shall be within the public port authority a division of commerce, a division of tourist trains and transportation, and such other divisions as are deemed necessary by the board of directors.

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

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

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

The authority shall give first consideration to selected high priority opportunities as set forth in the document entitled “Development of an Inland Port Authority,” as submitted to the governor’s office of community and industrial development on the second day of March, one thousand nine hundred eighty-nine.

(2) On or before the fifteenth day of January, one thousand nine hundred ninety, the authority shall prepare and file a comprehensive report, with the governor and the Legislature setting forth the overall strategic plan both short term and long term for accomplishing the purposes set forth in this article.

(3) The public port authority shall coordinate with the West Virginia turnpike commission or other parkways authority, established pursuant to article sixteen-a, chapter seventeen of this code in the exercise of its powers and duties hereunder and development of appropriate intermodal transportation within the state.

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

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

    (2) Acquire, purchase, install, lease, construct, own,
hold, operate, maintain, equip, use and control ports,
terminals, buildings, roadways, rights-of-way, rails and
such structures, equipment, facilities or improvements
necessary to carry out the provisions of this article, and
in connection therewith shall have the further right to
lease, install, construct, acquire, own, maintain, control
and use 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, highway, waterway
or airway or other conveyance of such transportation
system, excluding pipelines.

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

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

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

    (6) To meet and cooperate with similar 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;

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

(8) To report annually to the Legislature by the first
day of January of each year on the status of projects,
operations, financial condition and other necessary
information relating to the statewide tourist intermodal
transportation system and public port authority
activities.

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

(10) To assist and encourage the West Virginia
railroad maintenance authority to purchase railroad
tracks being abandoned by any common carrier, and to
financially assist the railroad maintenance authority in
making such purchase.

(11) To collect reasonable fees and charges in connec-
tion with making and servicing loans, notes, bonds,
obligations, commitments and other evidence of in-
debtedness, and in connection with providing technical,
consultive and project assistance services.

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

(c) Incidental to the development of a comprehensive
strategic plan for intermodal transportation, the
executive director and staff of the authority shall
analyze the shipment of products through the ports of
the state for the purpose of expediting such shipments,
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 which has been moved by rail, water, highway
or air to and from points within and without this state.

(1) Any such information and data supplied to the
executive director of the authority shall be for exclusive
use of the executive director and the staff of the
authority. Such information is deemed confidential and
is not subject to disclosure under the freedom of
information act. Neither the executive director nor any 
staff member of the authority shall publicly disclose this 
information and data to any member of the board of the 
authority, nor to any person, firm, corporation or agent. 
It shall be unlawful for any officer or 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 authority.

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

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

§17-16B-7. Special West Virginia public port authority 
operations fund.

There is hereby established a special West Virginia 
public port authority operations fund which shall 
operate as a special revolving fund. All proceeds and 
revenues of the authority shall be credited to the fund 
by the state treasurer on a monthly basis. At the end 
of each fiscal year, any unexpended funds in this 
account shall be reappropriated and available for 
expenditure for the subsequent fiscal year: Provided, 
That no funds shall be appropriated from the general 
revenue fund of the state of West Virginia for the 
operation of the authority.

§17-16B-8. Designation of local port authority districts, 
powers and duties; plan for development.

(a) Upon application by a local governmental entity, 
groups of local governmental entities, or joint venture
of local government entity or entities and private
industry, the board may grant authority for the creation
of a local inland port authority district. In so authorizing
such entities, political subdivisions of this state are
authorized to join with other political subdivisions of
this and sister states to form a local port authority. In
deciding on a local port district designation, consider-
ation shall be given to the following:

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

(2) Areas for which the political subdivision(s) seeking
designation has 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 transpor-
tation systems;

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

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

§17-24-9. Construction and operation of facilities by
private enterprise; leasing of facilities by
port authority.

(a) The authority or local port authority districts shall
foster and encourage the participation of private
enterprise in the development of the port facilities to the
fullest extent it deems practicable in the interest of
limiting the necessity of construction and operation of
such facilities by the port authority. In this respect, the
authority or local port authority districts may upon its
own motion or upon the written request of any other party, advertise and solicit for the construction, operations and/or maintenance of any facility included in the development plan in accordance to plans, specifications and regulations therefor prepared by the board of directors.

(b) It is further provided that in the event the board of directors of the port authority or the local port authority districts deem it advisable and practicable, said board may cause certain facilities included in the development plan to be installed by private enterprise and leased back to the authority or local port authority districts 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 bank arrangement shall be repayable in full from the expected rentals to be generated by such facility.

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

The authority is empowered and directed to 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.


(a) The authority may assist business in the formation of joint venture to function as an export trading company. The authority may conduct feasibility studies to ascertain the feasibility of such a joint venture.

(b) The authority shall study whether the formation of such an entity would aid and assist West Virginia businesses in the export of goods. In the event that such company is financially feasible, the authority is authorized to create a quasi-public corporation, under the
authority’s control, to perform such function. The
authority may advance seed money to such corporation
to get it established: Provided, That the obligations of
such quasi-public corporation shall not be considered
obligations of the authority.

(c) The authority is authorized to promulgate rules
and regulations to establish the duties, powers and
obligations of any export trading company to be
established under this section.

§17-16B-12. Division of tourist trains and transportation;
duties.

(a) The division of tourist trains and transportation
shall develop a plan to assess the feasibility, financial
and otherwise, of establishing a statewide intermodal
network of tourist transportation, so as to coordinate,
link and supervise the various means of transportation
including highway, rail, waterway and air and such
plan shall also include, if feasible, the development of
a comprehensive strategy and state plan for tourist
transportation.

(b) The division shall cooperate and assist the efforts
of public and private groups, agencies and political
subdivisions in establishing components of the tourist
transportation plan.

(c) The division shall specifically work to establish a
pilot project for the purpose of creating a tourist train
network in the area from Bluefield, West Virginia, to
Bramwell, West Virginia, to Matoaka, West Virginia,
and to Pocahontas, Virginia.

§17-16B-13. Disclaimer of any liability of state of West
Virginia.

The state of West Virginia is not liable on notes or
other evidences of indebtedness of the public port
authority and such notes or other evidences of indebted-
ness are not a debt of the state of West Virginia, and
such notes or other evidences of indebtedness shall
contain on the face thereof a statement to such effect.

§17-16B-14. Prohibition on funds inuring to the benefit of
or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.

(a) No part of the funds of the public port authority may inure to the benefit of or be distributable to its directors, employees, officers or other private persons except that the public port authority may pay reasonable compensation to its officers and employees for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purposes: Provided, That no such loans may be made, and no property may be purchased or leased from, or sold, leased to or otherwise disposed of, to any director or officer of the public port authority.

(b) No officer, member or employee of the authority may be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal to or from the authority during such person's employment with the authority or for a period of twelve months after termination of such person's employment with the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. Any officer, member or employee of the authority who has such financial interest in a contract or sale of property prohibited hereby, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§24-3-7. Permit to abandon service; certificate; hearing upon intervention by consumer advocate; alternative service.

(a) No railroad or other public utility shall abandon all or any portion of its service to the public or the operation of any of its lines which would affect the service it is rendering the public unless and until there shall first have been filed with the public service commission of this state an application for a permit to
abandon service and obtained from the commission an order stating that the present and future public convenience and necessity permits such abandonment.

(b) The consumer advocate's office shall be notified of all notices to abandon rail service. Within five (5) days of the receipt of such notice the consumer advocate shall notify the West Virginia public port authority of such proposed abandonment. The public port authority shall advise the consumer advocate as to whether such abandonment is in the public interest or if such rail line or service is an integral part of the inter modal transportation system within West Virginia. If the public port authority deems such abandonment to be not in the public interest, then the consumer advocate shall intervene to block such abandonment before all appropriate state and federal agencies or courts.

(c) The public service commissioner, to the extent permitted by federal law, shall promulgate rules and regulations to govern the abandonment of rail lines and rail service, including but not limited to the providing of a hearing for the presentation of evidence in cases where the consumer advocate seeks intervention pursuant to subsection (b).

(d) In the event the commission determines that an application to abandon gas service or any part thereof is in the public interest and required by the present and future public convenience and necessity, it shall include in its order, as a condition of releasing any such utility from its public service obligation to provide gas service, a provision requiring the utility, prior to discontinuing service, to pay the cost reasonably necessary to convert each customer to an alternate fuel source.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick Clark
Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Saul C. Nathan
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

President of the Senate

B.B. Kittle
Speaker of the House of Delegates

The within is approved this the 26th day of April, 1989.

Wooster Cargil
Governor