WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 539

(By Senator Jones, et al.)

PASSED March 10, 1990
In Effect July 1, 1990 - Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 559

(By Senators Jones, Heck, Burdette, Mr. President, Brackenrich, Craigo, Dittmar, Blatnik, Chernenko, Tomblin, Jackson and Spears, original sponsors)

[Passed March 10, 1990; to take effect July 1, 1990.]

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-c, relating to creation of the West Virginia wayport authority; board of directors; members; officers; qualifications; terms; oath; compensation; quorum; delegation of power; executive director; purpose of authority; transportation development; definitions; powers and duties of authority; wayport revenue bonds; and special West Virginia wayport authority operations fund.

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-c, to read as follows:
CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16C. WAYPORT AUTHORITY.

§17-16C-1. Creation of authority.

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

§17-16C-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 seven members, including the transportation secretary, or his or her designee, who shall serve as the chairman of the wayport authority, and six individuals shall be appointed by the governor with the advice and consent of the Senate: Provided, That no more than four members shall be members of the same political party.

All directors of the authority shall be residents of the state of West Virginia.

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) All appointed 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 accounting.

(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-one; two members of the board whose term shall expire on the first day of July, one thousand nine hundred ninety-two; two members of the board whose term shall expire on the first day of July, one thousand nine hundred ninety-three. 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.

(d) Each director, before entering upon the duties of the board, 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) Four 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 four members is required for the approval of any resolution authorizing the issuance of any wayport bonds pursuant to this article.

(g) No vacancy in the membership or 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 or her signature to the resolution unless some other date is otherwise pro-
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.

§17-16C-3. Executive director.

The executive director of the West Virginia Public Port Authority shall serve as the executive director of the wayport authority pursuant to article sixteen-b of this chapter.

§17-16C-4. Purposes of authority; transportation development.

The Legislature finds that the state of West Virginia must look to new opportunities to expand and diversify its economy; that there exists a continuing need for gainful employment for the citizens of this state and that innovative concepts must be explored in order for the state of West Virginia to maintain our competitive edge with the rest of the world.

The Legislature further finds that transportation is about to enter a new era. The Legislature finds that to ensure our global competitiveness, to successfully provide for the demands of our domestic economy, to maintain our military defense readiness, our transportation system must be renewed with the future in mind.

The Legislature further finds that America’s unity and vitality are inextricably entwined with the growth of transportation. The Legislature finds that annual expenditures for transportation products and services in the United States total nearly eight hundred billion dollars and therefore, that growth and demand for transportation services parallels economic activity.

The Legislature further finds that as the national economy grows, so will the demand for transportation services and transportation-related products. The Legislature finds that higher levels of economic activity will mean more jobs, more goods to be shipped, higher incomes and greater demand for
travel. The Legislature finds that continuation of this trend will affect the total demand for freight transportation and alter the pattern of commodity movements.

The Legislature further finds that one of the new, innovative proposals being investigated is the creation of wayports. The Legislature finds that if it is to keep and attract industry, it should explore the concept of the wayport, that is an airport located in a rural area, used primarily as a location at which passengers and cargo may be transferred between connecting flights of air carriers engaged in commerce. The Legislature finds that there exists substantial economic benefits to new airports: Economic activity attracts growth industry to the area; the property values increase; transportation centers develop and businesses will go where they can go in an efficient manner.

The Legislature further finds that Congress has introduced two bills that "provide for the establishment of a revolving loan fund for the development of wayports and to establish a commission to propose areas suitable for the locations of such wayports." The Legislature finds that these bills allow for the creation of a wayport revolving loan fund, with authorization of appropriations from unobligated amounts in the airport and airway trust fund.

The Legislature further finds that it would be to the benefit of the people and the state of West Virginia to pursue the opportunity of identifying potential sites for a wayport designation. The Legislature finds that the creation of a West Virginia Wayport Authority could assist and develop in the application and location of a wayport in West Virginia.

The Legislature further finds that it is a corollary purpose of the wayport authority to coordinate and cooperate with the public port authority to keep and attract industry, to provide for a modern and efficient transportation infrastructure that will allow and facilitate business to compete on a regional, national and international basis.

§17-16C-5. Definitions.

1 As used in this article, the following words and
terms shall have the following meanings, unless the
context shall indicate another or different meaning or
intent:

(a) The word “authority” means the West Virginia
Wayport Authority as created by section one of this
article.

(b) The words “operation fund” means the special
West Virginia Wayport Authority operation fund as
created by section seven of this article.

(c) The word “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 said
airport or similar type facility.

(d) The words “wayport development” means any
activities which are undertaken with respect to a
wayport by a wayport authority.

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

The authority is granted the following powers and
duties:

(1) The authority is hereby designated and empow-
ered to act on behalf of the state on submitting a
siting proposal for a wayport.

(2) The authority is empowered to take all steps
appropriate and necessary to effect siting, develop-
ment, and operation of a wayport within the state.

(3) To adopt bylaws for the regulations of its affairs
and the conduct of its business.

(4) To adopt an official seal and alter the same at
pleasure.

(5) To maintain an office at such place or places
within the state as it may designate.

(6) The powers of a body corporate, including the
power to sue and be sued.
(7) To construct, reconstruct, improve, maintain, repair and operate infrastructure projects at the designated wayport site as determined by the wayport authority.

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

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

(10) The wayport authority is authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for the construction or operation of any project 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; and for the purpose of acquiring any lands, rights or easements deemed necessary or incidental for the purposes of the wayport authority, the authority has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns, and other municipal corporations.

(11) If the state is selected as a site for a wayport, the authority is hereby designated and empowered to act on behalf of the state and to represent the state in the planning, financing, development, construction and operation of the project or any facility related to the project, with the concurrence of the affected public agency. Other state agencies and local governmental entities in this state, including the West Virginia housing development fund, shall cooperate to the fullest extent the authority deems appropriate to
effectuate the duties of the authority. If requested to do so by the authority, the West Virginia housing development fund shall, subject to the provisions of article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, including without limitation the approval of its board of directors, issue or use its best efforts to issue, either in its own name or on behalf of the authority, such bonds and notes as may be required to finance the planning, development, construction and operation of a project or any facility related to a project. In the event such bonds or notes are issued by the West Virginia housing development fund, the authority shall enter into all such agreements as the West Virginia housing development fund may determine are necessary to pledge revenues from projects or other funds of the authority sufficient to pay such bonds and notes and to pay all related fees, costs and expenses.

(12) The authority shall initiate meetings with local and area wayport committees in the development of a possible wayport site designation. The authority shall seek coordination, cooperation, and feasibility studies from local and area wayport committees.

(13) The authority shall take affirmative steps to coordinate freely all aspects of the submission of a siting proposal for the wayport project, and if the state is selected as a site, to coordinate fully the development of the project or any facility related to the project with the federal government agency.

(14) To do any and all things necessary to carry out and accomplish the purposes of this article, including issuing wayport revenue bonds or requesting other appropriate state agencies to issue and administer wayport revenue bonds to finance wayport projects.

§17-16C-7. Wayport revenue bonds - generally.

1 The wayport authority is hereby authorized to provide by resolution at one time or from time to time, for the issuance of wayport revenue bonds of the state for the purpose of paying all or any part of the
cost of one or more wayport projects. The principal of
and the interest on such bonds shall be payable solely
from the funds herein provided for such payment. The
bonds of each issue shall be dated, shall bear interest
at such rate or rates as may be determined by the
authority in its sole discretion, shall mature at such
time or times not exceeding forty years from their
date or dates, as may be determined by the authority,
and may be made redeemable before maturity, at the
option of the wayport authority, at such price or prices
and under such terms and conditions as may be fixed
by the wayport authority prior to the issuance of the
bonds. The wayport authority shall determine the
form of the bonds, including any interest coupons to
be attached thereto, and shall fix the denomination or
denominations of the bonds and the place or places of
payment of principal and interest, which may be at
any bank or trust company within or without the
state. The bonds shall be executed by manual or
facsimile signature by the governor and by the chair-
man of the wayport authority, and the official seal of
the wayport authority shall be affixed to or printed on
each bond, and attested, manually or by facsimile
signature, by the secretary of the wayport authority,
and any coupons attached to any bond shall bear the
manual or facsimile signature of the chairman of the
wayport authority. In case any officer whose signature
or a facsimile of whose signature appears on any bonds
or coupons shall cease to be such officer before the
delivery of such bonds, such signature or facsimile
shall nevertheless be valid and sufficient for all
purposes the same as if he had remained in office until
such delivery; and, in case the seal of the wayport
authority has been changed after a facsimile has been
imprinted on such bonds, such facsimile seal will
continue to be sufficient for all purposes. All bonds
issued under the provisions of this article shall have
and are hereby declared to have all the qualities and
incidents of negotiable instruments under the negotia-
tible instruments law of the state. The bonds may be
issued in coupon or in registered form, or both, as the
wayport authority may determine, and provision may
be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The wayport authority may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be in the best interests of the state.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the wayport authority project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the wayport authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional wayport bonds may in like manner be used to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost of the project or projects for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the wayport authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The wayport authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the state, and
[Enr. Com. Sub. for S. B. No. 559]

§17-16C-8. Wayport revenue bonds - trust agreements.

1 In the discretion of the wayport authority any wayport bonds issued under the provisions of this article may be secured by a trust agreement by and between the wayport authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may pledge or assign the tolls, rents, fees, charges and other revenues to be received, but shall not convey or mortgage any project or any part thereof. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the wayport authority in relation to the acquisition of property and the construction, reconstruction, improvement, maintenance, repair, operation and insurance of the project or projects in connection with which such bonds shall have been authorized, and 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 project or projects. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the wayport authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such other provisions as the wayport
authority may deem reasonable and proper for the
security of the bondholders. All expenses incurred in
carrying out the provisions of any such trust agree-
ment may be treated as a part of the cost of the
operation of the project or projects to which the trust
agreement applies.

§17-16C-9. Tolls, rents, fees, charges and revenues.

1 The wayport authority is hereby authorized to fix,
revise, charge and collect tolls for the use of each
wayport project and the different parts or sections
thereof, and to fix, revise, charge and collect rents,
fees, charges and other revenues, of whatever kind or
character, for the use of each economic development
project or tourism project, or any part or section
thereof, and to contract with any person, partnership,
association or corporation desiring the use of any part
thereof, including the right-of-way adjoining the
paved portion, for placing thereon telephone, tele-
graph, electric light, power or other utility lines, gas
stations, garages, stores, hotels, restaurants and adver-
tising signs, or for any other purpose, and to fix the
terms, conditions, rents and rates of charges for such
use. Such tolls, rents, fees and charges shall be so fixed
and adjusted in respect of the aggregate of tolls, or in
respect of the aggregate rents, fees and charges, from
the project or projects in connection with which the
bonds of any issue shall have been issued as to provide
a fund sufficient with other revenues, if any, to pay
(A) the cost of maintaining, repairing and operating
such project or projects and (B) the principal of and
the interest on such bonds as the same shall become
due and payable, and to create reserves for such
purposes. Such tolls, rents, fees and other charges shall
not be subject to supervision or regulation by any
other commission, board, bureau, department or
agency of the state. The tolls, rents, fees, charges and
all other revenues derived from the project or projects
in connection with which the bonds of any issue shall
have been issued, except such part thereof as may be
necessary to pay such cost of maintenance, repair and
operation and to provide such reserves therefor as
may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of such bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such wayport bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. The moneys in the sinking fund, less such reserve as may be provided in such resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds at the redemption price then applicable.

§17-16C-10. Trust funds.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this article. The resolution authorizing the issuance of bonds of any issue of the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution or trust agreement may provide.

§17-16C-11. Remedies.

Any holder of bonds issued under the provisions of
this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the wayport authority or by any officer thereof, including the fixing, charging and collecting of tolls, rents, fees and charges.

§17-16C-12. Exemption from taxes.

(a) The exercise of the powers granted by this article will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the wayport authority will constitute the performance of essential governmental functions, the wayport authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the wayport authority under the provisions of this article or upon the income therefrom, and the bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state.

(b) In lieu of payment by the wayport authority of county property taxes and other assessments on facilities owned by it, or upon any facility which is leased to any private person, corporation, or entity, the wayport authority shall make an annual payment as provided herein to the county commission of such county. Any wayport authority project which is leased and is exempt from taxation shall be subject to a payment in lieu of taxes. Said payment shall be made to the county commission of the county in which the
project is located and shall be in an amount equal to
the property taxes otherwise payable. The county
commission receiving such in lieu of payment shall
distribute such payment to the different levying bodies
in that county in the same manner as are property
taxes. Nothing contained herein may be construed to
prohibit the wayport authority from collecting such in
lieu of payment from any private party by contract or
otherwise.

§17-16C-13. Preliminary expenses.

1 The secretary of transportation is hereby authorized,
in his or her discretion to expend out of any funds
available for the purpose, such moneys as may be
necessary for the study of any wayport economic
development or tourism project or projects and to use
the department of highway's engineering and other
forces, including consulting engineers and traffic
engineers, for the purpose of effecting such study and
to pay for such additional engineering and traffic and
other expert studies as he may deem expedient; and
all such expenses incurred by the state department of
transportation and the state department of highways
prior to the issuance of wayport revenue bonds or
revenue refunding bonds under the provisions of this
article shall be paid by the state department of
highways or the state department of transportation
and charged to the appropriate project or projects, and
the state department of highways and the state
department of transportation shall keep proper records
and accounts showing each amount so charged. Upon
the sale of wayport revenue bonds or revenue refund-
ing bonds for any wayport project or projects, the
funds so expended by the state department of high-
ways or the state department of transportation in
connection with such project or projects shall be
reimbursed to the state department of highways and
the state department of transportation from the
proceeds of such bonds.

§17-16C-14. Wayport revenue refunding bonds - generally.

1 The wayport authority is hereby authorized to
provide by resolution for the issuance of wayport revenue refunding bonds of the state for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon any interest accrued or to accrue to the date of redemption of such bonds; and if deemed advisable by the wayport authority, for the additional purpose of constructing improvements, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued.

The wayport authority is further authorized to provide by resolution for the issuance of wayport refunding revenue bonds of the state for the combined purpose of two or more of the following: (a) Refunding any wayport bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and (b) paying all or any part of the cost of any additional wayport project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the wayport authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

§17-16C-15. Special West Virginia Wayport Authority operations fund.

There is hereby established a special West Virginia Wayport 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
10 revenue fund of the state of West Virginia for the
11 operation of the authority.

§17-16C-16. Severability.
1 If any part or provision of this article be held to be
2 unconstitutional by any court of competent jurisdic-
3 tion, such holding and decision of the court shall not
4 affect the validity and constitutionality of the remain-
5 ing parts and provisions of this article, and to this end
6 the parts and provisions of this article are declared to
7 be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1990.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .......................this the .....................

day of ........................., 1990.

Governor