

RECEIVED
1991 APR -2 PM 4:03
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

Committee Substitute for
SENATE BILL NO. 471

(By Senators Jones and Heck)

PASSED March 9, 1991

In Effect July 1, 1991 Passage ~~_____~~

RECEIVED
1991 APR -2 PM 4:08
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 471

(SENATORS JONES AND HECK, *original sponsors*)

[Passed March 9, 1991; to take effect July 1, 1991.]

AN ACT to repeal section four, article sixteen-b, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen-c of said chapter; to amend and reenact sections one, two, three, five, six and seven, article sixteen-b of said chapter; and to further amend said article by adding thereto eight new sections, designated sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, all relating to reorganizing and combining the public port authority and the wayport authority; providing for continuation of public port authority; establishing board of directors, members thereof, officers, qualifications, terms, oath, compensation, quorum and delegation of power; authorizing executive director, appointment, powers and duties, compensation; providing definitions; establishing powers and duties of authority; reestablishing special West Virginia public port authority operations fund and combining with wayport fund; authorizing and providing for port revenue bonds generally; providing for public port revenue bond trust agreements; authorizing

tolls, rents, fees, charges and revenues; providing funds to be trust funds; providing remedies; providing exemption from taxation; providing for preliminary expenses of authority; authorizing and providing for public port revenue refunding bonds generally; and repealing wayport authority statutes.

Be it enacted by the Legislature of West Virginia:

That section four, article sixteen-b, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article sixteen-c of said chapter be repealed; that sections one, two, three, five, six and seven, article sixteen-b of said chapter be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, all to read as follows:

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-1. Creation of authority.

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

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

1 (a) The governing and administrative powers of the
2 authority shall be vested in a board of directors
3 consisting of eleven members, including the transpor-
4 tation secretary, or his or her designee, who shall
5 serve as the chairman of the public port authority, and
6 ten individuals who shall be appointed by the gover-
7 nor with the advice and consent of the Senate: *Pro-*
8 *vided*, That no more than six members shall be
9 members of the same political party.

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

12 The directors shall annually elect one of their
13 members as vice chairman. The directors shall appoint

14 a person to serve as secretary and as treasurer. The
 15 person appointed as treasurer shall give a bond for the
 16 faithful performance of his or her duties as custodian
 17 of all funds, securities and other investments of the
 18 authority in an amount set by the board. The board
 19 may elect such other officers from its membership or
 20 from its staff as it deems proper, and prescribe their
 21 powers and duties. Appointments to fill a vacancy of
 22 one of the appointed members shall be made in the
 23 same manner as the original appointment.

24 (b) All appointed members of the board shall be
 25 from the private sector, with one member of the board
 26 from each congressional district of the state as of the
 27 effective date of this article, and shall represent the
 28 public interest generally. At least two members shall
 29 be appointed that have recognized ability and practical
 30 experience in transportation. At least two members
 31 may be appointed that have recognized ability and
 32 practical experience in banking and finance. At least
 33 one member may be appointed that has recognized
 34 ability and practical experience in international trade.
 35 At least one member may be appointed that has
 36 recognized ability and practical experience in business
 37 management, economics or accounting. Two members
 38 shall be appointed to represent the public at large.

39 One ex officio member of the board shall be the
 40 secretary of the department of commerce, labor and
 41 environmental resources or his or her designee.

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

45 (c) Any member of the board of directors of the
 46 public port authority, appointed pursuant to the
 47 provisions of this section prior to amendment thereto,
 48 and any member of the board of directors of the
 49 wayport authority, appointed under the provisions of
 50 section two, article sixteen-c of this chapter, prior to
 51 repeal of that section, and confirmed by the Senate of
 52 West Virginia, and serving in such capacity on the
 53 effective date of amendment to this section, shall serve

54 as a member of the board of directors of the public
55 port authority for the duration of the appointed term.
56 Thereafter, their respective successors shall be
57 appointed for terms of three years. Each member shall
58 serve until a successor is appointed and qualified.

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

64 (e) Members of the board shall not be entitled to
65 compensation for their services but shall be reim-
66 bursed for all necessary expenses actually incurred in
67 connection with the performance of their duties as
68 members.

69 (f) Six members of the board shall constitute a
70 quorum and the affirmative vote of the majority of
71 members present at a meeting of the board shall be
72 necessary and sufficient for any action taken by the
73 board, except that the affirmative vote of at least six
74 members is required for the approval of any resolu-
75 tion authorizing the issuance of any bonds pursuant to
76 this article.

77 (g) No vacancy in the membership or the board
78 impairs the right of a quorum to exercise all rights
79 and perform all duties of the board. Any action taken
80 by the board may be authorized by resolution at any
81 regular or special meeting and shall take effect upon
82 the date the chairman certifies the action of the
83 authority by affixing his or her signature to the
84 resolution unless some other date is otherwise pro-
85 vided in the resolution.

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

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

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

3 (b) The executive director shall be paid a salary to
4 be determined by the board of directors. The execu-
5 tive director shall be responsible for managing and
6 administering the daily functions of the authority and
7 for performing any and all other functions necessary
8 or helpful for the effective functioning of the author-
9 ity, together with all other functions and powers as
10 may be delegated to him by the board. The executive
11 directors may, with the authorization of the board of
12 directors, employ support staff as deemed necessary to
13 carry out the duties and responsibilities of the
14 authority.

15 (c) The chairman of the board shall serve as tempo-
16 rary director of the authority until appointment of the
17 executive director pursuant to this section.

§17-16B-5. Definitions.

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

5 (a) The word “authority” means the West Virginia
6 public port authority as created and continued by
7 section one of this article.

8 (b) The words “operation fund” mean the special
9 West Virginia public port authority operation fund as
10 created by section seven of this article.

11 (c) The words “port” or “public port” mean ports,
12 airports, wayports, terminals, buildings, roadways,
13 rights-of-way, rails, rail lines, facilities for rail, water,
14 highway or air transportation, and such structures,
15 equipment, facilities or improvements as are necessary
16 or incident thereto.

17 (d) The word “wayport” means an airport used
18 primarily as a location at which passengers and cargo
19 may be transferred between connecting flights of air
20 carriers engaged in air commerce; but also allows
21 passengers to initiate and terminate flights, and
22 shipments of cargo to originate and terminate at said
23 airport or similar type facility.

24 (e) The words "public port development" or "public
25 port project" mean any activities which are under-
26 taken with respect to public ports.

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

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

3 (1) The authority shall initiate meetings with polit-
4 ical subdivisions of the state to assess specific transpor-
5 tation needs and shall determine the needs of the state
6 as a whole in terms of transportation, as well as
7 consider feasibility studies for the purpose of deter-
8 mining the best site locations for transportation
9 centers, terminals, ports and harbors and foreign trade
10 zones.

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

17 (2) On or before the first day of December, one
18 thousand nine hundred ninety-one, the authority shall
19 prepare and file a comprehensive report with the
20 governor and the Legislature setting forth the overall
21 strategic plan both short term and long term for
22 accomplishing the purposes set forth in this article.

23 (3) The public port authority shall coordinate with
24 the West Virginia parkways, economic development
25 and tourism authority or other parkways authority,
26 established pursuant to article sixteen-a, chapter
27 seventeen of this code, in the exercise of its powers
28 and duties hereunder and development of appropriate
29 intermodal transportation within the state.

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

32 (1) The powers of a body corporate, including the
33 power to sue and be sued, to make contracts, and to
34 adopt and use a common seal and to alter the same as

35 may be deemed expedient;

36 (2) Acquire, purchase, install, lease, construct, own,
 37 hold, operate, maintain, equip, use and control ports,
 38 as defined herein, and such terminals, buildings,
 39 roadways, rights-of-way, rails and such structures,
 40 equipment, facilities or improvements as are necessary
 41 or incident to carry out the provisions of this article,
 42 and in connection therewith shall have the further
 43 right to lease, install, construct, acquire, own, main-
 44 tain, control and use any and every kind or character
 45 of motive powers and conveyances or appliances
 46 necessary or proper to carry goods, wares and mer-
 47 chandise over, along, upon or through the railway,
 48 highway, waterway or airway or other conveyance of
 49 such transportation system, excluding pipelines;

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

60 (4) To act as agent for the United States of America,
 61 or any agency, department, corporation or instrumen-
 62 tality thereof, in any manner coming within the
 63 purposes or powers of the board;

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

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

73 (7) To enter into agreements, contracts or other

74 transactions with any federal, state, county, municipal
75 agency or private entity;

76 (8) To report annually to the Legislature by the first
77 day of December of each year on the status of projects,
78 operations, financial condition and other necessary
79 information relating to the statewide tourist intermo-
80 dal transportation system and public port authority
81 activities;

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

85 (10) The authority is hereby designated and empow-
86 ered to act on behalf of the state on submitting siting
87 proposals for public ports;

88 (11) The authority is empowered to take all steps
89 appropriate and necessary to effect siting, develop-
90 ment and operation of public ports within the state;

91 (12) To construct, reconstruct, improve, maintain,
92 repair and operate infrastructure projects at the
93 designated port sites as determined by the public port
94 authority;

95 (13) To receive and accept from any federal agency
96 grants for or in aid of the construction of any project,
97 and to receive and accept aid or contributions from
98 any sources of either money, property, labor or other
99 things of value, to be held, used and applied only for
100 the purposes for which such grants and contributions
101 may be made;

102 (14) The authority is authorized and empowered to
103 acquire by purchase, whenever it shall deem such
104 purchase expedient, any land, property, rights, rights-
105 of-way, franchises, easements and other interests in
106 lands as it may deem necessary or convenient for the
107 construction or operation of any project upon such
108 terms and at such price as may be considered by it to
109 be reasonable and to take title in the name of the
110 state; and for the purpose of acquiring any lands,
111 rights or easements deemed necessary or incidental
112 for the purposes of the authority, the authority has the

113 right of eminent domain to the same extent and to be
114 exercised in the same manner as now or hereafter
115 provided by law for such right of eminent domain by
116 cities, incorporated towns, and other municipal
117 corporations;

118 (15) The authority is hereby designated and empow-
119 ered to act on behalf of the state and to represent the
120 state in the planning, financing, development, con-
121 struction and operation of any port project or any
122 facility related to any such project, with the concur-
123 rence of the affected public agency. Other state
124 agencies and local governmental entities in this state,
125 including the West Virginia housing development
126 fund, shall cooperate to the fullest extent the authority
127 deems appropriate to effectuate the duties of the
128 authority. If requested to do so by the authority, the
129 West Virginia housing development fund shall, subject
130 to the provisions of article eighteen, chapter thirty-one
131 of the code of West Virginia, one thousand nine
132 hundred thirty-one, as amended, including, without
133 limitation, the approval of its board of directors, issue
134 or use its best efforts to issue, either in its own name
135 or on behalf of the authority, such bonds and notes as
136 may be required to finance the planning, develop-
137 ment, construction and operation of any project or any
138 facility related to any project. In the event such bonds
139 or notes are issued by the West Virginia housing
140 development fund, the authority shall enter into all
141 such agreements as the West Virginia housing devel-
142 opment fund may determine are necessary to pledge
143 revenues from projects or other funds of the authority
144 sufficient to pay such bonds and notes and to pay all
145 related fees, costs and expenses;

146 (16) The authority shall initiate meetings with local
147 and area port authority districts, committees and
148 entities in the development of possible port site
149 designations. The authority shall seek coordination,
150 cooperation and feasibility studies from local and area
151 port authority districts, committees and entities;

152 (17) The authority shall take affirmative steps to
153 coordinate freely all aspects of the submission of a

154 siting proposal for any port project, and to coordinate
155 fully the development of any project or any facility
156 related to any project with the federal government
157 agency;

158 (18) To do any and all things necessary to carry out
159 and accomplish the purposes of this article, including
160 issuing revenue bonds or requesting other appropriate
161 state agencies to issue and administer public port
162 revenue bonds to finance projects;

163 (19) To assist and encourage the West Virginia
164 railroad maintenance authority to purchase railroad
165 tracks being abandoned by any common carrier, and
166 to financially assist the railroad maintenance authority
167 in making such purchase;

168 (20) To collect reasonable fees and charges in con-
169 nection with making and servicing loans, notes, bonds,
170 obligations, commitments and other evidence of
171 indebtedness, and in connection with providing techni-
172 cal, consultive and project assistance services; and

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

175 (c) Incidental to the development of a comprehen-
176 sive strategic plan for intermodal transportation, the
177 executive director and staff of the authority shall
178 analyze the shipment of products through the ports of
179 the state for the purpose of expediting such shipments,
180 and shall be authorized to collect and analyze such
181 information, which is maintained in the ordinary
182 course of business by the person, firm or corporation
183 providing such information, pertaining to the trans-
184 portation of products which has been moved by rail,
185 water, highway or air to and from points within and
186 without this state:

187 (1) Any such information and data supplied to the
188 executive director of the authority shall be for exclu-
189 sive use of the executive director and the staff of the
190 authority. Such information is deemed confidential
191 and is not subject to disclosure under the freedom of
192 information act. Neither the executive director nor

193 any staff member of the authority shall publicly
 194 disclose this information and data to any member of
 195 the board of the authority, nor to any person, firm,
 196 corporation or agent. It shall be unlawful for any
 197 officer or employee of this state to divulge or make
 198 known in any manner any information obtained
 199 pursuant to this subsection or disclose information
 200 concerning the personal or business affairs of any
 201 individual or the business of any single firm or
 202 corporation, or disclose any particulars set forth or
 203 disclosed in any report or other information provided
 204 to the authority.

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

211 (3) In carrying out the functions theretofore des-
 212 cribed, the authority shall be deemed to be performing
 213 an essential governmental function as an instrumen-
 214 tality of the state of West Virginia.

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

1 There is hereby established a special West Virginia
 2 public port authority operations fund which shall
 3 operate as a special revolving fund. All proceeds and
 4 revenues of the authority shall be credited to the fund
 5 by the state treasurer on a monthly basis. At the end
 6 of each fiscal year, any unexpended funds in this
 7 account shall be reappropriated and available for
 8 expenditure for the subsequent fiscal year. On the
 9 effective date of the amendment to this section, the
 10 West Virginia wayport authority operations fund
 11 heretofore created shall be transferred and combined
 12 with the West Virginia public port authority opera-
 13 tions fund.

§17-16B-15. Port revenue bonds — Generally.

1 The public port authority is hereby authorized to

2 provide by resolution at one time or from time to
3 time, for the issuance of public port revenue bonds of
4 the state for the purpose of paying all or any part of
5 the cost of one or more port projects. The principal of
6 and the interest on such bonds shall be payable solely
7 from the funds herein provided for such payment. The
8 bonds of each issue shall be dated, shall bear interest
9 at such rate or rates as may be determined by the
10 authority in its sole discretion, shall mature at such
11 time or times not exceeding forty years from their
12 date or dates, as may be determined by the authority,
13 and may be made redeemable before maturity, at the
14 option of the public port authority, at such price or
15 prices and under such terms and conditions as may be
16 fixed by the public port authority prior to the issuance
17 of the bonds. The public port authority shall deter-
18 mine the form of the bonds, including any interest
19 coupons to be attached thereto, and shall fix the
20 denomination or denominations of the bonds and the
21 place or places of payment of principal and interest,
22 which may be at any bank or trust company within or
23 without the state. The bonds shall be executed by
24 manual or facsimile signature by the governor and by
25 the chairman of the public port authority, and the
26 official seal of the public port authority shall be affixed
27 to or printed on each bond, and attested, manually or
28 by facsimile signature, by the secretary of the public
29 port authority, and any coupons attached to any bond
30 shall bear the manual or facsimile signature of the
31 chairman of the public port authority. In case any
32 officer whose signature or a facsimile of whose signa-
33 ture appears on any bonds or coupons shall cease to be
34 such officer before the delivery of such bonds, such
35 signature or facsimile shall nevertheless be valid and
36 sufficient for all purposes the same as if he had
37 remained in office until such delivery; and, in case the
38 seal of the public port authority has been changed
39 after a facsimile has been imprinted on such bonds,
40 such facsimile seal will continue to be sufficient for all
41 purposes. All bonds issued under the provisions of this
42 article shall have and are hereby declared to have all
43 the qualities and incidents of negotiable instruments

44 under the negotiable instruments law of the state. The
45 bonds may be issued in coupon or in registered form,
46 or both, as the public port authority may determine,
47 and provision may be made for the registration of any
48 coupon bonds as to principal alone and also as to both
49 principal and interest, and for the reconversion into
50 coupon bonds of any bonds registered as to both
51 principal and interest. The public port authority may
52 sell such bonds in such manner, either at public or at
53 private sale, and for such price as it may determine to
54 be in the best interests of the state.

55 The proceeds of the bonds of each issue shall be used
56 solely for the payment of the cost of the public port
57 authority project or projects for which such bonds
58 shall have been issued, and shall be disbursed in such
59 manner and under such restrictions, if any, as the
60 public port authority may provide in the resolution
61 authorizing the issuance of such bonds or in the trust
62 agreement hereinafter mentioned securing the same.
63 If the proceeds of the bonds of any issue, by error of
64 estimates or otherwise, shall be less than such cost,
65 additional public port bonds may in like manner be
66 used to provide the amount of such deficit, and, unless
67 otherwise provided in the resolution authorizing the
68 issuance of such bonds or in the trust agreement
69 securing the same, shall be deemed to be of the same
70 issue and shall be entitled to payment from the same
71 fund without preference or priority of the bonds first
72 issued. If the proceeds of the bonds of any issue shall
73 exceed the cost of the project or projects for which the
74 same shall have been issued, the surplus shall be
75 deposited to the credit of the sinking fund for such
76 bonds.

77 Prior to the preparation of definitive bonds, the
78 public port authority may, under like restrictions,
79 issue interim receipts or temporary bonds, with or
80 without coupons, exchangeable for definitive bonds
81 when such bonds shall have been executed and are
82 available for delivery. The public port authority may
83 also provide for the replacement of any bonds which
84 shall become mutilated or shall be destroyed or lost.

85 Bonds may be issued under the provisions of this
86 article without obtaining the consent of any depart-
87 ment, division, commission, board, bureau or agency
88 of the state, and without any other proceedings or the
89 happening of any other conditions or things than those
90 proceedings, conditions or things which are specifically
91 required by this article.

§17-16B-16. Public port revenue bonds — Trust agreements.

1 In the discretion of the public port authority any
2 public port bonds issued under the provisions of this
3 article may be secured by a trust agreement by and
4 between the public port authority and a corporate
5 trustee, which may be any trust company or bank
6 having the powers of a trust company within or
7 without the state. Any such trust agreement may
8 pledge or assign the tolls, rents, fees, charges and other
9 revenues to be received, but shall not convey or
10 mortgage any project or any part thereof. Any such
11 trust agreement or any resolution providing for the
12 issuance of such bonds may contain such provisions for
13 protecting and enforcing the rights and remedies of
14 the bondholders as may be reasonable and proper and
15 not in violation of law, including covenants setting
16 forth the duties of the public port authority in relation
17 to the acquisition of property and the construction,
18 reconstruction, improvement, maintenance, repair,
19 operation and insurance of the project or projects in
20 connection with which such bonds shall have been
21 authorized, and the custody, safeguarding and applica-
22 tion of all moneys, and provisions for the employment
23 of consulting engineers in connection with the con-
24 struction or operation of such project or projects. It
25 shall be lawful for any bank or trust company incor-
26 porated under the laws of the state which may act as
27 depository of the proceeds of bonds or of revenues to
28 furnish such indemnifying bonds or to pledge such
29 securities as may be required by the public port
30 authority. Any such trust agreement may set forth the
31 rights and remedies of the bondholders and of the
32 trustee, and may restrict the individual right of action
33 by bondholders as is customary in trust agreements

34 securing bonds and debentures of corporations. In
35 addition to the foregoing, any such trust agreement
36 may contain such other provisions as the public port
37 authority may deem reasonable and proper for the
38 security of the bondholders. All expenses incurred in
39 carrying out the provisions of any such trust agree-
40 ment may be treated as a part of the cost of the
41 operation of the project or projects to which the trust
42 agreement applies.

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

1 (a) The public port authority is hereby authorized to
2 fix, revise, charge and collect tolls for the use of each
3 public port project and the different parts or sections
4 thereof, and to fix, revise, charge and collect rents,
5 fees, charges and other revenues, of whatever kind or
6 character, for the use of each port, public port,
7 economic development project or tourism project, or
8 any part or section thereof, and to contract with any
9 person, partnership, association or corporation desiring
10 the use of any part thereof, including the right-of-way
11 adjoining the paved portion, for placing thereon
12 telephone, telegraph, electric light, power or other
13 utility lines, gas stations, garages, stores, hotels,
14 restaurants and advertising signs, or for any other
15 purpose, and to fix the terms, conditions, rents and
16 rates of charges for such use. Such tolls, rents, fees
17 and charges shall be so fixed and adjusted in respect
18 of the aggregate of tolls, or in respect of the aggregate
19 rents, fees and charges, from the project or projects in
20 connection with which the bonds of any issue shall
21 have been issued as to provide a fund sufficient with
22 other revenues, if any, to pay: (A) The cost of main-
23 taining, repairing and operating such project or
24 projects; and (B) the principal of and the interest on
25 such bonds as the same shall become due and payable,
26 and to create reserves for such purposes. Such tolls,
27 rents, fees and other charges shall not be subject to
28 supervision or regulation by any other commission,
29 board, bureau, department or agency of the state. The
30 tolls, rents, fees, charges and all other revenues
31 derived from the project or projects in connection

32 with which the bonds of any issue shall have been
33 issued, except such part thereof as may be necessary
34 to pay such cost of maintenance, repair and operation
35 and to provide such reserves therefor as may be
36 provided for in the resolution authorizing the issuance
37 of such bonds or in the trust agreement securing the
38 same shall be set aside at such regular intervals as
39 may be provided in such resolution or such trust
40 agreement in a sinking fund which is hereby pledged
41 to, and charged with, the payment of: (1) The interest
42 upon such bonds as such interest shall fall due; (2) the
43 principal of such bonds as the same shall fall due; (3)
44 the necessary charges of paying agents for paying
45 principal and interest; and (4) the redemption price or
46 the purchase price of bonds retired by call or purchase
47 as therein provided. The use and disposition of moneys
48 to the credit of such sinking fund shall be subject to
49 the provisions of the resolution authorizing the issu-
50 ance of such public port bonds or of such trust
51 agreement. Except as may otherwise be provided in
52 such resolution or such trust agreement, such sinking
53 fund shall be a fund for all such bonds without
54 distinction or priority of one over another. The
55 moneys in the sinking fund, less such reserve as may
56 be provided in such resolution or trust agreement, if
57 not used within a reasonable time for the purchase of
58 bonds for cancellation as above provided, shall be
59 applied to the redemption of bonds at the redemption
60 price then applicable.

§17-16B-18. Trust funds.

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

12 resolution or trust agreement may provide.

§17-16B-19. Remedies.

1 Any holder of bonds issued under the provisions of
 2 this article or any of the coupons appertaining thereto,
 3 and the trustee under any trust agreement, except to
 4 the extent the rights herein given may be restricted
 5 by such trust agreement, may either at law or in
 6 equity, by suit, action, mandamus or other proceeding,
 7 protect and enforce any and all rights under the laws
 8 of the state or granted hereunder or under such trust
 9 agreement or the resolution authorizing the issuance
 10 of such bonds, and may enforce and compel the
 11 performance of all duties required by this article or by
 12 such trust agreement or resolution to be performed by
 13 the public port authority or by any officer thereof,
 14 including the fixing, charging and collecting of tolls,
 15 rents, fees and charges.

§17-16B-20. Exemption from taxes.

1 (a) The exercise of the powers granted by this article
 2 will be in all respects for the benefit of the people of
 3 the state, for the increase of their commerce and
 4 prosperity, and for the improvement of their health
 5 and living conditions, and as the operation and main-
 6 tenance of projects by the public port authority will
 7 constitute the performance of essential governmental
 8 functions, the public port authority shall not be
 9 required to pay any taxes or assessments upon any
 10 project or any property acquired or used by the public
 11 port authority under the provisions of this article or
 12 upon the income therefrom, and the bonds issued
 13 under the provisions of this article, their transfer and
 14 the income therefrom (including any profit made on
 15 the sale thereof) shall at all times be free from
 16 taxation within the state.

17 (b) In lieu of payment by the public port authority
 18 of county property taxes and other assessments on
 19 facilities owned by it, or upon any facility which is
 20 leased to any private person, corporation, or entity, the
 21 public port authority shall make an annual payment as
 22 provided herein to the county commission of such

23 county. Any public port authority project which is
24 leased and is exempt from taxation shall be subject to
25 a payment in lieu of taxes. Said payment shall be
26 made to the county commission of the county in which
27 the project is located and shall be in an amount equal
28 to the property taxes otherwise payable. The county
29 commission receiving such in lieu of payment shall
30 distribute such payment to the different levying bodies
31 in that county in the same manner as are property
32 taxes. Nothing contained herein may be construed to
33 prohibit the public port authority from collecting such
34 in lieu of payment from any private party by contract
35 or otherwise.

§17-16B-21. Preliminary expenses.

1 The secretary of transportation is hereby authorized,
2 in his or her discretion, to expend out of any funds
3 available for the purpose, such moneys as may be
4 necessary for the study of any public port economic
5 development or tourism project or projects and to use
6 the division of highway's engineering and other forces,
7 including consulting engineers and traffic engineers,
8 for the purpose of effecting such study and to pay for
9 such additional engineering and traffic and other
10 expert studies as he may deem expedient; and all such
11 expenses incurred by the state department of trans-
12 portation and the state division of highways prior to
13 the issuance of public port revenue bonds or revenue
14 refunding bonds under the provisions of this article
15 shall be paid by the state division of highways or the
16 state department of transportation and charged to the
17 appropriate project or projects, and the state division
18 of highways and the state department of transporta-
19 tion shall keep proper records and accounts showing
20 each amount so charged. Upon the sale of public port
21 revenue bonds or revenue refunding bonds for any
22 public port project or projects, the funds so expended
23 by the state division of highways or the state depart-
24 ment of transportation in connection with such project
25 or projects shall be reimbursed to the state division of
26 highways and the state department of transportation
27 from the proceeds of such bonds.

**§17-16B-22. Public port revenue refunding bonds —
Generally.**

1 The public port authority is hereby authorized to
2 provide by resolution for the issuance of public port
3 revenue refunding bonds of the state for the purpose
4 of refunding any bonds then outstanding which shall
5 have been issued under the provisions of this article,
6 including the payment of any redemption premium
7 thereon and any interest accrued or to accrue to the
8 date of redemption of such bonds; and if deemed
9 advisable by the public port authority, for the addi-
10 tional purpose of constructing improvements, exten-
11 sions or enlargements of the project or projects in
12 connection with which the bonds to be refunded shall
13 have been issued.

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

25 The issuance of such bonds, the maturities and other
26 details thereof, the rights of the holders thereof, and
27 the rights, duties and obligations of the public port
28 authority in respect of the same, shall be governed by
29 the provisions of this article insofar as the same may
30 be applicable.

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

Homer Heck
.....
Chairman Senate Committee

Ernest C. Middle
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1991.

Harold E. Nelson
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Keith Brundette
.....
President of the Senate

W. C. Cullen
.....
Speaker House of Delegates

The within *approved* this the *2d*.....
day of *April*....., 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:35 am