

HB 2141

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



ENROLLED

House Bill No. 2141

(By Delegates Michael and Martin)



Passed March 13, 1999

In Effect Ninety Days from Passage

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OFFICE OF THE SECRETARY OF STATE

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H. B. 2141

(BY DELEGATES MICHAEL AND MARTIN)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article two-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and seven, article eighteen, chapter twenty-nine of said code, all relating to the state rail authority generally; exempting the state rail authority as an agency for which the secretary of administration is to provide alternative fuel vehicles; legislative rules; providing special competitive bid requirements in certain circumstances; providing exemption from competitive bid requirements in certain circumstances; and permitting state rail authority to enter into contracts or agreements with the division of highways for the lease or purchase and maintenance of vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article two-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections six and seven, article eighteen, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 2A. USE OF ALTERNATIVE FUELS IN STATE-OWNED VEHICLES.

§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

1 (a) After the first day of September, one thousand nine
2 hundred ninety-three, the secretary may purchase or lease
3 alternative fuel vehicles for use by any state agency.

4 (b) The secretary may acquire or be provided with equip-
5 ment or refueling facilities necessary to operate alternative fuel
6 vehicles by any of the following methods:

7 (1) Purchase or lease as authorized by law;

8 (2) Gift or loan of the equipment or facilities; or

9 (3) Gift or loan of the equipment or facilities or other
10 arrangement pursuant to a service contract for the supply of
11 alternative fuels.

12 (c) If such equipment or facilities are donated, loaned or
13 provided through other arrangement with the supplier of
14 alternative fuels, the supplier shall be entitled to recoup its
15 actual cost of donating, loaning or providing the equipment or
16 facilities through its fuel charges under the fuel supply contract.

17 (d) Of the total number of vehicles acquired or caused to be
18 acquired by the secretary for use by any state agency vehicle
19 fleet:

20 (1) Twenty percent in fiscal year one thousand nine
21 hundred ninety-five;

22 (2) Thirty percent in fiscal year one thousand nine hundred
23 ninety-six;

24 (3) Fifty percent in fiscal year one thousand nine hundred
25 ninety-seven, shall be alternative fuel vehicles.

26 (e) The secretary shall review this alternative fuel use
27 program on or before the thirty-first day of December, one
28 thousand nine hundred ninety-seven, and if the secretary
29 determines that the program is effective in reducing costs to the

30 state, taking into consideration the cost of operating alternative
31 fuel vehicles over the expected useful life of the vehicles, the
32 secretary shall, of the total number of vehicles acquired in each
33 fiscal year, acquire at least seventy-five percent alternative fuel
34 vehicles for state agency fleets beginning the first day of
35 September, one thousand nine hundred ninety-eight, and
36 thereafter.

37 (f) The secretary shall, in the annual fiscal report to the
38 Legislature, show the progress in achieving these percentage
39 requirements by itemizing purchases, leases and conversions of
40 motor vehicles and usage of alternative fuels.

41 (g) The secretary, in the development of the alternative fuel
42 use program, shall consult with state agency fleet operators,
43 vehicle manufacturers and converters, fuel distributors and
44 others to delineate the vehicles to be covered, taking into
45 consideration range, specialty uses, fuel availability, vehicle
46 manufacturing and conversion capability, safety, resale values
47 and other relevant factors. In order to maximize the savings to
48 the state, the secretary shall attempt to the extent possible to
49 convert first those vehicles that are used the most often for the
50 most miles. The secretary may meet the percentage require-
51 ments of this section through purchase or lease of new vehicles,
52 purchase or lease of used alternative fuel vehicles or the
53 conversion of existing vehicles, in accordance with federal and
54 state requirements and applicable safety laws and standards, to
55 use alternative fuels.

56 (h) The secretary may reduce any percentage specified or
57 waive the requirements of subsection (d) of this section for any
58 state agency upon a determination by the secretary that either
59 of the following situations apply:

60 (1) The agency's vehicles will be operating primarily in an
61 area in which neither the agency nor a supplier has or can
62 reasonably be expected to establish a central refueling station
63 for alternative fuels.

64 (2) The agency is unable to acquire or be provided equip-
65 ment or refueling facilities necessary to operate alternative fuel

66 vehicles at a projected cost that is reasonably expected to result
67 in no greater net costs than the continued use of traditional
68 gasoline or diesel fuels measured over the expected useful life
69 of the equipment or facilities supplied.

70 (i) The provisions of this section do not apply to:

71 (1) Vehicles operated by law-enforcement agencies;

72 (2) Emergency vehicles;

73 (3) Vehicles operated by public transit authorities;

74 (4) School buses;

75 (5) Vehicles operated by the state rail authority; or

76 (6) Nonroad vehicles, including farm and construction
77 vehicles.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority gener- ally.

1 The West Virginia state rail authority is hereby granted, has
2 and may exercise all powers necessary or appropriate to carry
3 out and effectuate its corporate purpose.

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

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

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and be
15 impleaded in its own name, and particularly to enforce the
16 obligations and covenants made under sections ten, eleven and

17 sixteen of this article. Any actions against the authority shall be
18 brought in the circuit court of Kanawha County. The location
19 of the principal office of the authority shall be determined by
20 the governor.

21 (5) Make loans and grants to governmental agencies and
22 persons for carrying out railroad projects by any such govern-
23 mental agency or person and, in accordance with chapter
24 twenty-nine-a of this code, adopt legislative rules and proce-
25 dures for making such loans and grants.

26 (6) Acquire, construct, reconstruct, enlarge, improve,
27 furnish, equip, maintain, repair, operate, lease or rent to, or
28 contract for operation by a governmental agency or person,
29 railroad projects and, in accordance with chapter twenty-nine-a
30 of this code, adopt legislative rules for the use of these projects.

31 (7) Make available the use or services of any railroad
32 project to one or more persons, one or more governmental
33 agencies, or any combination thereof.

34 (8) Issue railroad maintenance authority bonds and notes
35 and refunding bonds of the state, payable solely from revenues
36 as provided in section ten of this article unless the bonds are
37 refunded by refunding bonds, for the purpose of paying any part
38 of the cost of one or more railroad projects or parts thereof.

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

42 (10) Acquire in the name of the state, by purchase or
43 otherwise, on such terms and in such manner as it considers
44 proper, or by the exercise of the right of eminent domain in the
45 manner provided in chapter fifty-four of this code, rail proper-
46 ties and appurtenant rights and interests necessary for carrying
47 out railroad projects.

48 (11) (A) Make and enter into all contracts and agreements
49 and execute all instruments necessary or incidental to the
50 performance of its duties and the execution of its powers.

51 (B) Where rolling stock, equipment or trackage of the
52 authority is in need of immediate maintenance, repair or

53 reconstruction in order to avoid a cessation of its operations,
54 economic loss, the inability to provide essential service to
55 customers or danger to authority personnel or the public, the
56 following requirements and procedures for entering into the
57 contract or agreement to remedy the condition shall be in lieu
58 of those provided in article three, chapter five-a of this code or
59 any legislative rule promulgated pursuant thereto:

60 (i) If the cost under the contract or agreement involves an
61 expenditure of more than one thousand dollars, but ten thousand
62 dollars or less, the authority shall award the contract to or enter
63 into the agreement with the lowest responsible bidder based
64 upon at least three oral bids made pursuant to the requirements
65 of the contract or agreement.

66 (ii) If the cost under the contract or agreement, other than
67 one for compensation for personal services, involves an
68 expenditure of more than ten thousand dollars, but twenty-five
69 thousand dollars or less, the authority shall award the contract
70 to or enter into the agreement with the lowest responsible
71 bidder based upon at least three bids, submitted to the authority
72 in writing on letterhead stationery, made pursuant to the
73 requirements of the contract or agreement.

74 (C) Notwithstanding any other provision of this code to the
75 contrary, a contract or lease for the operation of a railroad
76 project constructed and owned by the authority or an agreement
77 for cooperation in the acquisition or construction of a railroad
78 project pursuant to section sixteen of this article is not subject
79 to the provisions of article three, chapter five-a of this code or
80 any legislative rule promulgated pursuant thereto, and the
81 authority may enter into the contract or lease or the agreement
82 pursuant to negotiation and upon such terms and conditions and
83 for a period of time as it finds to be reasonable and proper
84 under the circumstances and in the best interests of proper
85 operation or of efficient acquisition or construction of the
86 railroad project.

87 (D) The authority may reject any and all bids. A bond with
88 good and sufficient surety, approved by the authority, shall be
89 required of all contractors in an amount equal to at least fifty

90 percent of the contract price, conditioned upon the faithful
91 performance of the contract.

92 (12) Appoint a director and employ managers, superinten-
93 dents and other employees and retain or contract with consult-
94 ing engineers, financial consultants, accountants, attorneys and
95 other consultants and independent contractors as are necessary
96 in its judgment to carry out the provisions of this article, and fix
97 the compensation or fees thereof. All expenses thereof shall be
98 payable from the proceeds of railroad maintenance authority
99 revenue bonds or notes issued by the authority, from revenues
100 and funds appropriated for this purpose by the Legislature or
101 from grants from the federal government which may be used for
102 such purpose.

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

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

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

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

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

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

125 (1) Acquire rail properties both within and not within the
126 jurisdiction of the interstate commerce commission and rail
127 properties within the purview of the federal Regional Rail
128 Reorganization Act of 1973, any amendments to it and any
129 other relevant federal legislation.

130 (2) Enter into agreements with owners of rail properties for
131 the acquisition of rail properties or use, or both of rail proper-
132 ties upon the terms, conditions, rates or rentals that can best
133 effectuate the purposes of this article.

134 (3) Acquire rail properties and other property of a railroad
135 in concert with another state or states as is necessary to ensure
136 continued rail service in this state.

137 (4) Establish a state plan for rail transportation and local
138 rail services.

139 (5) Administer and coordinate such state plan.

140 (6) Provide in the state plan for the equitable distribution of
141 federal rail service continuation subsidies among state, local
142 and regional transportation authorities.

143 (7) Promote, supervise and support safe, adequate and
144 efficient rail services.

145 (8) Employ sufficiently trained and qualified personnel for
146 these purposes.

147 (9) Maintain adequate programs of investigation, research,
148 promotion and development in connection with such purposes
149 and to provide for public participation therein.

150 (10) Provide satisfactory assurances on behalf of the state
151 that fiscal control and fund accounting procedures will be
152 adopted by the state necessary to assure proper disbursement of
153 and accounting for federal funds paid to the state as rail service
154 continuation subsidies.

155 (11) Comply with the regulations of the secretary of
156 transportation of the United States department of transportation
157 affecting federal rail service continuation programs.

158 (12) Do all things otherwise necessary to maximize federal
159 assistance to the state under Title IV of the federal Regional
160 Rail Reorganization Act of 1973, and to qualify for rail service
161 continuation subsidies pursuant to the federal Regional Rail
162 Reorganization Act of 1973.

§29-18-7. Operations; purchases.

1 (a) The authority may sell, transfer or lease all, or any part,
2 of the rail properties and other property acquired under the
3 provisions of this article to any responsible person, firm or
4 corporation for continued operation of a railroad or other public
5 purpose: *Provided*, That approval for the continued operation
6 or other public purpose, is granted by the interstate commerce
7 commission of the United States, whenever approval is re-
8 quired. The sale, transfer or lease shall be for a price and
9 subject to any further terms and conditions which the authority
10 feels are necessary and appropriate to effectuate the purposes of
11 this article.

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

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

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

31 (e) The authority may cooperate with other states in
32 connection with the purchase of any rail properties within this
33 state. The authority may also acquire railroad rights in other
34 states and rail properties lying in other states in order to carry
35 out the intentions and purposes of this article. In carrying out
36 the powers and duties conferred by this article, the authority
37 may enter into general contractual arrangements, including joint
38 purchasing and leasing of rail properties with other states.

39 (f) In weighing the varied interests of the residents of this
40 state, the authority shall give consideration to the individual
41 interest of any county or municipality expressing a desire to
42 acquire a portion, or all, of the abandoned real estate located
43 within its jurisdiction. The authority may exercise its powers
44 under this article to acquire the abandoned property for subse-
45 quent conveyance to the county or municipality.

46 (g) The authority may utilize federal funds, grants, gifts or
47 donations which are available and any sums that are appropri-
48 ated in carrying out the purposes of this article. The authority
49 may also apply for discretionary or other funds available under
50 the provisions of the federal Regional Rail Reorganization Act
51 of 1973 or other federal programs.

52 (h) The authority may apply for an acquisition and modern-
53 ization loan, or a guarantee of a loan, pursuant to Section 403
54 of the federal Regional Rail Reorganization Act of 1973, or any
55 other federal programs, within the limit of funds appropriated
56 for those purposes.

57 (i) The authority is authorized to purchase any railroad
58 rolling stock, equipment and machinery necessary for the
59 operation and maintenance of any rail properties purchased by
60 it on behalf of the state, with any funds made available for this
61 purpose. The authority may also acquire and have available a
62 pool of equipment and machinery which may be utilized by the
63 operators of the rail properties for the purpose of track mainte-
64 nance and other related railroad activities upon terms and
65 conditions determined by the authority. Notwithstanding the
66 provisions of sections forty-eight through fifty-three, article
67 three, chapter five-a of this code to the contrary, the authority

68 may enter into contracts or agreements for the lease or purchase
69 and maintenance of any vehicles required for its purposes with
70 the division of highways. For those purposes, the division of
71 highways is authorized and empowered to enter into contracts
72 or agreements for the lease or purchase and maintenance of any
73 vehicles with the authority.

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

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

88 (l) Whenever the authority determines that any rail proper-
89 ties acquired by the state are no longer needed for railroad
90 purposes, it may, with the permission of the governor, perma-
91 nently or temporarily transfer the rail properties to any other
92 state department or agency or political subdivision of the state,
93 which shall utilize the properties for a public purpose. When-
94 ever more than one department or agency or political subdivi-
95 sion wishes to utilize the property, the authority shall resolve
96 such a conflict and make a prompt determination of the
97 reasonable and proper order of priority, taking into consider-
98 ation any applicable state plans, policies or objectives. If no
99 state department or agency or political subdivision wants the
100 properties, the authority may sell them, with the proceeds
101 deposited to the special railroad fund established by this article.
102 A public hearing is required prior to the transfer or sale of any
103 rail properties by the authority.

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

Ruby Moonover
Chairman Senate Committee

Jeff. Smith
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell Stokes
Clerk of the Senate

Bruce M. Bony
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

John C. Boehner
Speaker of the House of Delegates

The within *approved* this the *7th*
day of *April*, 1999.

Jeff. B. Abernethy
Governor

PRESENTED TO THE

GOVERNOR

Date

3/26/99

Time

2:30 pm