WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

House Bill No. 2141

(By Delegates Michael and Martin)

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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.

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

(b) The secretary may acquire or be provided with equipment or refueling facilities necessary to operate alternative fuel vehicles by any of the following methods:

(1) Purchase or lease as authorized by law;

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

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

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

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

(1) Twenty percent in fiscal year one thousand ninety-five;

(2) Thirty percent in fiscal year one thousand ninety-six;

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

(e) The secretary shall review this alternative fuel use program on or before the thirty-first day of December, one thousand nine hundred ninety-seven, and if the secretary determines that the program is effective in reducing costs to the
state, taking into consideration the cost of operating alternative fuel vehicles over the expected useful life of the vehicles, the secretary shall, of the total number of vehicles acquired in each fiscal year, acquire at least seventy-five percent alternative fuel vehicles for state agency fleets beginning the first day of September, one thousand nine hundred ninety-eight, and thereafter.

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

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

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

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

(2) The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate alternative fuel
vehicles at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

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

(1) Vehicles operated by law-enforcement agencies;
(2) Emergency vehicles;
(3) Vehicles operated by public transit authorities;
(4) School buses;
(5) Vehicles operated by the state rail authority; or
(6) Nonroad vehicles, including farm and construction vehicles.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.


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

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

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

(2) Adopt an official seal.

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

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections ten, eleven and
sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the governor.

(5) Make loans and grants to governmental agencies and persons for carrying out railroad projects by any such governmental agency or person and, in accordance with chapter twenty-nine-a of this code, adopt legislative rules and procedures for making such loans and grants.

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

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

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

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

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

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

(B) Where rolling stock, equipment or trackage of the authority is in need of immediate maintenance, repair or
reconstruction in order to avoid a cessation of its operations,
economic loss, the inability to provide essential service to
customers or danger to authority personnel or the public, the
following requirements and procedures for entering into the
contract or agreement to remedy the condition shall be in lieu
of those provided in article three, chapter five-a of this code or
any legislative rule promulgated pursuant thereto:

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

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

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

(D) The authority may reject any and all bids. A bond with
good and sufficient surety, approved by the authority, shall be
required of all contractors in an amount equal to at least fifty
percent of the contract price, conditioned upon the faithful
performance of the contract.

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

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

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

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

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

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

(b) In addition, the authority shall have the power to:
(1) Acquire rail properties both within and not within the
jurisdiction of the interstate commerce commission and rail
properties within the purview of the federal Regional Rail
Reorganization Act of 1973, any amendments to it and any
other relevant federal legislation.

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

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

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

(5) Administer and coordinate such state plan.

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

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

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

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

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

(11) Comply with the regulations of the secretary of
transportation of the United States department of transportation
affecting federal rail service continuation programs.
(12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973, and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.


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

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

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

(d) All rail properties within the state offered for sale by any railway corporation after the date of enactment of this article shall be offered for sale to the state in the first instance.
(e) The authority may cooperate with other states in connection with the purchase of any rail properties within this state. The authority may also acquire railroad rights in other states and rail properties lying in other states in order to carry out the intentions and purposes of this article. In carrying out the powers and duties conferred by this article, the authority may enter into general contractual arrangements, including joint purchasing and leasing of rail properties with other states.

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

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

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

(i) The authority is authorized to purchase any railroad rolling stock, equipment and machinery necessary for the operation and maintenance of any rail properties purchased by it on behalf of the state, with any funds made available for this purpose. The authority may also acquire and have available a pool of equipment and machinery which may be utilized by the operators of the rail properties for the purpose of track maintenance and other related railroad activities upon terms and conditions determined by the authority. Notwithstanding the provisions of sections forty-eight through fifty-three, article three, chapter five-a of this code to the contrary, the authority
may enter into contracts or agreements for the lease or purchase
and maintenance of any vehicles required for its purposes with
the division of highways. For those purposes, the division of
highways is authorized and empowered to enter into contracts
or agreements for the lease or purchase and maintenance of any
vehicles with the authority.

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

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

(l) Whenever the authority determines that any rail proper-
ties acquired by the state are no longer needed for railroad
purposes, it may, with the permission of the governor, perma-
nently or temporarily transfer the rail properties to any other
state department or agency or political subdivision of the state,
which shall utilize the properties for a public purpose. When-
ever more than one department or agency or political subdivi-
sion wishes to utilize the property, the authority shall resolve
such a conflict and make a prompt determination of the
reasonable and proper order of priority, taking into consider-
atation any applicable state plans, policies or objectives. If no
state department or agency or political subdivision wants the
properties, the authority may sell them, with the proceeds
deposited to the special railroad fund established by this article.
A public hearing is required prior to the transfer or sale of any
rail properties by the authority.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rex W. Moore
Chairman Senate Committee

Jared A. Smith
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell Hughett
Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

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

Governor