

HB 2742

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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2742**

(By Mr. Speaker, Mr. Kiss, and Delegates Douglas,  
Mezzatesta, Michael, Doyle, Varner and Martin)



Passed March 12, 1999

In Effect Ninety Days from Passage

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SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE

FOR

## H. B. 2742

(BY MR. SPEAKER, MR. KISS, AND DELEGATES DOUGLAS,  
MEZZATESTA, MICHAEL, DOYLE, VARNER AND MARTIN)

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[Passed March 12, 1999; in effect ninety days from passage.]

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AN ACT to authorize a roundhouse authority in Berkeley County; to be created as public corporation; acquisition of property; membership and management; general powers; promulgation of rules to regulate traffic and penalties; right of eminent domain; tax exemptions; indebtedness; disposition of surplus; contributions, participation; and dissolution of authority.

*Be it enacted by the Legislature of West Virginia:*

**BERKELEY COUNTY ROUNDHOUSE AUTHORITY.**

### **§1. Regional roundhouse authority authorized.**

1 The county commissions of interested counties and  
2 governing bodies of the municipalities within the region of  
3 Berkeley County are hereby authorized to create and establish  
4 the Berkeley County roundhouse authority for the purpose of  
5 acquiring, establishing, constructing, equipping, improving,  
6 financing, maintaining and operating the historic Baltimore and  
7 Ohio Railroad roundhouse property located in the city of

8 Martinsburg, for various uses: *Provided*, That no municipality  
9 or county may participate in the authority unless and until its  
10 governing body provides.

**§2. Authority to be a public corporation.**

1 The Berkeley County roundhouse authority when created  
2 and established, and the members thereof, shall constitute a  
3 public corporation and as such, shall have perpetual succession,  
4 may contract and be contracted with, sue and be sued, and have  
5 and use a common seal.

**§3. Authority empowered and authorized to acquire, operate, etc.,  
roundhouse property.**

1 The authority is hereby empowered and authorized to  
2 acquire, establish, construct, equip, improve, finance, maintain  
3 and operate for purposes it considers appropriate, the Baltimore  
4 and Ohio Railroad roundhouse located in the city of Martins-  
5 burg with appurtenant facilities and any other property neces-  
6 sary for the purposes of the authority.

**§4. Management of authority vested in board; appointment and  
terms of members; vote of members, valuation of prop-  
erty contributed to the authority.**

1 The management and control of the authority, its property,  
2 operations, business and affairs shall be lodged in a board of not  
3 less than five nor more than twenty-one individuals who shall  
4 be known as members of the authority board and who shall be  
5 appointed for terms of three years. Each participating county  
6 and municipality may initially appoint three members. Thereaf-  
7 ter, the authority may vary representation on the authority board  
8 depending on the number of municipalities and counties that  
9 choose to participate and to contribute moneys or property to  
10 the authority, except that the county shall retain the right to  
11 appointment of a majority of members of the board. Each  
12 member shall serve at the will and pleasure of his or her  
13 appointing body.

14 When property is contributed, the contributing municipality  
15 or county and the authority shall agree in writing at the time the

16 contribution is made as to the fair market value of such prop-  
17 erty.

**§5. Substitution of members.**

1 If any member of the authority board dies, resigns, is  
2 removed or for any other reason ceases to be a member of the  
3 authority, the municipality or the county commission which the  
4 member represented shall appoint another individual to fill the  
5 unexpired portion of the term of the member.

**§6. Qualification of members.**

1 Each member of the authority board shall be a resident of  
2 the municipality or county that appointed the member.

**§7. Compensation of members.**

1 No member of the authority board shall receive any  
2 compensation, whether in the form of salary, per diem allow-  
3 ance or otherwise, for or in connection with his or her services  
4 as a member. Each member shall be entitled to reimbursement  
5 by the authority for all reasonable and necessary expenses  
6 actually incurred in the performance of his or her duties as a  
7 member.

**§8. Powers of authority generally.**

1 The authority shall have the following powers:

2 (1) To make and adopt all necessary bylaws and rules for its  
3 organization and operations not inconsistent with law;

4 (2) To elect its own officers, to appoint committees and to  
5 employ and fix the compensation for personnel necessary for its  
6 operation;

7 (3) To enter into contracts with any person, including both  
8 public and private corporations, or governmental department or  
9 agency, and generally to do any and all things necessary or  
10 convenient for the purpose of acquiring, establishing, construct-  
11 ing, equipping, improving, financing, maintaining and operating  
12 the roundhouse property with appurtenant facilities and other  
13 property necessary for the purposes of the authority;

14 (4) To delegate any authority given to it by law to any of its  
15 officers, committees, agents or employees;

16 (5) To apply for, receive and use grants-in-aid, donations  
17 and contributions from any source or sources, including, but not  
18 limited to, the federal government and any department or  
19 agency thereof, and this state subject to any constitutional and  
20 statutory limitations with respect thereto, and to accept and use  
21 bequests, devises, gifts and donations from any person;

22 (6) To acquire lands and hold title thereto in its own name;

23 (7) To purchase, own, hold, sell and dispose of personal  
24 property and to sell, lease or otherwise dispose of any real  
25 property which it may own;

26 (8) To borrow money and execute and deliver negotiable  
27 notes, mortgage bonds, other bonds, debentures and other  
28 evidences of indebtedness therefor, and give security therefor  
29 as shall be requisite, including giving a mortgage or deed of  
30 trust on its properties and facilities or assigning or pledging the  
31 gross or net revenues therefrom;

32 (9) To raise funds by the issuance and sale of revenue  
33 bonds in the manner provided by the applicable provisions of  
34 sections nine through seventeen, article sixteen of chapter eight  
35 of the West Virginia code, it being hereby expressly provided  
36 that for the purpose of the issuance and sale of revenue bonds,  
37 the authority is a "governing body" as that term is used in said  
38 article only;

39 (10) To establish, charge and collect reasonable fees and  
40 charges for services or for the use of any part of its property or  
41 facilities, or for both services and use;

42 (11) To expend its funds in the execution for the powers  
43 herein given;

44 (12) To apply for, receive and use loans, grants, donations,  
45 technical assistance and contributions and from participating  
46 municipalities and counties; and

48 (13) To prescribe by bylaw the manner of financial partici-  
49 pation by participating municipalities and counties.

**§9. Rules and regulations to control vehicular and pedestrian traffic; violation of rule and regulations a misdemeanor; penalty.**

1 (a) The county commission of Berkeley County is hereby  
2 empowered and authorized, upon request of the authority, to  
3 adopt and promulgate rules to: (1) Control the movement and  
4 disposition of vehicular and pedestrian traffic within the  
5 property of the authority; (2) regulate and control vehicular  
6 parking within the property by the installation of parking meters  
7 or by other methods; and (3) impose reasonable charges for the  
8 use of the parking space so metered or otherwise allocated, so  
9 as to provide maximum opportunity for the public use thereof.

10 (b) Violation of any rule adopted pursuant to subsection (a)  
11 of this section shall constitute a misdemeanor and the offender,  
12 upon conviction in the manner provided by law, may be fined  
13 not less than two dollars nor more than ten dollars for each  
14 violation. Magistrates shall have concurrent jurisdiction with  
15 statutory courts of record having criminal jurisdiction for the  
16 trial of offenses under this section.

**§10. Indebtedness of authority.**

1 The authority may incur any proper indebtedness, issue any  
2 obligations and give any security therefor that it may consider  
3 necessary and advisable in connection with carrying out its  
4 purposes.

5 No indebtedness or obligation incurred by the authority  
6 shall give any right against any member of the governing body  
7 of any participating municipality or county or any member of  
8 the authority board. No indebtedness of any nature of the  
9 authority shall constitute an indebtedness of the governing body  
10 of any participating municipality or county or be a charge  
11 against any property of any participating municipality or  
12 county. The rights of creditors of the authority shall be solely  
13 against the authority as a corporate body and shall be satisfied  
14 only out of property held by it in its corporate capacity.

**§11. Agreements in connection with obtaining funds.**

1 The authority may, in connection with obtaining moneys or  
2 property for its purposes, enter into any agreement with any  
3 person, including the federal government, or any department,  
4 agency or subdivision thereof, containing such provisions,  
5 covenants, terms and conditions as the authority may consider  
6 advisable.

**§12. Authority to have right of eminent domain.**

1 Whenever it shall be considered necessary by the authority,  
2 in connection with the exercise of its powers herein conferred,  
3 to take or acquire any lands, structures or buildings or other  
4 rights, either in fee or as easements, for the purposes herein set  
5 forth, the authority may purchase the same directly or through  
6 its agents from the owner or owners thereof, or failing to agree  
7 with the owner or owners thereof, the authority may exercise  
8 the power of eminent domain in the manner provided for  
9 condemnation proceedings in chapter fifty-four of the West  
10 Virginia code, and such purposes are hereby declared to be  
11 public uses for which private property may be taken or dam-  
12 aged.

**§13. Property, bonds and obligations of authority exempt from taxation.**

1 The authority shall be exempt from the payment of any  
2 taxes or fees to the state or any subdivisions thereof or any  
3 municipality or to any officer or employee of the state or of any  
4 subdivision thereof or of any municipality.

5 The property of the authority shall be exempt from all  
6 municipal and county taxes. Bonds, notes, debentures and other  
7 evidences of indebtedness of the authority are declared to be  
8 issued for a public purpose and to be public instrumentalities,  
9 and, together with interest thereon, shall be exempt from  
10 taxation.

**§14. Authority may lease facilities.**

1 The authority may lease all or part of the property and all  
2 or any part of the appurtenances and facilities therewith to any

3 available lessee, subject to all constitutional and statutory  
4 limitations with respect thereto, at such rental and upon such  
5 terms and conditions as the authority shall consider proper.

**§15. Disposition of surplus of authority.**

1 If the authority should realize a surplus, whether from  
2 operating the property or leasing it for operation, over and  
3 above the amount required for the equipping, improvement,  
4 maintenance and operation of the property and for meeting all  
5 required payments on its obligations, it shall set aside such  
6 reserve for future equipping, improvements, maintenance,  
7 operations and contingencies as it shall consider proper and  
8 shall then apply the residue of the surplus, if any, to the  
9 payment of any recognized and established obligations not then  
10 due, and after all such recognized and established obligations  
11 have been paid off and discharged in full, the authority shall, at  
12 the end of each fiscal year, set aside the reserve for future  
13 equipping improvements, maintenance, operations and contin-  
14 gencies, as aforesaid, and then pay the residue of such surplus,  
15 if any, to the participating counties and municipalities in direct  
16 proportion to their contribution for moneys and property.

**§16. Contributions to authority; funds and accounts of authority.**

1 Contributions of moneys may be made to the authority from  
2 time to time by the participating municipalities and counties  
3 and persons that shall desire to do so. All such moneys and all  
4 other moneys received by the authority shall be deposited in a  
5 banking institution or banking institutions as the authority may  
6 direct and shall be withdrawn therefrom in a manner as the  
7 authority may direct. The authority shall keep strict account of  
8 all of its receipts and expenditures and shall make an annual  
9 report thereon to the participating municipalities and counties  
10 contributing moneys or property, and the report shall contain an  
11 itemized account of its receipts and disbursements for the  
12 preceding fiscal year, and publish the same as a Class II-O legal  
13 advertisement in compliance with the provision of article three,  
14 chapter fifty-nine of the code of West Virginia, in a newspaper  
15 of general circulation within Berkeley County. The books,  
16 records and accounts of the authority shall be subject to audit



17 and examination by the office of the state tax commissioner and  
18 by any other proper public official or body in the manner  
19 provided by law.

20 The participating counties and municipalities are hereby  
21 authorized to convey to the authority any and all real and  
22 personal property to which they hold title and which property  
23 will enhance the authority's ability to own, manage and operate  
24 the aforesaid B&O Railroad roundhouse property with appurte-  
25 nant facilities and other property necessary to the purposes of  
26 the authority.

**§17. Dissolution of authority; disposition of assets after payment  
of debts.**

1 In the event full and adequate provision is made for the  
2 payment of all of the debts of the authority, the participating  
3 municipalities or counties or any combination thereof which  
4 have contributed at least sixty percent of the total value of all  
5 moneys and property (the value of which property is deter-  
6 mined as specified in section four of this article) contributed to  
7 the authority by the participating municipalities and counties  
8 may by resolution provide for the dissolution of the authority  
9 and for: (1) The conveyance of the real and tangible personal  
10 property contributed to it to the participating municipalities and  
11 counties that contributed the same; (2) equitable distribution  
12 among the contributing municipalities and counties of any real  
13 and tangible personal property purchased or condemned by the  
14 authority or of the proceeds of sale thereof, or the fair value  
15 thereof; and (3) the equitable distribution of all moneys on hand  
16 to the participating municipalities and counties in direct  
17 proportion to the contribution of moneys by them.

**§18. Employees to be covered by workers' compensation.**

1 All eligible employees of the authority shall be considered  
2 to be within the workers' compensation system of this state and  
3 premiums on their compensation shall be paid by the authority  
4 as required by law.

**§19. Liberal construction of act.**

1 The purposes of this act are to provide for the acquisition,  
2 establishment, construction, equipping, improvements, financ-  
3 ing, maintenance and operation of the roundhouse property in  
4 a prudent and economical manner, and this act shall be liberally  
5 construed as giving to the authority created and established  
6 hereunder full and complete power reasonably required to give  
7 effect to the purposes hereof. The provisions of this act are in  
8 addition to and not in derogation of any power granted to or  
9 vested in municipalities and county commissions under any  
10 constitutional, statutory or charter provisions which may now  
11 or hereafter be in effect.

*[Faint, illegible handwritten text and signatures]*

Enr. Com. Sub. for H. B. 2742] 10

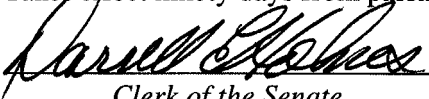
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

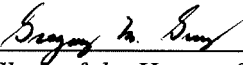
  
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Chairman Senate Committee

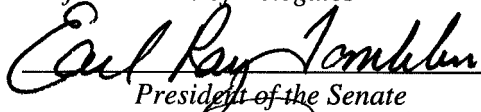
  
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Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

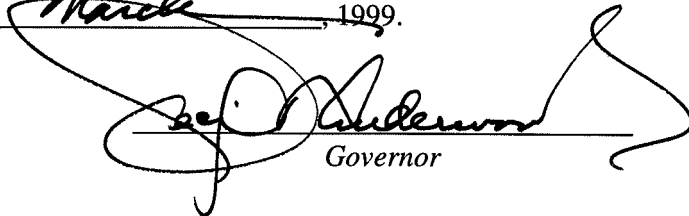
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within approved this the 3/5  
day of March, 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/99

Time 4:00 pm