ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 3015

(By Delegates Michael, Proudfoot, Douglas and Doyle)

Passed April 14, 2001

In Effect Ninety Days from Passage
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FOR

H. B. 3015

(BY DELEGATES MICHAEL, PROUDFOOT, DOUGLAS AND DOYLE)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the state rail authority to enter contracts and agreements; authorizing the acquisition of rolling stock and equipment of a specified value in lieu of meeting contract requirements otherwise imposed on spending units; raising the cost threshold under which certain lowest responsible bidders on contracts may be selected; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

That section six, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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 may:

(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 propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and make effective its powers and duties.

(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 governmental agency or person and, in accordance with chapter twenty-nine-a of this code, propose rules for legislative approval 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, propose 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 terms and in the manner 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 including, but not limited to, the power to make contract and agreements in accordance with the provisions set forth in paragraph (B) of this subdivision.

(B) Make and enter into contracts and agreements to acquire rolling stock or equipment with a value of one hundred thousand dollars or less exempt from the provisions of article three, chapter five-a of this code.
(i) The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which set forth the methods for determining value of rolling stock or equipment to be purchased in accordance with the provisions of paragraph B of this subdivision.

(C) 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 one hundred 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.

(D) 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.

(E) The authority may reject any and all bids. A bond with
good and sufficient surety, approved by the authority, is
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 are
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 the 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 has 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 properties 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 the 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 the 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of May, 2001.

Governor