

SB 569s

FILED

2007 MAR 28 PM 5: 22

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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COMMITTEE SUBSTITUTE  
FOR

**ENROLLED**  
**Senate Bill No. 569**

(SENATORS PLYMALE, JENKINS AND KESSLER,  
*original sponsors*)

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[Passed March 8, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §11-15-18b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-24-43a; and to amend said code by adding thereto two new sections, designated §17-16B-7a and §17-16B-7b, all relating to dedicating up to four million three hundred thousand dollars from annual collections of the corporation net income tax for construction, reconstruction, maintenance and repair of railways, the construction of railway-related

structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority; creating the Special Railroad and Intermodal Enhancement Fund into which those funds are deposited and from which expenditures are made under the administration of the West Virginia Public Port Authority; providing administrative procedures for the State Tax Commissioner's deposit of those funds; providing an expiration date for the deposit of those funds; and directing a study relating to the feasibility of the planning, development, construction and operation of the intermodal facility at Prichard, West Virginia.

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

That §11-15-18b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-24-43a; and that said code be amended by adding thereto two new sections, designated §17-16B-7a and §17-16B-7b, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

#### **§11-15-18b. Tax on motor fuel effective the first day of January, two thousand four.**

1       (a) *General.* — Effective the first day of January, two  
2       thousand four, all sales of motor fuel subject to the flat  
3       rate of the tax imposed by section five, article fourteen-  
4       c of this chapter are subject to the tax imposed by this  
5       article which shall comprise the variable component of  
6       the tax imposed by said section and be collected and  
7       remitted at the time the tax imposed by said section is

8 remitted. Sales of motor fuel upon which the tax  
9 imposed by this article has been paid shall not  
10 thereafter be again taxed under the provisions of this  
11 article. This section is construed so that all gallons of  
12 motor fuel sold and delivered, or delivered, in this state  
13 are taxed one time.

14 (b) *Measure of tax.* — The measure of tax imposed by  
15 this article on sales of motor fuel is the average  
16 wholesale price as defined and determined in section  
17 five, article fourteen-c of this chapter. For purposes of  
18 maintaining revenue for highways, and recognizing that  
19 the tax imposed by this article is generally imposed on  
20 gross proceeds from sales to ultimate consumers,  
21 whereas the tax on motor fuel herein is imposed on the  
22 average wholesale price of the motor fuel; in no case, for  
23 the purposes of taxation under this article, shall the  
24 average wholesale price be determined to be less than  
25 ninety-seven cents per gallon of motor fuel for all  
26 gallons of motor fuel sold during the reporting period,  
27 notwithstanding any provision of this article to the  
28 contrary.

29 (c) *Definitions.* — For purposes of this article, the  
30 terms “gasoline” and “special fuel” are defined as  
31 provided in section two, article fourteen-c of this  
32 chapter. Other terms used in this section have the same  
33 meaning as when used in a similar context in said  
34 article.

35 (d) *Tax return and tax due.* — The tax imposed by this  
36 article on sales of motor fuel shall be paid by each  
37 taxpayer on or before the last day of the calendar month  
38 by check, bank draft, certified check or money order  
39 payable to the Tax Commissioner for the amount of tax

40 due for the preceding month, notwithstanding any  
41 provision of this article to the contrary: *Provided*, That  
42 the commissioner may require all or certain taxpayers  
43 to file tax returns and payments electronically. The  
44 return required by the commissioner shall accompany  
45 the payment of tax: *Provided, however*, That if no tax is  
46 due, the return required by the commissioner shall be  
47 completed and filed on or before the last day of the  
48 month.

49 (e) *Compliance*. — To facilitate ease of administration  
50 and compliance by taxpayers, the Tax Commissioner  
51 shall require persons liable for the tax imposed by this  
52 article on sales of motor fuel to file a combined return  
53 and make a combined payment of the tax due under this  
54 article on sales of motor fuel and the tax due under  
55 article fourteen-c of this chapter on motor fuel. In order  
56 to encourage use of a combined return each month and  
57 the making of a single payment each month for both  
58 taxes, the due date of the return and tax due under said  
59 article is the last day of each month, notwithstanding  
60 any provision in said article to the contrary.

61 (f) *Dedication of tax*. — All tax collected under the  
62 provisions of this section, after deducting the amount of  
63 any refunds lawfully paid, shall be deposited in the  
64 Road Fund in the State Treasurer's office and used only  
65 for the purpose of construction, reconstruction,  
66 maintenance and repair of highways and payment of  
67 principal and interest on state bonds issued for highway  
68 purposes: *Provided*, That notwithstanding any provision  
69 to the contrary, any tax collected on the sale of aviation  
70 fuel after deducting the amount of any refunds lawfully  
71 paid shall be deposited in the State Treasurer's office  
72 and transferred to the State Aeronautical Commission

73 to be used for the purpose of matching federal funds  
74 available for the reconstruction, maintenance and  
75 repair of public airports and airport runways.

76 (g) *Construction.* — This section is not construed as  
77 taxing any sale of motor fuel which this state is  
78 prohibited from taxing under the constitution of this  
79 state or the constitution or laws of the United States.

80 (h) *Effective date.* — The provisions of this section  
81 take effect on the first day of January, two thousand  
82 four. The provisions of this section enacted during the  
83 two thousand seven Legislative session take effect on  
84 the first day of January, two thousand eight.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-43a. Dedication of tax proceeds to railways.**

1 (a) Beginning the first day of January, two thousand  
2 eight, there is hereby dedicated an annual amount of up  
3 to four million three hundred thousand dollars from  
4 annual collections of the tax imposed by this article for  
5 the purpose of construction, reconstruction,  
6 maintenance and repair of railways, the construction of  
7 railway-related structures and payment of principal  
8 and interest on state bonds issued for railway purposes,  
9 as approved by the West Virginia Public Port Authority.

10 (b) For purposes of administering the deposits  
11 required by this subdivision, after the thirty-first day of  
12 December, two thousand seven, from the taxes imposed  
13 by this section and paid to the Tax Commissioner in  
14 each quarter of the year, after deducting the amount of  
15 any refunds lawfully paid and any administrative costs  
16 authorized by this code, the Tax Commissioner shall

17 pay into the Special Railroad and Intermodal  
18 Enhancement Fund provided for in section seven-a,  
19 article sixteen-b, chapter seventeen of this code an  
20 amount equal to at least one million seventy-five  
21 thousand dollars. In any quarter where the collections  
22 are less than the amount required to be paid into the  
23 Special Railroad and Intermodal Enhancement Fund, or  
24 where the total amount paid in any year will be less  
25 than four million three hundred thousand dollars, the  
26 difference shall be paid from amounts available from  
27 collections in succeeding quarters until paid in full.  
28 Notwithstanding any provision of this section to the  
29 contrary, the total amount to be deposited into the  
30 Special Railroad and Intermodal Enhancement Fund  
31 for the year two thousand sixteen shall not exceed two  
32 million one hundred fifty thousand dollars.

33 (c) Notwithstanding any provision of this section to  
34 the contrary, all provisions of this section relating to  
35 requiring the deposit of moneys in the Special Railroad  
36 and Intermodal Enhancement Fund shall expire at the  
37 end of the thirtieth day of June, two thousand sixteen.

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 16B. PUBLIC PORT AUTHORITY.**

#### **§17-16B-7a. Special Railroad and Intermodal Enhancement Fund; purposes.**

1 There is hereby established in the State Treasury a  
2 Special Railroad and Intermodal Enhancement Fund,  
3 which shall consist of all amounts deposited into the  
4 fund pursuant to section forty-three-a, article twenty-  
5 four, chapter eleven of this code. The Special Railroad  
6 and Intermodal Enhancement Fund shall be

7 administered by the West Virginia Public Port  
8 Authority. The money deposited in the fund shall be  
9 used only for the purpose of construction,  
10 reconstruction, maintenance and repair of railways, the  
11 construction of railway-related structures and payment  
12 of principal and interest on state bonds issued for  
13 railway purposes, as approved by the West Virginia  
14 Public Port Authority.

**§17-16B-7b. Study of feasibility intermodal facility at  
Prichard, West Virginia.**

1 The West Virginia Public Port Authority shall conduct  
2 a study relating to the feasibility of the planning,  
3 development, construction and operation of the  
4 intermodal facility at Prichard, West Virginia, to  
5 determine whether the same is sustainable.



Enr. Com. Sub. for S. B. No. 569] 8

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

  
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Chairman Senate Committee

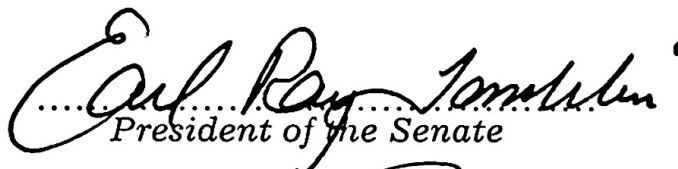
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within ..... *is approved* ..... this  
the  Day of *March* ..... 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 1:55 pm