WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 569

(Senators Plymale, Jenkins and Kessler, original sponsors)

[Passed March 8, 2007; in effect ninety days from passage.]
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(SENATORS PLYMALE, JENKINS AND KESSLER, original sponsors)

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

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.

(a) General. — Effective the first day of January, two thousand four, all sales of motor fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter are subject to the tax imposed by this article which shall comprise the variable component of the tax imposed by said section and be collected and remitted at the time the tax imposed by said section is
remitted. Sales of motor fuel upon which the tax imposed by this article has been paid shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of motor fuel sold and delivered, or delivered, in this state are taxed one time.

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

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

(d) Tax return and tax due. — The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax
due for the preceding month, notwithstanding any
provision of this article to the contrary: Provided, That
the commissioner may require all or certain taxpayers
to file tax returns and payments electronically. The
return required by the commissioner shall accompany
the payment of tax: Provided, however, That if no tax is
due, the return required by the commissioner shall be
completed and filed on or before the last day of the
month.

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

(f) **Dedication of tax.** — All tax collected under the
provisions of this section, after deducting the amount of
any refunds lawfully paid, shall be deposited in the
Road Fund in the State Treasurer's office and used only
for the purpose of construction, reconstruction,
maintenance and repair of highways and payment of
principal and interest on state bonds issued for highway
purposes: Provided, That notwithstanding any provision
to the contrary, any tax collected on the sale of aviation
fuel after deducting the amount of any refunds lawfully
paid shall be deposited in the State Treasurer's office
and transferred to the State Aeronautical Commission
to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

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

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

ARTICLE 24. CORPORATION NET INCOME TAX.

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

(a) Beginning the first day of January, two thousand eight, there is hereby dedicated an annual amount of up to four million three hundred thousand dollars from annual collections of the tax imposed by this article for the purpose of 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.

(b) For purposes of administering the deposits required by this subdivision, after the thirty-first day of December, two thousand seven, from the taxes imposed by this section and paid to the Tax Commissioner in each quarter of the year, after deducting the amount of any refunds lawfully paid and any administrative costs authorized by this code, the Tax Commissioner shall
pay into the Special Railroad and Intermodal Enhancement Fund provided for in section seven-a, article sixteen-b, chapter seventeen of this code an amount equal to at least one million seventy-five thousand dollars. In any quarter where the collections are less than the amount required to be paid into the Special Railroad and Intermodal Enhancement Fund, or where the total amount paid in any year will be less than four million three hundred thousand dollars, the difference shall be paid from amounts available from collections in succeeding quarters until paid in full. Notwithstanding any provision of this section to the contrary, the total amount to be deposited into the Special Railroad and Intermodal Enhancement Fund for the year two thousand sixteen shall not exceed two million one hundred fifty thousand dollars.

(c) Notwithstanding any provision of this section to the contrary, all provisions of this section relating to requiring the deposit of moneys in the Special Railroad and Intermodal Enhancement Fund shall expire at the 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.

There is hereby established in the State Treasury a Special Railroad and Intermodal Enhancement Fund, which shall consist of all amounts deposited into the fund pursuant to section forty-three-a, article twenty-four, chapter eleven of this code. The Special Railroad and Intermodal Enhancement Fund shall be
administered by the West Virginia Public Port Authority. The money deposited in the fund shall be used only for the purpose of 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.

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

The West Virginia Public Port Authority shall conduct a study relating to the feasibility of the planning, development, construction and operation of the intermodal facility at Prichard, West Virginia, to determine whether the same is sustainable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this 28th Day of March 2007.

Governor