

SB 382

FILED

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WEST VIRGINIA LEGISLATURE

OFFICE OF THE CLERK
WEST VIRGINIA
STATE

SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 382

(SENATORS UNGER, CARUTH, HALL
AND SNYDER, *original sponsors*)

[Passed April 10, 2009; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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FOR

Senate Bill No. 382

(SENATORS UNGER, CARUTH, HALL AND SNYDER, *original sponsors*)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §29-18-6 of the Code of West Virginia, 1931, as amended, relating to the amount of expenditure for rolling stock; and granting additional authority regarding the Maryland Area Regional Commuter.

Be it enacted by the Legislature of West Virginia:

That §29-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia State Rail Authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose.

5 (a) The authority may:

6 (1) Adopt and, from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its
8 affairs and the conduct of its business and propose rules
9 for legislative approval in accordance with the provisions
10 of article three, chapter twenty-nine-a of this code to
11 implement and make effective its powers and duties.

12 (2) Adopt an official seal.

13 (3) Maintain a principal office and, if necessary, re-
14 gional suboffices at locations properly designated or
15 provided.

16 (4) Sue and be sued in its own name and plead and be
17 impleaded in its own name and particularly to enforce the
18 obligations and covenants made under sections ten, eleven
19 and sixteen of this article. Any actions against the author-
20 ity shall be brought in the circuit court of Kanawha
21 County. The location of the principal office of the author-
22 ity shall be determined by the Governor.

23 (5) Make loans and grants to governmental agencies and
24 persons for carrying out railroad projects by any govern-
25 mental agency or person and, in accordance with chapter
26 twenty-nine-a of this code, propose rules for legislative
27 approval and procedures for making such loans and
28 grants.

29 (6) Acquire, construct, reconstruct, enlarge, improve,
30 furnish, equip, maintain, repair, operate, lease or rent to or
31 contract for operation by a governmental agency or
32 person, railroad projects and, in accordance with chapter

33 twenty-nine-a of this code, propose legislative rules for the
34 use of these projects.

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

38 (8) Issue Railroad Maintenance Authority bonds and
39 notes and refunding bonds of the state, payable solely
40 from revenues as provided in section ten of this article
41 unless the bonds are refunded by refunding bonds for the
42 purpose of paying any part of the cost of one or more
43 railroad projects or parts thereof.

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

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

53 (11) (A) Make and enter into all contracts and agree-
54 ments and execute all instruments necessary or incidental
55 to the performance of its duties and the execution of its
56 powers including, but not limited to, the power to make
57 contracts and agreements in accordance with the provi-
58 sions set forth in paragraph (B) of this subdivision.

59 (B) Make and enter into contracts and agreements to
60 acquire rolling stock or equipment with a value of
61 \$500,000 or less exempt from the provisions of article
62 three, chapter five-a of this code.

63 The authority shall propose rules for legislative ap-
64 proval in accordance with the provisions of article three,
65 chapter twenty-nine-a of this code which set forth the

66 methods for determining value of rolling stock or equip-
67 ment to be purchased in accordance with the provisions of
68 paragraph (B) of this subdivision.

69 (C) Where rolling stock, equipment or trackage of the
70 authority is in need of immediate maintenance, repair or
71 reconstruction in order to avoid a cessation of its opera-
72 tions, economic loss, the inability to provide essential
73 service to customers or danger to authority personnel or
74 the public, the following requirements and procedures for
75 entering into the contract or agreement to remedy the
76 condition shall be in lieu of those provided in article three,
77 chapter five-a of this code or any legislative rule promul-
78 gated pursuant thereto:

79 (i) If the cost under the contract or agreement involves
80 an expenditure of more than \$1,000, but \$10,000 or less,
81 the authority shall award the contract to or enter into the
82 agreement with the lowest responsible bidder based upon
83 at least three oral bids made pursuant to the requirements
84 of the contract or agreement.

85 (ii) If the cost under the contract or agreement, other
86 than one for compensation for personal services, involves
87 an expenditure of more than \$10,000, but \$100,000 or less,
88 the authority shall award the contract to or enter into the
89 agreement with the lowest responsible bidder based upon
90 at least three bids, submitted to the authority in writing on
91 letterhead stationery, made pursuant to the requirements
92 of the contract or agreement.

93 (D) Notwithstanding any other provision of this code to
94 the contrary, a contract or lease for the operation of a
95 railroad project constructed and owned by the authority
96 or an agreement for cooperation in the acquisition or
97 construction of a railroad project pursuant to section
98 sixteen of this article is not subject to the provisions of
99 article three, chapter five-a of this code or any legislative
100 rule promulgated pursuant thereto and the authority may

101 enter into the contract or lease or the agreement pursuant
102 to negotiation and upon such terms and conditions and for
103 a period of time as it finds to be reasonable and proper
104 under the circumstances and in the best interests of proper
105 operation or of efficient acquisition or construction of the
106 railroad project.

107 (E) The authority may reject any and all bids. A bond
108 with good and sufficient surety, approved by the author-
109 ity, is required of all contractors in an amount equal to at
110 least fifty percent of the contract price, conditioned upon
111 the faithful performance of the contract.

112 (12) Appoint a director and employ managers, superin-
113 tendents and other employees and retain or contract with
114 consulting engineers, financial consultants, accountants,
115 attorneys and other consultants and independent contrac-
116 tors as are necessary in its judgment to carry out the
117 provisions of this article and fix the compensation or fees
118 thereof. All expenses thereof are payable from the pro-
119 ceeds of Railroad Maintenance Authority revenue bonds or
120 notes issued by the authority, from revenues and funds
121 appropriated for this purpose by the Legislature or from
122 grants from the federal government which may be used for
123 such purpose.

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

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

133 (15) Purchase fire and extended coverage and liability
134 insurance for any railroad project and for the principal

135 office and suboffices of the authority, insurance protecting
136 the authority and its officers and employees against
137 liability, if any, for damage to property or injury to or
138 death of persons arising from its operations and be a
139 member of, and to participate in, the state workers'
140 compensation program.

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

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

146 (b) In addition, the authority has the power to:

147 (1) Acquire rail properties both within and not within
148 the jurisdiction of the Interstate Commerce Commission
149 and rail properties within the purview of the federal
150 Regional Rail Reorganization Act of 1973, any amend-
151 ments to it and any other relevant federal legislation.

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

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

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

161 (5) Administer and coordinate the state plan.

162 (6) Provide in the state plan for the equitable distribu-
163 tion of federal rail service continuation subsidies among
164 state, local and regional transportation authorities.

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

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

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

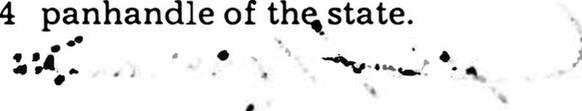
173 (10) Provide satisfactory assurances on behalf of the
174 state that fiscal control and fund accounting procedures
175 will be adopted by the state necessary to assure proper
176 disbursement of and accounting for federal funds paid to
177 the state as rail service continuation subsidies.

178 (11) Comply with the regulations of the Secretary of
179 Transportation of the United States Department of
180 Transportation affecting federal rail service continuation
181 programs.

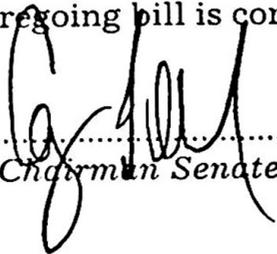
182 (12) Do all things otherwise necessary to maximize
183 federal assistance to the state under Title IV of the federal
184 Regional Rail Reorganization Act of 1973 and to qualify
185 for rail service continuation subsidies pursuant to the
186 federal Regional Rail Reorganization Act of 1973.

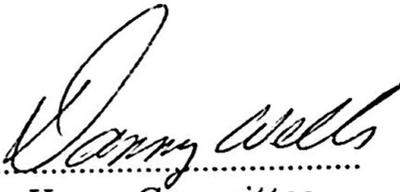
187 (c) Additional authority in regard to the Maryland Area
188 Regional Commuter.

189 (1) The Rail Authority is hereby granted, has and may
190 exercise all aforementioned powers necessary or appropri-
191 ate to coordinate all activities with the Maryland Transit
192 Administration to assure the continued operation of the
193 Maryland Area Regional Commuter into the eastern
194 panhandle of the state.



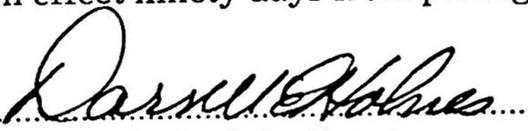
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

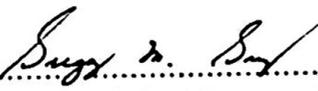

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Chairman Senate Committee


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Chairman House Committee

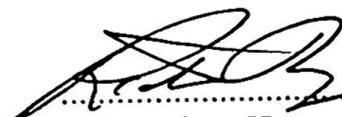
Originated in the Senate.

In effect ninety days from passage.

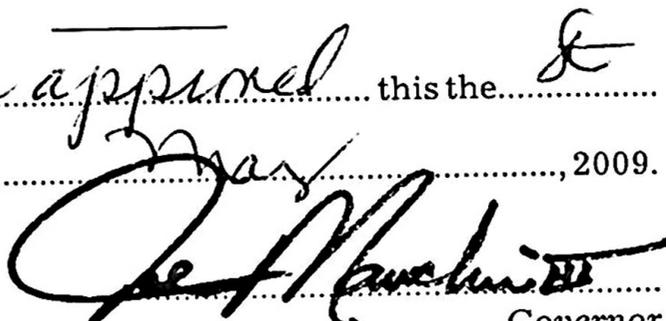

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 12
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:20am