WEST VIRGINIA LEGISLATURE
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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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.

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
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
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 $1,000, but $10,000 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 $10,000, but $100,000 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 author-
ity, 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, superin-
tendents and other employees and retain or contract with
consulting engineers, financial consultants, accountants,
attorneys and other consultants and independent contrac-
tors 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 pro-
cceeds 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 contri-
butions 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 amend-
ments 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 distribu-
tion 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.

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

(1) The Rail Authority is hereby granted, has and may exercise all aforementioned powers necessary or appropriate to coordinate all activities with the Maryland Transit Administration to assure the continued operation of the Maryland Area Regional Commuter into the eastern panhandle of the state.
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 the

Day of , 2009.

Governor
PRESENTED TO THE GOVERNOR

MAY 7 2009

Time 11:30am