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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

Senate Bill No. 527

(BY SENATOR UNGER)

[Passed March 10, 2010; in effect ninety days from passage.]

SB 527

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OFFICE OF THE SECRETARY OF STATE

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Senate Bill No. 527

(BY SENATOR UNGER)

[Passed March 10, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §29-18-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-18-25, all relating to powers, duties and responsibilities of the West Virginia State Rail Authority; requiring the authority to establish a state plan for transportation and local rail services; and providing what the state plan may include.

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; and that said code be amended by adding thereto a new section, designated §29-18-25, all 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, regional
14 suboffices at locations properly designated or provided.

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

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

28 (6) Acquire, construct, reconstruct, enlarge, improve,
29 furnish, equip, maintain, repair, operate, lease or rent to or
30 contract for operation by a governmental agency or
31 person, railroad projects and, in accordance with chapter
32 twenty-nine-a of this code, propose legislative rules for the
33 use of these projects.

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

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

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

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

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

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

62 The authority shall propose rules for legislative approval
63 in accordance with the provisions of article three, chapter
64 twenty-nine-a of this code which set forth the methods for
65 determining value of rolling stock or equipment to be
66 purchased in accordance with the provisions of paragraph
67 (B) of this subdivision.

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

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

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

92 (D) Notwithstanding any other provision of this code to
93 the contrary, a contract or lease for the operation of a
94 railroad project constructed and owned by the authority
95 or an agreement for cooperation in the acquisition or
96 construction of a railroad project pursuant to section
97 sixteen of this article is not subject to the provisions of
98 article three, chapter five-a of this code or any legislative
99 rule promulgated pursuant thereto and the authority may
100 enter into the contract or lease or the agreement pursuant
101 to negotiation and upon such terms and conditions and for
102 a period of time as it finds to be reasonable and proper

103 under the circumstances and in the best interests of proper
104 operation or of efficient acquisition or construction of the
105 railroad project.

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

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

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

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

132 (15) Purchase fire and extended coverage and liability
133 insurance for any railroad project and for the principal
134 office and suboffices of the authority, insurance protecting
135 the authority and its officers and employees against
136 liability, if any, for damage to property or injury to or

137 death of persons arising from its operations and be a
138 member of, and to participate in, the state workers'
139 compensation program.

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

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

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

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

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

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

158 (4) Administer and coordinate the state plan.

159 (5) Provide in the state plan for the equitable distribu-
160 tion of federal rail service continuation subsidies among
161 state, local and regional transportation authorities.

162 (6) Promote, supervise and support safe, adequate and
163 efficient rail services.

164 (7) Employ sufficiently trained and qualified personnel
165 for these purposes.

166 (8) Maintain adequate programs of investigation,
167 research, promotion and development in connection with

168 the purposes and to provide for public participation
169 therein.

170 (9) Provide satisfactory assurances on behalf of the state
171 that fiscal control and fund accounting procedures will be
172 adopted by the state necessary to assure proper disburse-
173 ment of and accounting for federal funds paid to the state
174 as rail service continuation subsidies.

175 (10) Comply with the regulations of the Secretary of
176 Transportation of the United States Department of
177 Transportation affecting federal rail service continuation
178 programs.

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

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

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

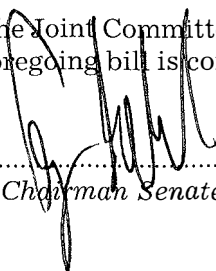
§29-18-25. State rail plan required.

1 (a) The authority shall establish a state plan for rail
2 transportation and local rail services. In establishing and
3 updating the plan, the authority may request input from
4 freight and rail passenger associations.

5 (b) The plan shall, at a minimum, comply with the
6 provisions of the laws of the United States and any
7 regulations made thereunder relating to capturing and

8 administering federal moneys for rail transportation, local
9 rail services, and intermodal facilities as deemed necessary
10 by the authority.


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


.....
Chairman Senate Committee

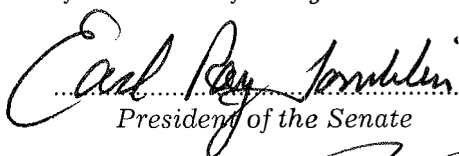

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Chairman House Committee

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 *22nd*
Day of *March*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time

4:00 p