

**WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE**

REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 103

(SENATORS SNYDER, MILLER AND BEACH, ORIGINAL SPONSORS)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 103

WEST VIRGINIA
SENATE OF STATE

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SECRETARY OF STATE

Senate Bill No. 103

(SENATORS SNYDER, MILLER AND BEACH, *original sponsors*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §29-18-3 and §29-18-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-18-24, all relating to commuter rail access in West Virginia; providing authority for the State Rail Authority to negotiate an agreement with the State of Maryland for operation of commuter rail in West Virginia; providing terms of minimum daily service requirements in the agreement; providing for the payment of track access fees pursuant to the agreement; and creating a special fund to pay track access fees.

Be it enacted by the Legislature of West Virginia:

That §29-18-3 and §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 §29-18-24, all to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-3. Definitions.

1 As used in this article unless the context clearly requires
2 a different meaning:

3 (1) "Authority" means the West Virginia State Rail
4 Authority created by this article, the duties, powers,
5 responsibilities and functions of which are specified in this
6 article.

7 (2) "Bond" or "state rail authority bond" means a revenue
8 bond or rate issued by the state rail authority to effectuate the
9 intents and purposes of this article.

10 (3) "Commuter rail" means a transit mode that is an
11 electric or diesel propelled railway for urban passenger train
12 service consisting of local short distance travel operating
13 between a central city and adjacent suburbs. Service must be
14 operated on a regular basis by or under contract with a transit
15 operator for the purpose of transporting passengers within
16 urbanized areas or between urbanized areas and outlying
17 areas. The rail service, using either locomotive-hauled or
18 self-propelled railroad passenger cars, is generally
19 characterized by multitrip tickets, specific station-to-station
20 fares or railroad employment practices and usually has only
21 one or two stations in the central business district. It does not
22 include heavy rail rapid transit or light rail/streetcar transit
23 service. Intercity rail service is excluded except for that
24 portion of service operated by or under contract with a public
25 transit agency for predominantly commuter services. Only
26 the predominantly commuter service portion of an intercity
27 route is eligible for inclusion when determining commuter
28 rail route miles.

29 (4) "Heavy rail" means a transit mode that is an electric
30 railway with the capacity for a heavy volume of traffic. It is
31 characterized by high speed and rapid acceleration passenger
32 rail cars operating singly or in multicar trains on fixed rails,

33 separate rights-of-way from which all other vehicular and
34 foot traffic are excluded, sophisticated signaling and high
35 platform loading.

36 (5) "Income" means and includes all money accruing to
37 the authority from any source.

38 (6) "Light rail" means a transit mode that typically is an
39 electric railway with a light volume traffic capacity compared
40 to heavy rail. It is characterized by passenger rail cars
41 operating singly or in short, usually two-car, trains, on fixed
42 rails in shared or exclusive rights-of-way, low- or high-
43 platform loading and vehicle power drawn from an overhead
44 electric line via a trolley or a pantograph.

45 (7) "Owner" means and includes all individuals,
46 copartnerships, associations, corporations, companies,
47 transportation companies, public service corporations, the
48 United States or any agency or instrumentality thereof,
49 common carriers by rail and railroad companies having any
50 title or interest in any rail properties authorized to be
51 acquired, leased or used by this article.

52 (8) "Person" means individuals, corporations,
53 partnerships or foreign and domestic associations, including
54 railroads.

55 (9) "Predominantly commuter services" means that for
56 any given trip segment (i.e., distance between two stations),
57 more than fifty percent of the average daily ridership travels
58 on the train at least three times a week.

59 (10) "Rail properties" means assets or rights owned,
60 leased or otherwise controlled by a railroad or other person
61 which are used, or useful, in rail transportation service:
62 *Provided*, That rail properties does not include any properties

63 owned, leased, or otherwise controlled by a railroad not in
64 reorganization, unless it consents to such properties'
65 inclusion in the particular transaction.

66 (11) "Rail service" means both freight and passenger
67 service.

68 (12) "Railroad" means a common carrier by railroad as
69 defined in section 1(3) of Part I of the Interstate Commerce
70 Act (49 U. S. C.(1) 3).

71 (13) "Railroad project" means the initiation, acquisition,
72 construction, maintenance, repair, equipping or operation of
73 rail properties or rail service, or the provisions of loans or
74 grants to or with government agencies, or to persons for such
75 purposes, by the authority.

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

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

4 (a) The authority may:

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

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (12) Appoint a director and employ managers,
109 superintendents and other employees and retain or contract
110 with consulting engineers, financial consultants, accountants,
111 attorneys and other consultants and independent contractors
112 as are necessary in its judgment to carry out the provisions of
113 this article and fix the compensation or fees thereof. All
114 expenses thereof are payable from the proceeds of State Rail
115 Authority revenue bonds or notes issued by the authority,
116 from revenues and funds appropriated for this purpose by the
117 Legislature or from grants from the federal government
118 which may be used for such purpose.

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

126 (14) Engage in research and development with respect to
127 railroads.

128 (15) Purchase fire and extended coverage and liability
129 insurance for any railroad project and for the principal office
130 and suboffices of the authority, insurance protecting the
131 authority and its officers and employees against liability, if
132 any, for damage to property or injury to or death of persons
133 arising from its operations and be a member of, and to
134 participate in, the state workers' compensation program.

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

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

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

141 (1) Acquire rail properties both within and not within the
142 jurisdiction of the Interstate Commerce Commission and rail
143 properties within the purview of the federal Regional Rail
144 Reorganization Act of 1973, any amendments to it and any
145 other relevant federal legislation.

146 (2) Enter into agreements with owners of rail properties
147 for the acquisition of rail properties or use, or both, of rail
148 properties upon the terms, conditions, rates or rentals that can
149 best effectuate the purposes of this article.

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

153 (4) Administer and coordinate the state plan.

154 (5) Provide in the state plan for the equitable distribution
155 of federal rail service continuation subsidies among state,
156 local and regional transportation authorities.

157 (6) Promote, supervise and support safe, adequate and
158 efficient rail services.

159 (7) Employ sufficiently trained and qualified personnel
160 for these purposes.

161 (8) Maintain adequate programs of investigation,
162 research, promotion and development in connection with the
163 purposes and to provide for public participation therein.

164 (9) Provide satisfactory assurances on behalf of the state
165 that fiscal control and fund accounting procedures will be
166 adopted by the state necessary to assure proper disbursement

167 of and accounting for federal funds paid to the state as rail
168 service continuation subsidies.

169 (10) Comply with the regulations of the Secretary of
170 Transportation of the United States Department of
171 Transportation affecting federal rail service continuation
172 programs.

173 (11) Do all things otherwise necessary to maximize
174 federal assistance to the state under Title IV of the federal
175 Regional Rail Reorganization Act of 1973 and to qualify for
176 rail service continuation subsidies pursuant to the federal
177 Regional Rail Reorganization Act of 1973.

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

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

186 (2) In addition to the authority provided in subdivision
187 (1) of this subsection, the Rail Authority shall negotiate
188 agreements with the State of Maryland or the Maryland
189 Transit Administration for the continued operation of the
190 commuter rail operation between Maryland and the
191 Washington D. C. metropolitan area and West Virginia. A
192 commuter rail operation agreement shall provide for quantity
193 and quality of commuter rail service, including certain
194 minimum daily service at least equivalent to the level service
195 on the effective date of the amendments to this subsection
196 enacted in the Regular Session of the Legislature, 2013,
197 unless daily ridership diminishes significantly from said date.

198 The agreement may provide for the payment of track access
199 fees attributed to commuter rail operation within the
200 boundaries of the State. Any payments of track access fees
201 pursuant to the agreement shall be paid from the special fund
202 created in section twenty-four of this article as provided by
203 appropriation of the Legislature.

**§29-18-24. Creation of the West Virginia Commuter Rail Access
Fund.**

1 There is hereby established a special fund in the State
2 Treasury known as the West Virginia Commuter Rail Access
3 Fund. The fund shall be administered by the director and
4 shall consist of appropriations by the Legislature. Subject to
5 legislative appropriation, the director shall administer the
6 fund to pay track access fees pursuant to the agreement
7 required by section six of this article. Balances in the fund at
8 the end of any fiscal year shall not expire, but shall be
9 expended for those purposes in ensuing fiscal years.

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

Rocky Feeman
.....
member ~~Chairman~~ Senate Committee

Jimmy Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Beggy In Boy
.....
Clerk of the House of Delegates

Jeffrey Keane
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
Day of *May*, 2013.

Carl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm