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.]
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.

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

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

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

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

4. (4) "Heavy rail" means a transit mode that is an electric railway with the capacity for a heavy volume of traffic. It is characterized by high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails.
separate rights-of-way from which all other vehicular and foot traffic are excluded, sophisticated signaling and high platform loading.

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

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

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

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

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

(10) "Rail properties" means assets or rights owned, leased or otherwise controlled by a railroad or other person which are used, or useful, in rail transportation service: Provided, That rail properties does not include any properties
owned, leased, or otherwise controlled by a railroad not in reorganization, unless it consents to such properties' inclusion in the particular transaction.

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

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

(13) "Railroad project" means the initiation, acquisition, construction, maintenance, repair, equipping or operation of rail properties or rail service, or the provisions of loans or grants to or with government agencies, or to persons for such purposes, by the 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 of this chapter 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 twenty-nine-a of this code, propose legislative rules for the use of these projects.

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

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

(9) Acquire, by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.
(10) Acquire in the name of the state, by purchase or otherwise, on terms and in the manner it considers proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

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

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

The authority shall propose rules for legislative approval in accordance with the provisions of article three, 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 authority, 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, superintendents and other employees and retain or contract with consulting engineers, financial consultants, accountants, attorneys and other consultants and independent contractors 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 proceeds of State Rail 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 contributions 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 amendments 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. Administer and coordinate the state plan.

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

6. Promote, supervise and support safe, adequate and efficient rail services.

7. Employ sufficiently trained and qualified personnel for these purposes.

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

9. 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.

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

(11) 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

(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.

(2) In addition to the authority provided in subdivision
(1) of this subsection, the Rail Authority shall negotiate
agreements with the State of Maryland or the Maryland
Transit Administration for the continued operation of the
commuter rail operation between Maryland and the
Washington D. C. metropolitan area and West Virginia. A
commuter rail operation agreement shall provide for quantity
and quality of commuter rail service, including certain
minimum daily service at least equivalent to the level service
on the effective date of the amendments to this subsection
enacted in the Regular Session of the Legislature, 2013,
unless daily ridership diminishes significantly from said date.
The agreement may provide for the payment of track access fees attributed to commuter rail operation within the boundaries of the State. Any payments of track access fees pursuant to the agreement shall be paid from the special fund created in section twenty-four of this article as provided by appropriation of the Legislature.


There is hereby established a special fund in the State Treasury known as the West Virginia Commuter Rail Access Fund. The fund shall be administered by the director and shall consist of appropriations by the Legislature. Subject to legislative appropriation, the director shall administer the fund to pay track access fees pursuant to the agreement required by section six of this article. Balances in the fund at the end of any fiscal year shall not expire, but shall be expended for those purposes in ensuing fiscal years.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within................. this the 2nd
Day of........................., 2013.

[Signature]
PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm