

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 874

BY SENATORS JEFFRIES, MARTIN, HAMILTON, HUNT,
OLIVERIO, ROBERTS, SWOPE, CHAPMAN, AND PLYMALE

[Passed March 8, 2024; in effect 90 days from
passage (June 6, 2024)]

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §17-16F-1, §17-16F-3, §17-16F-4, and §17-16F-5 of the Code of
2 West Virginia, 1931, as amended; and to amend said code by adding thereto three new
3 sections, designated §17-16F-10a, §17-16F-10b, and §17-16F-10c, all relating to the
4 West Virginia Division of Multimodal Transportation Facilities; providing for additional
5 legislative findings; modifying definitions; authorizing division to create local port authority
6 districts; authorizing division to propose legislative rules for application process for
7 creation of local port authority districts; providing that political subdivisions and certain
8 joint ventures may create local port authority districts in accordance with a certain
9 procedure; establishing an application and approval process for creation of local port
10 authority districts; directing division to make certain considerations relating to creation of
11 local port authority districts; providing for creation of board of directors for local port
12 authority districts and membership composition; authorizing board to exercise certain
13 powers; limiting eminent domain powers to the Division itself and prohibiting its imposition
14 directly by local port authority districts; and directing board to prepare a certain annual
15 plan.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 16F. WEST VIRGINIA DIVISION OF MULTIMODAL TRANSPORTATION
FACILITIES.**

§17-16F-1. Legislative findings and creation of division.

1 (a) The Legislature finds and declares that there is a need to streamline the execution and
2 implementation of the state's multimodal transportation goals and reduce related costs by
3 consolidating existing multimodal authorities to a single division, known as the West Virginia
4 Division of Multimodal Transportation Facilities, under the Secretary of Transportation pursuant
5 to the provisions of chapter 5F of this code. The Department of Transportation, through the West
6 Virginia Division of Multimodal Transportation Facilities, is designated as the agency of this state

7 responsible for administering all federal and state programs related to public ports, railroads,
8 aeronautics, airports, and air navigation facilities.

9 (b) The Legislature further finds and declares that the establishment of local port authority
10 districts will enhance the efficiency and cost of the movement of goods and services to and from
11 markets in this state and will encourage the construction and completion of local infrastructure
12 projects for all types of transportation systems.

13 (c) On July 1, 2022, the Public Port Authority, the West Virginia State Rail Authority, the
14 Division of Public Transit, and the West Virginia State Aeronautics Commission are reestablished,
15 reconstituted, and continued as the West Virginia Division of Multimodal Transportation Facilities,
16 an agency of the state. The purpose of the division is to administer all federal and state programs
17 related to public ports, railroad transportation and commerce, public transit, aeronautics, airports,
18 and air navigation facilities in the State of West Virginia, and thereby to encourage and facilitate
19 growth and economic development opportunities utilizing such transport facilities. The powers
20 and duties heretofore imposed upon the Public Port Authority, the West Virginia State Rail
21 Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are
22 transferred to and imposed upon the West Virginia Division of Multimodal Transportation Facilities
23 in the manner prescribed by this article.

24 (d) It is the intent of this article to consolidate into the West Virginia Division of Multimodal
25 Transportation Facilities those entities and employees performing functions which will be
26 facilitated by their consolidation. The Department of Transportation shall provide appropriate
27 office locations necessary to fulfill the functions of the division.

28 (e) On the effective date of this article, all real property interests, vehicles, equipment
29 contracts or agreements, interests under any existing insurance policy, and records belonging to
30 the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and
31 the West Virginia State Aeronautics Commission shall be transferred to the West Virginia Division
32 of Multimodal Transportation Facilities. Any state funds, special revenue funds, and all accounts

33 created for the benefit or use of the Public Port Authority, the West Virginia State Rail Authority,
34 the Division of Public Transit, and the West Virginia State Aeronautics Commission are
35 transferred to the West Virginia Division of Multimodal Transportation Facilities in accordance with
36 the provisions of this article.

§17-16F-3. Definitions.

1 As used in this article, unless the context indicates another or different meaning or intent:

2 "Aeronautics" means the art and science of flight, including, but not limited to,
3 transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft
4 power plants, and accessories, including the repair, packing, and maintenance of parachutes;
5 and the design, establishment, construction, extension, operation, improvement, repair, or
6 maintenance of airports or other air navigation facilities.

7 "Aircraft" means any contrivance now known, or hereafter invented, used, or designed for
8 navigation of, or flight in the air whether manned or unmanned.

9 "Air navigation" means the operation or navigation of aircraft in the air space over this
10 state or upon any airport within this state.

11 "Air navigation facility" means any facility other than one owned or controlled by the federal
12 government used in, available for use in, or designed for use in aid of air navigation, including
13 airports, and any structures, mechanisms, lights, beacons, markers, communications system, or
14 other instrumentalities or devices used or useful as an aid or constituting an advantage or
15 convenience to the safe taking off, air navigation, and landing of aircraft or the safe and efficient
16 operation or maintenance of an airport, and any combination of any or all of such facilities.

17 "Airport" means any area of land or water which is used, or intended for use, for the landing
18 and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport
19 buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities
20 located thereon.

21 “Bond” means a revenue bond or rate issued by the division to effectuate the intents and
22 purposes of this article.

23 “Commissioner” means the chief operating officer and administrative head of the
24 Multimodal Division, when such person is appointed by the Secretary of Transportation.

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

37 “Development plan” means a document which details the overall strategy of the division
38 for the proper planning and sustainable development of an area and consists of a written
39 statement and accompanying maps.

40 “Division” means the West Virginia Division of Multimodal Transportation Facilities.

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

45 “Income” means and includes all money accruing to the division or part thereof from any
46 source.

47 “Intermodal transportation” means the successive transport of goods or passengers using
48 more than one mode of transportation, including air, rail, ship, or roadway.

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

53 “Multimodal transportation” means the consideration or connection of various modes of
54 transportation, including air, rail, ship, or roadway.

55 “Operation fund” means the special West Virginia Public Port Operation Fund as created
56 by §17-16F-12 of this code.

57 “Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft
58 in the airspace over this state or upon the ground within this state.

59 “Owner” means and includes all individuals, co-partnerships, associations, corporations,
60 companies, transportation companies, public service corporations, the United States or any of its
61 agencies or instrumentalities, common carriers by rail and railroad companies having any title or
62 interest in any rail properties authorized to be acquired, leased, or used by this article.

63 “Person” means any individual, firm, corporation, partnership, company, foreign or
64 domestic association, including railroads, joint stock association, or body politic and includes any
65 trustee, receiver, assignee, or other similar representative.

66 “Political subdivision” means any county commission, municipality, city, town, village, or
67 county board of education; any separate corporation or instrumentality established by one or more
68 counties or municipalities, as permitted by law; any instrumentality supported in most part by
69 municipalities; or any public body charged by law with the performance of a government function
70 and whose jurisdiction is coextensive with one or more counties, cities, or towns.

71 "Port" or "public port" means ports, airports, wayports, terminals, buildings, roadways,
72 rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such
73 structures, equipment, facilities, or improvements as are necessary.

74 "Predominantly commuter services" means that for any given trip segment (i.e., distance
75 between two stations), more than 50 percent of the average daily ridership travels on the train at
76 least three times a week.

77 "Public port development" or "public port project" means any activities which are
78 undertaken with respect to public ports.

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

83 "Rail service" means both freight and passenger service.

84 "Railroad" means a common carrier by railroad as defined in Section 10102 of the
85 Interstate Transportation Act (49 U.S.C. § 10102).

86 "Railroad project" means the initiation, acquisition, construction, maintenance, repair,
87 equipping, or operation of rail properties or rail service, or the provisions of loans or grants to or
88 with government agencies, or to persons for such purposes, by the division.

89 "Secretary" means the Secretary of Transportation.

90 "Wayport" means an airport used primarily as a location at which passengers and cargo
91 may be transferred between connecting flights of air carriers engaged in air commerce, but also
92 allows passengers to initiate and terminate flights and shipments of cargo to originate and
93 terminate at the airport or similar type facility.

94 "West Virginia Commuter Rail Access Fund" means the special West Virginia Commuter
95 Rail Access Fund created by §17-16F-27 of this code.

96 "West Virginia Railroad Maintenance Fund" means the West Virginia Railroad
97 Maintenance Fund created by §17-16F-17 of this code.

§17-16F-4. Powers and duties of division.

1 The division shall perform all acts necessary and proper to carry out the purposes of this
2 article and is granted the following powers and duties:

3 (1) To promote, supervise, and support safe, adequate, and efficient transportation
4 throughout the state;

5 (2) To preserve roadway, railroad, waterway, and airway facilities;

6 (3) To help facilitate economic development in this state utilizing transportation facilities;

7 (4) To meet and cooperate with similar divisions, authorities, or bodies of any of the several
8 states contiguous with this state, whose purpose in their respective states is to establish an
9 interstate or intermodal transportation network;

10 (5) To take all steps appropriate and necessary to effect siting, development, and
11 operation of public ports, railroads, or airport facilities within the state;

12 (6) To employ managers, superintendents, and other sufficiently trained and qualified
13 personnel and retain or contract with consulting engineers, financial consultants, accountants,
14 attorneys, and other consultants and independent contractors when necessary to carry out the
15 provisions of this article and fix their compensation or fees. All expenses are payable from the
16 proceeds of revenue bonds or notes issued by the division, from revenues and funds appropriated
17 for this purpose by the Legislature, or from grants from the federal government which may be
18 used for such purpose;

19 (7) To make and enter into all contracts and agreements with any federal, state, county,
20 municipal agency, or private entity and execute all instruments necessary or incidental to the
21 performance of its duties and the execution of its powers including, but not limited to, the power
22 to make contracts and agreements in accordance with the provisions set forth in this article;

23 (8) To acquire, purchase, lease, construct, own, hold, operate, maintain, equip, use, and
24 control by eminent domain or other means, any land, property, rights, franchises, easements,
25 ports, and such terminals, buildings, roadways, rights-of-way, talls and such structures,
26 equipment, facilities, any and every kind or character of motive powers and conveyances or
27 appliances necessary or proper to carry goods, wares, and merchandise over, along, upon, or
28 through the railway, waterway or airway, or other conveyance of such transportation system,
29 excluding pipelines or improvements, as are necessary or incident to carry out the provisions of
30 this article, upon such terms and at such price as may be considered by it to be reasonable and
31 to take title in the name of the state;

32 (9) To lease, sell, or otherwise dispose of real and personal property in the exercise of its
33 powers and the performance of its duties as set forth in this article;

34 (10) To act on behalf of the state and to represent the state in the planning, financing,
35 development, construction, and operation of any port, transit facility, railroad, or aeronautics
36 project or any facility related to any such project, with the concurrence of the affected public
37 agency. Other state agencies and local governmental entities in this state shall cooperate to the
38 fullest extent the division deems appropriate to effectuate the duties of the division;

39 (11) To act as agent for the United States of America, or any of its agencies, departments,
40 corporations, or instrumentalities, in any manner coming within the purposes or powers of the
41 division;

42 (12) To expend funds available for the purpose of studying any proposed railroad project,
43 which may include consulting with engineers. All expenses incurred in conducting the study and
44 necessary engineering shall be paid from the funds established in §17-16F-17 of this code;

45 (13) To report annually to the Legislature by December 31 of each year the status of
46 projects, operations, financial condition, and other necessary information relating to the statewide
47 multimodal transportation system and activities in accordance with this article and any report may
48 be made electronically with paper copies provided upon request to any member of the Legislature;

49 (14) To meet with political subdivisions of the state to assess both specific and general
50 transportation needs of the state in terms of transportation, as well as consider feasibility studies
51 for the purpose of determining the best site locations for transportation centers, terminals,
52 railroads, airports, ports and harbors, and foreign trade zones;

53 (15) To authorize creation of local port authority districts;

54 (16) To apply for and accept loans, grants or gifts of money, property, or service from the
55 United States, any political subdivision, any public or private sources available, or any public or
56 private lender or donor, to give such evidence of indebtedness as may be required and to permit
57 the state Board of Investments to invest, as provided by this code, any funds received by the
58 division pursuant to the provisions of this code;

59 (17) To make loans and grants, out of any appropriation made to the division by the
60 Legislature or out of any funds at its disposal, to governmental agencies and persons for carrying
61 out any multimodal transportation projects by any governmental agency or person in accordance
62 with rules adopted under this article;

63 (18) To issue revenue bonds or request other appropriate state agencies to issue and
64 administer revenue bonds to finance port, railroad, transit, or aeronautics projects;

65 (19) To collect reasonable fees and charges in connection with making and servicing
66 loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, and in
67 connection with providing technical, consulting, and project assistance services; and

68 (20) To act, through the Department of Transportation, the division is hereby designated
69 as the agency of this state responsible for administering all federal and state programs relating to
70 public transportation and public transit facilities.

§17-16F-5. Rules of division.

1 (a) All rules promulgated by the Public Port Authority, the West Virginia State Rail
2 Authority, the Division of Public Transit, or the West Virginia State Aeronautics Commission in

3 effect at the time of creation of the division shall continue in full force and effect until revised or
4 repealed by the division.

5 (b) The division, upon consultation with the Secretary of the Department of Transportation,
6 may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code
7 to implement the purposes of this article, including an application process for the creation of local
8 port authority districts. The division may promulgate any necessary emergency rules to implement
9 the provisions of this article pursuant to the provisions of §29A-3-15 of this code.

§17-16F-10a. Authorization to create a local port authority district.

1 A political subdivision of this state, a joint venture of two or more political subdivisions, a
2 joint venture of political subdivisions and a private entity or entities, or a joint venture of political
3 subdivisions and any bordering state may create a local port authority district in accordance with
4 the procedure set forth in §17-16F-10b of this of this code.

§17-16F-10b. Application to division for approval to create local port authority district.

1 The division shall create an application and approval process for creation of a local port
2 authority district. In deciding on a local port authority district designation, the division shall
3 consider areas which have entered into a joint venture with private industry and areas which have
4 made or will make the greatest effort, both financially and otherwise, to encourage the
5 establishment of facilities to enhance the efficiency and cost of the movement of goods and
6 services to and from markets in West Virginia, or will make the greatest effort to encourage the
7 construction and completion of infrastructure projects, including all types of transportation
8 systems.

**§17-16F-10c. Creation of board of directors for local port authority district; powers and
duties.**

1 (a) A local port authority district may appoint a board of directors to administer the district.
2 Board members shall be appointed from political subdivisions and the private sector and, at a
3 minimum, represent the following areas:

4 (1) One member from each political subdivision and each private entity comprising the
5 local port authority district;

6 (2) One member from the congressional district in which the local port authority district is
7 located who shall represent the public interest generally;

8 (3) At least two members that have recognized ability and practical experience in
9 transportation;

10 (4) At least two members with recognized ability and practical experience in economic
11 development, freight, or logistics;

12 (5) At least one member that has recognized ability and practical experience in
13 international trade;

14 (6) At least one member with recognized ability and practical experience in business
15 management, economics, or accounting; and

16 (7) Two members representing the public at large.

17 (b) The board may exercise all powers necessary and proper to implement the purpose of
18 the local port authority district so long as those powers do not exceed or supersede the powers
19 of the division: *Provided*, That the power of eminent domain may only be exercised by the division
20 itself and not by any local port authority district.

21 (c) The board shall prepare and submit a plan by October 31 of each year with the division
22 for future development, construction, and improvement of its services and facilities.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.


Clerk of the Senate



Clerk of the House of Delegates

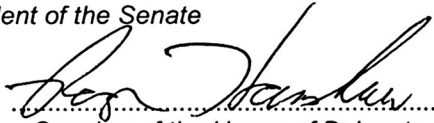
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED


Originated in the Senate.

In effect 90 days from passage.


President of the Senate


Speaker of the House of Delegates

The within is approved this the 27th
Day of March 2024.


Governor

PRESENTED TO THE GOVERNOR

MAR 14 2024

Time 10:47 am