

**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.]

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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.

.....  
*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*

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*Speaker of the House of Delegates*

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

.....  
*Governor*