

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 552**

4 (By Senators Plymale, Browning, Jenkins and Foster)

5 _____
6 [Originating in the Committee on Economic Development;
7 reported February 20, 2012.]
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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §31-21-1, §31-21-2,
14 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8,
15 §31-21-9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-
16 14, §31-21-15, §31-21-16, §31-21-17, §31-21-18 and §31-21-19,
17 all relating to authorizing the creation of a public nonprofit
18 corporation and governmental instrumentality under the
19 provisions of article two, chapter thirty-one-e of said code,
20 to collectively address several environmental and economic
21 development programs established to promote the productive
22 reuse of idled and underutilized commercial, industrial and
23 mining properties, support more efficient use of existing
24 public infrastructure and encourage increased job creation
25 with living wages, renewed community vitality and tax revenue
26 generation while protecting public health and our natural

1 resources.

2 *Be it enacted by the Legislature of West Virginia:*

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new article, designated §31-21-1, §31-21-2,
5 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8, §31-21-
6 9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-14, §31-21-
7 15, §31-21-16, §31-21-17, §31-21-18 and §31-21-19, all to read as
8 follows:

9 **ARTICLE 21. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.**

10 PART 1. SHORT TITLE, DECLARATION OF POLICY, PURPOSE OF ARTICLE AND
11 DEFINITIONS.

12 **§31-21-1. Short title.**

13 This article shall be known and may be cited as "The West
14 Virginia Land Stewardship Corporation Act."

15 **§31-21-2. Declaration of policy.**

16 (a) The Legislature finds and declares that developable land
17 is one of West Virginia's most valuable resources in terms of net
18 contributions to the state's economy and tax base;

19 (b) The Legislature further finds that:

20 (1) Due to topography, the state has somewhat limited amounts
21 of developable land and that promoting the productive reuse of
22 idled and underutilized commercial, industrial and mining
23 properties will maximize our most valuable resource and foster
24 reuse of sites with existing public infrastructure;

25 (2) An entity that specializes in promoting the productive

1 reuse of idled or underutilized commercial, industrial and mining
2 properties will help the state and its citizenry to plan more
3 wisely for sustainable property reuse and economic development
4 efforts;

5 (3) An entity created to address and reduce regulatory and
6 economic uncertainty by being a repository of site history and
7 remediation information about formerly used properties can be a
8 benefit to attracting new employers or encouraging businesses to
9 relocate, remain or expand within the state;

10 (4) An entity that assists the state's Department of
11 Environmental Protection (DEP) with a voluntary land stewardship
12 program for the long-term safeguarding of remediated sites using
13 institutional controls (ICs) and engineering controls (ECs)
14 (collectively IECs) to ensure that the remedy remains protective of
15 human health and the environment is assisting the department to
16 effectively oversee these remediated sites (IEC Sites);

17 (5) An entity that also assists in identifying formerly used
18 properties that are ready for redevelopment and construction within
19 twelve months or less from acquisition and certifies these
20 properties as "project-ready" for specific industry profiles can
21 increase economic development efforts within the state;

22 (6) An entity that also acts as a land bank to accept title to
23 formerly used properties as an intermediary step to help seek a
24 purchaser, ready the property for reuse through environmental
25 assessment, remediation, building demolition or other efforts, can
26 be a useful ally to the state, local government, real estate

1 developers and business for transacting property conveyances,
2 redevelopment and creating or retaining jobs; and

3 (7) The promotion of private investment in our developable
4 land and West Virginia businesses will tend to reduce unemployment
5 by creating new or maintaining existing opportunities for the
6 citizens of this state.

7 **§31-21-3. Purpose of article.**

8 The purposes of this article are to create a special purpose
9 nonprofit corporation with a comprehensive mission to:

10 (1) Assist the Department of Environmental Protection in
11 utilizing a voluntary land stewardship program for the long-term
12 safeguarding of IEC Sites to ensure that the remedy remains
13 protective of human health and the environment and to facilitate
14 further economic development and reuse opportunities;

15 (2) Provide the Department of Environmental Protection and
16 other parties with a reliable source of oversight, monitoring and
17 information about IEC Sites under the voluntary land stewardship
18 program;

19 (3) Establish a land bank as a legal and financial mechanism
20 to accept title to properties and assist to transform idled and
21 underutilized property back to productive reuse;

22 (4) Facilitate the reuse and redevelopment of certain property
23 by authorizing the conveyance of certain properties to a land bank
24 under a voluntary land bank program and assist the state and local
25 governments with the assembly and clearance of title to property in
26 a coordinated manner;

1 (5) Promote economic growth by implementing a state "Certified
2 Sites" program to identify sites that are ready for construction
3 within twelve months or less and that are certified "project-ready"
4 for specific industry profiles as well as other categories of sites
5 identified for economic development opportunities;

6 (6) Provide voluntary programs on a fee or subscription basis
7 with a nonprofit corporation to protect human health and the
8 environment as well as assist with a variety of economic
9 development efforts throughout the state; and

10 (7) Prescribe the powers and duties of the nonprofit
11 corporation; provide for the creation and appointment of boards to
12 govern nonprofit corporation and to prescribe their powers and
13 duties; and to extend protections against certain environmental
14 liabilities to the nonprofit corporation in order to protect the
15 entity from liability created by third parties.

16 **§31-21-4. Definitions.**

17 The following words used in this article , unless the context
18 clearly indicates a different meaning, are defined as follows:

19 (1) "Agreement" means any agreement being entered into between
20 the nonprofit corporation and a business, corporation, private
21 party or local state government.

22 (2) "All Appropriate Inquiries" or "AAI" means the process of
23 evaluating a property's environmental conditions and assessing the
24 likelihood of any contamination. Every Phase I environmental
25 assessment must be conducted in compliance with the All Appropriate
26 Inquiries Final Rule at 40 CFR Part 312. The All Appropriate

1 Inquiries Final Rule provides that the ASTM E1527-05 standard is
2 consistent with the requirements of the final rule and may be used
3 to comply with the provisions of the rule. The specific reporting
4 requirements for all appropriate inquiries are provided in 40 CFR
5 §312.21 (Results of Inquiry by an Environmental Professional) and
6 §312.31 of the final rule and in §12 of ASTM E1527-05.

7 (3) "Board of directors" means the board of directors of the
8 corporation to be appointed under the provisions of section seven
9 of this article.

10 (4) "Certified sites" means such sites that are developable
11 properties that have been prequalified as having proper land use
12 designation, utilities, transportation improvements, availability
13 and pricing. The criteria include established pricing, terms and
14 conditions so that property acquisition can be negotiated quickly
15 and without time-consuming delays.

16 (5) "Charitable purposes" means the 501(c)(3) subclasses of
17 "lessening the burden of the government" where the government
18 identifies a need for the nonprofit entity to assist with a
19 governmental service and the nonprofit collaborates with the
20 government entity, and the "environmental protection for the
21 benefit of the public" where the corporation's services benefit the
22 general public by protecting public health and the environment as
23 well as assisting with state and local economic development
24 initiatives.

25 (6) "Contaminants" has the same meaning as defined in the
26 environmental acts.

1 (7) "Corporation" means the West Virginia Land Stewardship
2 Corporation, a nonstock, nonprofit corporation to be established
3 under the West Virginia Nonprofit Corporation Act, article thirty-
4 one-e, article two of this code and with nonprofit status under one
5 or more charitable purposes under 501(c) of the Internal Revenue
6 Code of 1986, as amended, or under any corresponding section of any
7 future tax code.

8 (8) "Corporate directors" means the members of the board of
9 directors of the corporation.

10 (9) "DEP" means the State of West Virginia, acting by and
11 through the Department of Environmental Protection or any successor
12 agency.

13 (10) "Enforcement tools" means any order, permit, consent
14 decree or environmental covenant or similar mechanisms which
15 restrict or control certain land uses implemented at IEC sites.

16 (11) "Engineering controls" or "ECs" means physical controls
17 or measures designed to eliminate the potential for human exposure
18 to contamination by limiting direct contact with contaminated
19 areas, or controlling contaminants from migrating through
20 environmental media into soil, groundwater or off-site.

21 (12) "Enrolled sites" means properties enrolled and accepted
22 for participation in the voluntary Land Stewardship Program.

23 (13) "Environmental acts" means the Surface Coal Mining and
24 Reclamation Act set forth in article three, chapter twenty-two of
25 this code; the Air Pollution Control Act set forth in article five,
26 chapter twenty-two of this code; the Water Pollution Control Act

1 set forth in article eleven, chapter twenty-two of this code; the
2 Groundwater Protection Act set forth in article twelve, chapter
3 twenty-two of this code; the solid waste landfill closure
4 assistance program set forth in article sixteen, chapter twenty-two
5 of this code; the Hazardous Waste Management Act set forth in
6 article eighteen, chapter twenty-two of this code; section 103(a)
7 of the Comprehensive Environmental Response, Compensation and
8 Liability Act of 1980 (42 U.S.C.A. §9603(a)); section 304 of the
9 Emergency Planning and Community Right-To-Know Act of 1986 (42
10 U.S.C.A. §§11001 to 11050); the Occupational Safety and Health Act
11 set forth in 29 U.S.C.A. §§ 651 to 678; the Resource Conservation
12 and Recovery Act, as amended, set forth in 42 U.S.C.A. §§6901, et
13 seq.; and the Toxic Substances Control Act set forth in 15 U.S.C.A.
14 §§2601, et seq. and any applicable regulation promulgated
15 thereunder.

16 (14) "Governmental controls" means any state laws, ordinances,
17 orders, permits, consent decrees and similar mechanisms which
18 restrict or control certain land uses implemented at IEC Sites.

19 (15) "IEC Sites" means sites remediated or closed under a
20 federal or state environmental program, including brownfields,
21 underground storage tanks, closed landfills, open dumps, hazardous
22 waste sites, and former mining sites with ongoing water treatment
23 as part of mine reclamation efforts.

24 (16) "Informational devices" means deed notices or other
25 written documents that describe the remediation that was conducted
26 on an IEC Site, the constituents of concern and the remediation

1 standards that were achieved. Informational devices are filed with
2 property records as an advisory to provide environmental
3 information to future buyers or users of the IEC Site.

4 (17) "Institutional Controls" or "ICs" means administrative
5 and legal controls that do not involve construction or physically
6 changing the site and are generally divided into four (4)
7 categories: 1) Government controls, 2) Proprietary controls, 3)
8 Enforcement tools, and 4) Informational devices. ICs are non-
9 engineering measures that help minimize the potential for human
10 exposure to contamination and/or protect the integrity of the
11 remedy by limiting land or resource use.

12 (18) "Nonprofit corporation" means a corporation established
13 under the West Virginia Nonprofit Corporation Act, article thirty-
14 one-e, article two of this code to fulfill the purposes of this
15 article.

16 (19) "Pollutants" has the same meaning as defined in the
17 environmental acts.

18 (20) "Proprietary controls" means legal property interests
19 created under real property laws that rely on legal documents
20 recorded in the chain of title for the site, and "run with the
21 land" to bind future landowners. Examples of proprietary controls
22 may include environmental covenants, deed land use restrictions,
23 water withdrawal prohibitions and continuing right-of-entry
24 easements for former owners or regulators to inspect, monitor and
25 maintain the IECs.

26 (21) "Regulated substances" has the same meaning as defined in

1 the environmental acts.

2 (20) "Releases" has the same meaning as defined in the
3 environmental acts.

4 PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

5 **§31-21-5. Creation of the West Virginia Land Stewardship**
6 **Corporation.**

7 (a) The corporation shall be organized as a nonprofit
8 corporation under the West Virginia Nonprofit Corporation Act,
9 article thirty-one-e, article two of this code to fulfill the
10 purposes of this article.

11 (b) The corporation shall seek nonprofit status under one or
12 more charitable purposes within the meaning of section 501(c) of
13 the Internal Revenue Code of 1986, as amended, or under any
14 corresponding section of any future tax code.

15 (c) The corporate name for the corporation shall be the "West
16 Virginia Land Stewardship Corporation."

17 (d) The corporation shall be a nonprofit and the corporation
18 shall not have or issue shares of stock or make distributions from
19 such shares of stock.

20 (e) Except as otherwise provided in this article, the
21 corporation may do all things necessary or convenient to implement
22 the purposes, objectives and provisions of this article and the
23 purposes, objectives and powers delegated to the board of directors
24 of a nonprofit corporation by other laws or executive orders,
25 including, but not limited to, all of the following:

26 (1) Adopt, amend and repeal bylaws for the regulation of its

1 affairs and the conduct of its business;

2 (2) Establish the service offerings and related fees for such
3 services under each of the voluntary programs described herein;

4 (3) Sue and be sued in its own name and plead and be
5 impleaded, including, but not limited to, defending the corporation
6 in an action arising or resulting from the services, programs and
7 responsibilities arising under this article;

8 (4) Solicit and accept gifts, grants, labor, loans, services
9 and other aid from any person, or the federal government, this
10 state or a political subdivision of this state or any agency of the
11 federal government or a state institution of higher education or
12 nonprofit affiliates or an intergovernmental entity created under
13 the laws of this state or participate in any other way in a program
14 of the federal government;

15 (5) Procure insurance against risk and loss in connection with
16 the programs, property, assets or activities of the corporation;

17 (6) Invest money of the corporation, at the discretion of the
18 board of directors in instruments, obligations, securities or
19 property determined proper by the board of directors of the
20 corporation and name and use depositories for its money;

21 (7) Employ legal and technical experts, contractors,
22 consultants, agents or employees, permanent or temporary, paid from
23 the funds of the corporation. The corporation shall determine the
24 qualifications, duties and compensation of those it employs;

25 (8) Contract for goods and services and engage personnel as
26 necessary, contract with Regional Brownfield Assistance Centers as

1 set out in section seven, article eleven, chapter eighteen-b, and
2 engage the services of private consultants, managers, legal
3 counsel, engineers, accountants and auditors for rendering
4 professional environmental, legal and financial assistance and
5 advice payable from funds of the corporation;

6 (9) Create limited liability companies or other sole purpose
7 entities or devices to accept real property as part of
8 administering its programs;

9 (10) Study, develop and prepare the reports or plans the
10 corporation considers necessary to assist it in the exercise of its
11 powers under this article and to monitor and evaluate progress
12 under this article;

13 (11) Enter into contracts for the management of, the
14 collection of rent from, or the sale of real property held by the
15 corporation; and

16 (12) Do all other things necessary or convenient to achieve
17 the objectives and purposes of the corporation or other laws that
18 relate to the purposes and responsibility of the corporation.

19 **§31-21-6. Powers.**

20 (a) The enumeration of a power in this article may not be
21 construed as a limitation upon the general powers of the
22 corporation. The powers granted under this article are in addition
23 to those powers granted by any other statute or as provided in
24 articles of incorporation filed with the Secretary of State.

25 (b) The property of the corporation and its income and
26 operations are exempt from all taxation by this state or any of its

1 political subdivisions.

2 (c) The corporation may not levy any power to issue tax-exempt
3 financing or issue bonds.

4 (d) The corporation does not have the power of eminent domain
5 or the ability to condemn property.

6 (e) The exercise by the corporation of powers and duties under
7 this article and its activities under the programs described herein
8 shall be considered a necessary public purpose and for the benefit
9 of the public.

10 (f) The corporation shall report biannually to the Legislature
11 on the activities of the corporation.

12 (g) The operations of the corporation are subject to an audit
13 by an independent auditor or the State of West Virginia as
14 determined by the Department of Environmental Protection.

15 (h) The corporation is not liable under the environmental acts
16 or common law equivalents to the state or to any other person by
17 virtue of the fact that the corporation is fulfilling the purposes
18 of this article including, but not limited to, providing land
19 stewardship services or accepting title to property under any
20 program herein unless:

21 (1) The corporation, its employees or agents directly cause an
22 immediate release or directly exacerbate a release of regulated
23 substances on or from a property that is an enrolled site or
24 accepted into the land bank program; or

25 (2) The corporation, its employees or agents knowingly and
26 willfully do an action which caused an immediate release of

1 regulated substances or violates an environmental act. Liability
2 pursuant to this article is limited to the cost for a response
3 action which may be directly attributable to the corporation's
4 activities, and only if these activities are the proximate and
5 efficient cause of the release or violation. Ownership or control
6 of the property after accepting title in the land bank program does
7 not by itself trigger liability.

8 (i) The corporation shall adopt a code of ethics for its
9 directors, officers and employees.

10 (j) The corporation shall establish policies and procedures
11 requiring the disclosure of relationships that may give rise to a
12 conflict of interest. The governing body of the corporation shall
13 require that any member of the governing body with a direct or
14 indirect interest in any matter before the corporation disclose the
15 member's interest to the governing body before the board takes any
16 action on the matter.

17 (k) The programs that are established under this article and
18 administered by the corporation are voluntary programs. Parties
19 can participate in the land stewardship program, certified sites
20 program and land bank program at their option.

21 (l) The state may contract with the corporation for services
22 for properties for which the state is responsible and may enter
23 into long-term contracts for services that are funded under a trust
24 agreement or provided in an escrow account.

25 **§31-21-7. Board of directors.**

26 (a) The purposes, powers and duties of the corporation shall

1 be exercised by a board of directors. The corporation's board
2 consists of the following eleven members:

3 (1) The Governor shall appoint four residents of this state;

4 (2) The West Virginia Chamber of Commerce shall appoint one
5 member;

6 (3) The West Virginia Manufacturers' Association shall appoint
7 one member;

8 (4) The West Virginia Environmental Council shall appoint one
9 member;

10 (5) The Secretary of the Department of Environmental
11 Protection or his or her designee who shall serve as an ex officio
12 nonvoting member;

13 (6) The Secretary of the Department of Commerce or his or her
14 designee who shall serve as an ex officio nonvoting member;

15 (7) One member of the Senate appointed by the Senate President
16 who shall serve as a nonvoting member; and

17 (8) One member of the House of Delegates appointed by the
18 speaker who shall serve as a nonvoting member.

19 (b) The members appointed by the Governor, the West Virginia
20 Chamber of Commerce and the West Virginia Manufacturers'
21 Association shall serve terms of four years: *Provided*, That for
22 the initial appointments the parties making the appointments shall
23 designate three to serve for four years, two to serve for three
24 years and two to serve for two years.

25 (c) Corporate directors shall serve without compensation, but
26 shall be reimbursed for actual and necessary expenses.

1 (d) The corporate directors shall appoint a person to serve as
2 the executive director of the corporation. A member of the board
3 is not eligible to hold the position of executive director.

4 (e) Subject to the approval of the board, the executive
5 director shall supervise, and be responsible for, the performance
6 of the functions and programs of the corporation under this
7 article. The executive director shall attend the meetings of the
8 board and shall provide the board of directors with a regular
9 report describing the activities and financial condition of the
10 corporation. The executive director shall furnish the board of
11 directors with information or reports governing the operation of
12 the corporation as the board requires.

13 (f) The rights conferred on the corporation or any person
14 described hereunder are not exclusive of and shall be in addition
15 to any other right which the person may have or may hereafter
16 acquire under any statute, provision of articles of incorporation,
17 bylaws, agreement, vote of corporate directors or otherwise.

18 PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

19 **§31-21-8. Voluntary land stewardship program.**

20 (a) When the voluntary land stewardship program is
21 implemented, remediation parties and site owners of IEC Sites will
22 have the option, for a fee, to participate in this program. The fee
23 will be established by the corporation for services provided for an
24 enrolled site as that term is defined in section four of this
25 article.

26 (b) The universe of sites or properties covered under this

1 section of the statute includes, but is not limited, to those with
2 IEC Sites remediated or closed under a federal or state
3 environmental program, including brownfields, underground storage
4 tanks, closed landfills, open dumps, hazardous waste sites, and
5 former mining sites with ongoing water treatment as part of mine
6 reclamation efforts.

7 (c) The corporation is further authorized to provide at a
8 minimum the following voluntary land stewardship services for
9 enrolled sites:

10 (1) Establish or maintain any ICs by filing the appropriate
11 documents or updating such documents when the site is leased,
12 conveyed, subdivided or when remediation occurs: *Provided*, That the
13 corporation's responsibilities for such activities are expressly
14 identified for the entity itself and provided in agreements for the
15 IEC Site that will be negotiated when a site is enrolled in the
16 voluntary land stewardship program;

17 (2) Conduct physical inspections of the enrolled sites,
18 including inspecting or monitoring any ECs (e.g., media treatment
19 systems, fences, caps and other mechanisms used as part of the
20 remedy at the IEC Site) and site activities to assure that the
21 enrolled sites continue to comply with the IECs, such as
22 maintenance of ECs and inspecting for compliance with restrictions
23 of specific land uses;

24 (3) Monitor and operate any required media treatment systems
25 and/or conduct routine surface water, groundwater and or gas
26 monitoring and prepare any monitoring or inspection reports that

1 may be part of the corporation's responsibilities under site
2 enrollment agreements;

3 (4) Conduct periodic reviews of the county land records to
4 monitor transfers or deed filings to assure that such records are
5 consistent with the required IECs for the enrolled sites, and
6 provide notices to the clerk of the county commission about the
7 results of monitoring or tracking of such records;

8 (5) Develop administrative records concerning the remediation
9 at enrolled sites in an electronic database, respond to inquiries
10 and coordinate the sharing of such data among various stakeholders,
11 including the Department of Environmental Protection, current
12 owners, the remediating parties, if not the owners, other state or
13 local agencies (such as economic development agencies), assessors,
14 potential purchasers, landowners and tenants;

15 (6) Develop and maintain records and information about
16 enrolled sites for posting on the Department of Environmental
17 Protection environmental registry, or any other registry that is
18 used for tracking IECs for IEC Sites in West Virginia and provide
19 for public access to such information; and

20 (7) Coordinate and share data with West Virginia Miss Utility,
21 the "One-Call" System, including verifying the location of ECs on
22 enrolled sites, providing information about the remediation, and
23 sharing any health and safety plans or soils management plans that
24 may be associated with an enrolled site in order to assist any
25 planned excavation at the enrolled site.

26 **§31-21-9. Underwriting.**

1 The enrollment and acceptance process to the land stewardship
2 program will be developed and include an underwriting review that
3 focuses on: (1) The nature and extent of contamination; (2) the
4 selected remedy; (3) the type of services selected and duration
5 thereof; and (4) the financial costs and risks associated with
6 fulfilling the services.

7 Part 4. State CERTIFIED SITES PROGRAM.

8 **§31-21-10. State certified sites program.**

9 (a) This article hereby authorizes the establishment of a
10 state certified sites program. The program shall consist of the
11 development and preparation of certain site specific decision ready
12 documentation or reports that will enable the expedited property
13 transaction for sites that participate in the certified sites
14 program.

15 (b) The objectives of the certified sites program are to:

16 (1) Establish an inventory of identified sites that are ready
17 for redevelopment and construction within twelve months or less
18 from acquisition and certifies these properties as "project-ready"
19 for specific industry profiles and other categories of developable
20 properties available that can increase economic development efforts
21 within the state;

22 (2) Improve the state's competitive edge by giving more
23 certainty in time, steps and costs to businesses expanding or
24 locating within the state;

25 (3) Develop standard criteria that most real estate developers
26 or businesses need when selecting a site for development;

1 (4) Develop a central source of certified sites and assist
2 local government in identifying potential redevelopment properties;
3 and

4 (5) Demonstrate that the state is committed to promoting and
5 expediting economic development projects for the benefit of its
6 citizenry.

7 (c) The corporation shall issue a site certification if it
8 determines that the decision ready document has been prepared and
9 completed in accord with the requirements set forth by the
10 corporation. The corporation may require some or all of the
11 following information based on the site specific circumstances of
12 the property to be certified.

13 (d) The issuance of a site certification shall be based on the
14 review and approval of the information submitted to the corporation
15 in an application for the site certification.

16 **§31-21-11. Minimum standards.**

17 (a) The minimum standards listed below must be met for a site
18 to be considered for certification:

19 (1) Letter of support from a mayor, county commissioner or
20 local economic development official;

21 (2) Site ownership/control:

22 (A) Preliminary fifty-year title report and description of
23 liens and encumbrances;

24 (B) Letter from property owner/option holder stating that site
25 is for sale/lease. If possible, proposed pricing or transactional
26 requirements with a description of any on-site improvements,

1 current level of investment, and whether property can be parceled;

2 (C) Acreage; and

3 (D) Full legal property description.

4 (3) Maps:

5 (A) ALTA map;

6 (B) Site map showing lot layout, transportation access, roads
7 and likely access points;

8 (C) USGS topographical map; and

9 (D) Aerial map.

10 (4) Phase I environmental site assessment performed by a
11 certified professional within the prior six months, if appropriate,
12 a Phase II environmental site assessment performed by a certified
13 professional within the prior six months. For any properties being
14 remediated, documentation about the status and cleanup objectives.
15 Remediated sites provide documentation of liability protection.

16 (5) Wetland delineation demonstrating that impacts to waters
17 of the state will be avoided or mitigation plan approved by the
18 Department of Environmental Protection.

19 (6) Water and wastewater infrastructure to property line or
20 demonstrate the ability to construct and pay for the infrastructure
21 up to property line. Capacity clearly defined.

22 (7) Transportation infrastructure to property line, including
23 type of roads near site such as whether the roads are local, state
24 or U.S. roads.

25 (8) Electric infrastructure to property line. Capacity clearly
26 identified.

1 (9) Natural gas infrastructure to property line. Capacity
2 clearly identified.

3 (10) Water infrastructure to property line. Capacity clearly
4 identified.

5 (11) Sewer infrastructure to property line. Capacity clearly
6 identified.

7 (12) Telecommunications and/or high speed communications
8 infrastructure to property line. Capacity clearly identified.

9 (b) The complete list of certified sites criteria will be
10 developed into a program application along with appropriate fees
11 for participation as the certified sites program is implemented,
12 and will be revised from time to time as warranted.

13 PART 5. LAND BANK PROGRAM.

14 **§31-21-12. Land bank program.**

15 (a) This article hereby authorizes the establishment of a
16 voluntary state land bank program. The corporation under the land
17 bank program is authorized to acquire properties, hold title and
18 prepare them for future use. Prior to acquiring any properties,
19 the corporation shall conduct all appropriate inquiry to determine
20 the environmental conditions or issues associated with a property.

21 (b) The objective of the land bank program is to assist state
22 and local government efforts for economic develop by accepting
23 formerly used or developable properties and prepare the properties
24 so they can be conveyed to other parties to locate or expand
25 businesses and create or retain jobs in the state;

26 (c) The corporation may acquire by gift, devise, transfer,

1 exchange, foreclosure, purchase or otherwise on terms and
2 conditions and in a manner the corporation considers proper, real
3 or personal property or rights or interests in real or personal
4 property.

5 (d) Real property acquired by the corporation may be by
6 purchase and sale agreement, lease purchase agreement, installment
7 sales contract, land contract or otherwise as may be negotiated or
8 structured. The corporation may acquire real property or rights or
9 interests in real property for any purpose the corporation
10 considers necessary to carry out the purposes of this article
11 including, but not limited to, one or more of the following
12 purposes:

13 (1) Use or development of property the corporation has
14 otherwise acquired;

15 (2) Facilitate the assembly of property for sale or lease to
16 any other public or private person, including, but not limited to,
17 a nonprofit or for profit corporation;

18 (3) Conduct environmental remediation and monitoring
19 activities.

20 (e) The corporation may also acquire by purchase, on terms and
21 conditions and in a manner the corporation considers proper,
22 property or rights or interest in property.

23 (f) The corporation may hold and own in its name any property
24 acquired by it or conveyed to it by this state, a foreclosing
25 governmental unit, a local unit of government, an intergovernmental
26 entity created under the laws of this state or any other public or

1 private person including, but not limited to, tax reverted property
2 and property with or without clear title.

3 (g) All deeds, mortgages, contracts, leases, purchases or
4 other agreements regarding property of the corporation, including
5 agreements to acquire or dispose of real property, may be approved
6 by and executed in the name of the corporation or any single
7 purpose entity created for the transaction.

8 (h) All property held by the corporation shall be inventoried
9 and classified by the nonprofit according to title status and
10 suitability for use.

11 (i) A document including, but not limited to, a deed
12 evidencing the transfer under this article of one or more parcels
13 of property to the corporation by this state or a political
14 subdivision of this state may be recorded with the register of
15 deeds office in the county in which the property is located without
16 the payment of a fee.

17 **§31-21-13. Preserve property value.**

18 (a) The corporation may, without the approval of a local unit
19 of government in which property held by the corporation is located,
20 control, hold, manage, maintain, operate, repair, lease as lessor,
21 secure, prevent the waste or deterioration of, demolish and take
22 all other actions necessary to preserve the value of the property
23 it holds or owns.

24 (b) The corporation may take or perform the following with
25 respect to property held or owned by the corporation:

26 (1) Grant or acquire a license, easement, or option with

1 respect to property as the corporation determines is reasonably
2 necessary to achieve the purposes of this article;

3 (2) Fix, charge, and collect rents, fees and charges for use
4 of property under the control of the corporation or for services
5 provided by the corporation;

6 (3) Pay any tax or special assessment due on property acquired
7 or owned by the corporation;

8 (4) Take any action, provide any notice or institute any
9 proceeding required to clear or quiet title to property held by the
10 corporation in order to establish ownership by and vest title to
11 property in the corporation; and

12 (5) Remediate environmental contamination on any property held
13 by the corporation.

14 (c) Except as the corporation otherwise agrees by agreement or
15 otherwise, on terms and conditions, and in a manner and for an
16 amount of consideration the corporation considers proper, fair and
17 valuable, including for no monetary consideration, the corporation
18 may convey, sell, transfer, exchange, lease as lessor or otherwise
19 dispose of property or rights or interests in property in which the
20 corporation holds a legal interest to any public or private person
21 for value determined by the corporation.

22 (d) The corporation shall be made a party to and shall defend
23 any action or proceeding concerning title claims against property
24 held by the corporation.

25 **§31-21-14. Contaminated property.**

26 (a) If the Department of Environmental Protection determines

1 that conditions on a property transferred to the corporation under
2 this article represents an immediate threat to public health,
3 safety and welfare, or to the environment, the corporation may not
4 convey, sell, transfer, exchange, lease or otherwise dispose of the
5 property until after a determination by the Department of
6 Environmental Protection that the threat has been remediated and/or
7 eliminated and that conveyance, sale, transfer, exchange, lease or
8 other disposal of the property by the corporation will not
9 interfere with any of the Department of Environmental Protection's
10 response activities and will coordinate with the Department of
11 Environmental Protection about the corporations activities at such
12 property.

13 (b) If the corporation has reason to believe that property
14 held by the corporation may be the site of environmental
15 contamination, the corporation shall provide the Department of
16 Environmental Protection with any information in the possession of
17 the corporation that suggests that the property may be the site of
18 environmental contamination.

19 (c) If property held by the corporation is a facility as
20 defined under environmental acts as a site impacted by
21 contamination, pollution, hazardous substances, hazardous or other
22 wastes prior to the sale or transfer of the property under this
23 section, the property is subject to all of the following:

24 (1) Upon reasonable written notice from the Department of
25 Environmental Protection, the corporation shall provide access to
26 the Department of Environmental Protection, its employees, its

1 contractors and any other person expressly authorized by the
2 Department of Environmental Protection to conduct an investigation
3 and/or response activities at the property. Reasonable written
4 notice may include, but is not limited to, notice by electronic
5 mail or facsimile, in advance of access as the Department of
6 Environmental Protection and corporation may agree.

7 (2) If the Department of Environmental Protection determines
8 necessary to protect public health, safety and welfare or the
9 environment, the corporation shall place and record deed
10 restrictions on the property as authorized under state
11 environmental statute.

12 **§31-21-15. Liberal construction.**

13 This article shall be construed liberally to effectuate the
14 legislative intent and the purposes as complete and independent
15 authorization for the performance of every act and thing authorized
16 by this article, and all powers granted shall be broadly
17 interpreted to effectuate the intent and purposes and not as a
18 limitation of powers in the exercise of its powers and duties under
19 this article and its powers relating to property held by the
20 authority, the authority has complete control as if it represented
21 a private property owner and may not be subject to restrictions
22 imposed on the authority by the charter, ordinances or resolutions
23 of a local unit of government.

24 **§31-21-16. Completed purpose.**

25 If the corporation has completed the purposes for which the
26 corporation was organized, the board of directors, by vote of at

1 least a majority of a quorum of the directors and with the written
2 consent of the Governor, may provide for the dissolution of the
3 corporation and may provide for the transfer of any property held
4 by the corporation as required by agreement or, if there are no
5 related agreements, then to the Department of Environmental
6 Protection or state agency or to another nonprofit corporation as
7 directed by the Department of Environmental Protection.

8 **§31-21-17. Conflicts of interest.**

9 Notwithstanding any other provision of this article to the
10 contrary, officers and employees of the corporation and its board
11 of directors may hold appointments to offices of any other
12 corporation or business and be corporate directors or officers or
13 employees of other entities but are prohibited to be a party or
14 otherwise participate in the transfer of real property and funds
15 from the corporation to the corporation or business for which they
16 work.

17 **§31-21-18. No waiver of sovereign immunity.**

18 Nothing contained in this article may be determined or
19 construed to waive or abrogate in any way the sovereign immunity of
20 the state or to deprive a governing board of a state created
21 nonprofit corporation or any officer or employee thereof of
22 sovereign immunity.

23 **§31-21-19. Not obligation of the state.**

24 Obligations of the corporation are not debts or obligations of
25 the Department of Environmental Protection or the state.

NOTE: The purpose of this bill is to authorize the creation of a public nonprofit corporation and governmental instrumentality under the provisions of article two, chapter thirty-one-e of the code, to collectively address several environmental and economic development programs. The corporation is established to promote the productive reuse of idled and underutilized commercial, industrial and mining properties; to support more efficient use of existing public infrastructure; encourage increased job creation with living wages; and renewed community vitality and tax revenue generation while protecting public health and our natural resources.

This article is new; therefore, strike-throughs and underscoring have been omitted.