

Senate Bill No. 552

(By Senators Plymale, Browning, Jenkins and Foster)

[Introduced February 9, 2012; referred to the Committee on
Economic Development; and then to the Committee on the
Judiciary.]

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §31-21-1, §31-21-2,
13 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8,
14 §31-21-9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-
15 14, §31-21-15, §31-21-16, §31-21-17, §31-21-18 and §31-21-19,
16 all relating to authorizing the creation of a public nonprofit
17 corporation and governmental instrumentality under the
18 provisions of article two, chapter thirty-one-e of said code,
19 to collectively address several environmental and economic
20 development programs established to promote the productive
21 reuse of idled and underutilized commercial, industrial and
22 mining properties, support more efficient use of existing
23 public infrastructure and encourage increased job creation

1 with living wages, renewed community vitality and tax revenue
2 generation while protecting public health and our natural
3 resources.

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

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

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

12 PART 1. SHORT TITLE, DECLARATION of Policy, PURPOSE of ARTICLE and
13 DEFINITIONS.

14 **§31-21-1. Short title.**

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

17 **§31-21-2. Declaration of policy.**

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

21 (b) The Legislature further finds that:

22 (1) Due to topography, the state has somewhat limited amounts
23 of developable land and that promoting the productive reuse of

1 idled and underutilized commercial, industrial and mining
2 properties will maximize our most valuable resource and foster
3 reuse of sites with existing public infrastructure;

4 (2) An entity that specializes in promoting the productive
5 reuse of idled or underutilized commercial, industrial and mining
6 properties will help the state and its citizenry to plan more
7 wisely for sustainable property reuse and economic development
8 efforts;

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

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

21 (5) An entity that also assists in identifying formerly used
22 properties that are ready for redevelopment and construction within
23 six months or less from acquisition and certifies these properties
24 as "project-ready" for specific industry profiles can increase

1 economic development efforts within the state;

2 (6) An entity that also acts as a land bank to accept title to
3 formerly used properties as an intermediary step to help seek a
4 purchaser, ready the property for reuse through environmental
5 assessment, remediation, building demolition or other efforts, can
6 be a useful ally to the state, local government, real estate
7 developers and business for transacting property conveyances,
8 redevelopment and creating or retaining jobs; and

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

13 **§31-21-3. Purpose of article.**

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

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

21 (2) Provide the Department of Environmental Protection and
22 other parties with a reliable source of oversight, monitoring and
23 information about IEC Sites under the voluntary land stewardship
24 program;

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

4 (4) Facilitate the reuse and redevelopment of certain property
5 by authorizing the conveyance of certain properties to a land bank
6 under a voluntary land bank program and assist the state and local
7 governments with the assembly and clearance of title to property in
8 a coordinated manner;

9 (5) Promote economic growth by implementing a state "Certified
10 Sites" program to identify sites that are ready for construction
11 within six months or less and that are certified "project-ready"
12 for specific industry profiles as well as other categories of sites
13 identified for economic development opportunities;

14 (6) Provide voluntary programs on a fee or subscription basis
15 with a nonprofit corporation to protect human health and the
16 environmental as well as assist with a variety of economic
17 development efforts throughout the state; and

18 (7) Prescribe the powers and duties of the nonprofit
19 corporation; provide for the creation and appointment of boards to
20 govern nonprofit corporation and to prescribe their powers and
21 duties; and to extend protections against certain environmental
22 liabilities to the nonprofit corporation in order to protect the
23 entity from liability created by third parties.

24 **§31-21-4. Definitions.**

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

3 (1) "Agreement" means any agreement being entered into between
4 the nonprofit corporation and a business, corporation, private
5 party, local state government.

6 (2) "All Appropriate Inquiries" or "AAI" means the process of
7 evaluating a property's environmental conditions and assessing the
8 likelihood of any contamination. Every Phase I environmental
9 assessment must be conducted in compliance with the All Appropriate
10 Inquiries Final Rule at 40 CFR Part 312. The All Appropriate
11 Inquiries Final Rule provides that the ASTM E1527-05 standard is
12 consistent with the requirements of the final rule and may be used
13 to comply with the provisions of the rule. The specific reporting
14 requirements for all appropriate inquiries are provided in 40 CFR
15 §312.21 (Results of Inquiry by an Environmental Professional) and
16 §312.31 of the final rule and in §12 of ASTM E1527-05.

17 (3) "Board of directors" means the board of directors of the
18 corporation to be appointed under the provisions of section seven
19 of this article.

20 (4) "Certified sites" means that such sites are developable
21 properties that have been prequalified as having proper land use
22 designation, utilities, transportation improvements, availability
23 and pricing. The criteria include established pricing, terms and
24 conditions so that property acquisition can be negotiated quickly

1 and without time-consuming delays.

2 (5) "Charitable purposes" means the 501(c)(3) subclasses of
3 "lessening the burden of the government" where the government
4 identifies a need for the nonprofit entity to assist with a
5 governmental service and the nonprofit collaborates with the
6 government entity, and the "environmental protection for the
7 benefit of the public" where the corporation's services benefit the
8 general public by protecting public health and the environment as
9 well as assisting with state and local economic development
10 initiatives.

11 (6) "Contaminants" has the same meaning as defined in the
12 environmental acts.

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

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

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

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

4 (11) "Engineering controls" means physical controls or
5 measures designed to eliminate the potential for human exposure to
6 contamination by limiting direct contact with contaminated areas,
7 or controlling contaminants from migrating through environmental
8 media into soil, groundwater or off-site.

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

11 (13) "Environmental acts" means the Surface Coal Mining and
12 Reclamation Act set forth in article three, chapter twenty-two of
13 this code; the Air Pollution Control Act set forth in article five,
14 chapter twenty-two of this code; the Water Pollution Control Act
15 set forth in article eleven, chapter twenty-two of this code; the
16 Groundwater Protection Act set forth in article twelve, chapter
17 twenty-two of this code; the solid waste landfill closure
18 assistance program set forth in article sixteen, chapter twenty-two
19 of this code; the Hazardous Waste Management Act set forth in
20 article eighteen, chapter twenty-two of this code; section 103(a)
21 of the Comprehensive Environmental Response, Compensation and
22 Liability Act of 1980 (42 U.S.C.A. §9603(a)); section 304 of the
23 Emergency Planning and Community Right-To-Know Act of 1986 (42
24 U.S.C.A. §§11001 to 11050); the Occupational Safety and Health Act

1 set forth in 29 U.S.C.A. §§ 651 to 678; the Resource Conservation
2 and Recovery Act, as amended, set forth in 42 U.S.C.A. §§6901, et
3 seq.; and the Toxic Substances Control Act set forth in 15 U.S.C.A.
4 §§2601, et seq. and any applicable regulation promulgated
5 thereunder.

6 (14) "Governmental controls" means any state laws, ordinances,
7 orders, permits, consent decrees and similar mechanisms which
8 restrict or control certain land uses implemented at IEC sites.

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

14 (16) "Informational devices" means deed notices or other
15 written documents that describe the remediation that was conducted
16 on an IEC Site, the constituents of concern and the remediation
17 standards that were achieved. Informational devices are filed with
18 property records as an advisory to provide environmental
19 information to future buyers or users of the IEC site.

20 (17) "Institutional Controls" or "ICs" means administrative
21 and legal controls that do not involve construction or physically
22 changing the site and are generally divided into four (4)
23 categories: 1) Government controls, 2) Proprietary controls, 3)
24 Enforcement tools, and 4) Informational devices. ICs are non-

1 engineering measures that help minimize the potential for human
2 exposure to contamination and/or protect the integrity of the
3 remedy by limiting land or resource use.

4 (18) "Nonprofit corporation" means a corporation established
5 under the West Virginia Nonprofit Corporation Act, article thirty-
6 one-e, article two of this code to fulfill the purposes of this
7 article.

8 (19) "Pollutants" has the same meaning as defined in the
9 environmental acts.

10 (20) "Proprietary controls" means legal property interests
11 created under real property laws that rely on legal documents
12 recorded in the chain of title for the site, and "ran with the
13 land" to bind future landowners. Examples of proprietary controls
14 may include environmental covenants, deed land use restrictions,
15 water withdrawal prohibitions and continuing right-of-entry
16 easements for former owners or regulators to inspect, monitor and
17 maintain the IECs.

18 (21) "Regulated substances" has the same meaning as defined in
19 the environmental acts.

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

22 PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

23 **§31-21-5. Creation of the West Virginia Land Stewardship**
24 **Corporation.**

1 (a) The corporation shall be organized as a nonprofit
2 corporation under the West Virginia Nonprofit Corporation Act,
3 article thirty-one-e, article two of this code to fulfill the
4 purposes of this article.

5 (b) The corporation must seek nonprofit status under one or
6 more charitable purposes within the meaning of section 501(c) of
7 the Internal Revenue Code of 1986, as amended, or under any
8 corresponding section of any future tax code.

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

11 (d) The corporation shall be a nonprofit and the corporation
12 may not have or issue shares of stock or make distributions from
13 such shares of stock.

14 (e) Except as otherwise provided in this article, the
15 corporation may do all things necessary or convenient to implement
16 the purposes, objectives and provisions of this article and the
17 purposes, objectives and powers delegated to the board of directors
18 of a nonprofit corporation by other laws or executive orders,
19 including, but not limited to, all of the following:

20 (1) Adopt, amend and repeal bylaws for the regulation of its
21 affairs and the conduct of its business;

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

24 (3) Sue and be sued in its own name and plead and be

1 impleaded, including, but not limited to, defending the corporation
2 in an action arising or resulting from the services, programs and
3 responsibilities arising under this article;

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

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

13 (6) Invest money of the corporation, at the discretion of the
14 board of directors in instruments, obligations, securities or
15 property determined proper by the board of directors of the
16 corporation and name and use depositories for its money;

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

21 (8) Contract for goods and services and engage personnel as
22 necessary and engage the services of private consultants, managers,
23 legal counsel, engineers, accountants and auditors for rendering
24 professional environmental, legal and financial assistance and

1 advice payable from funds of the corporation;

2 (9) Create limited liability corporations or other sole
3 purpose entities or devices to accept real property as part of
4 administering its programs;

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

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

12 (12) Do all other things necessary or convenient to achieve
13 the objectives and purposes of the authority or other laws that
14 relate to the purposes and responsibility of the corporation.

15 **§31-21-6. Powers.**

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

21 (b) The property of the corporation and its income and
22 operations are exempt from all taxation by this state or any of its
23 political subdivisions.

24 (c) The corporation may not levy any power to issue tax-exempt

1 financing or issue bonds.

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

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

8 (f) The corporation shall report biannually to the Legislature
9 on the activities of the corporation.

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

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

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

23 (2) The corporation, its employees or agents knowingly and
24 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.

1 **§31-21-7. Board of directors.**

2 (a) The purposes, powers and duties of the corporation shall
3 be exercised by a board of directors. The corporation's board
4 consists of the following eleven members:

5 (1) The Governor shall appoint five residents of this state;

6 (2) The West Virginia Chamber of Commerce shall appoint one
7 member;

8 (3) West Virginia Manufacturers' Association shall appoint one
9 member;

10 (4) 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 (5) The Secretary of the Department of Commerce or his or her
14 designee who shall serve as an ex officio nonvoting member;

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

17 (7) 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.

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

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

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

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

20 PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

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

22 (a) When the voluntary land stewardship program is
23 implemented, remediation parties and site owners of IEC Sites will
24 have the option, for a fee, to participate in this program. The fee

1 will be established by the corporation for services provided for an
2 enrolled site as that term is defined in section four of this
3 article.

4 (b) The universe of sites or properties covered under this
5 section of the statute includes, but is not limited, to those with
6 IEC Sites remediated or closed under a federal or state
7 environmental program, including brownfields, underground storage
8 tanks, closed landfills, open dumps, hazardous waste sites, and
9 former mining sites with ongoing water treatment as part of mine
10 reclamation efforts.

11 (c) The corporation is further authorized to provide at a
12 minimum the following voluntary land stewardship services for
13 enrolled sites:

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

21 (2) Conduct physical inspections of the enrolled sites,
22 including inspecting or monitoring any ECs (e.g., media treatment
23 systems, fences, caps and other mechanisms used as part of the
24 remedy at the IEC Site) and site activities to assure that the

1 enrolled sites continue to comply with the IECs, such as
2 maintenance of ECs and inspecting for compliance with restrictions
3 of specific land uses;

4 (3) Monitor and operate any required media treatment systems
5 and/or conduct routine surface water, groundwater and or gas
6 monitoring and prepare any monitoring or inspection reports that
7 may be part of the corporation's responsibilities under site
8 enrollment agreements;

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

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

21 (6) Develop and maintain records and information about
22 enrolled sites for posting on the Department of Environmental
23 Protection environmental registry, or any other registry that is
24 used for tracking IECs for IEC Sites in West Virginia and provide

1 for public access to such information; and

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

8 **§31-21-9. Underwriting.**

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

15 Part 4. State CERTIFIED SITES PROGRAM.

16 **§31-21-10. State certified sites program.**

17 (a) This article hereby authorizes the establishment of a
18 state certified sites program. The program shall consist of the
19 development and preparation of certain site specific decision ready
20 documentation or reports that will enable the expedited property
21 transaction for sites that participate in the certified sites
22 program.

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

24 (1) Establish an inventory of identified sites that are ready

1 for redevelopment and construction within twelve months or less
2 from acquisition and certifies these properties as "project-ready"
3 for specific industry profiles and other categories of developable
4 properties available that can increase economic development efforts
5 within the state;

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

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

11 (4) Develop a central source of certified sites and assist
12 local government in identifying potential redevelopment properties;
13 and

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

17 (c) The corporation shall issue a site certification if it
18 determines that the decision ready document has been prepared and
19 completed in accord with the requirements set forth by the
20 corporation. The corporation may require some or all of the
21 following information based on the site specific circumstances of
22 the property to be certified.

23 (d) The issuance of a site certification shall be based on the
24 review and approval of the information submitted to the corporation

1 in an application for the site certification.

2 **§31-21-11. Minimum standards.**

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

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

7 (2) Site ownership/control:

8 (A) Preliminary fifty-year title report and description of
9 liens and encumbrances;

10 (B) Letter from property owner/option holder stating that site
11 is for sale/lease. If possible, proposed pricing or transactional
12 requirements with a description of any on-site improvements,
13 current level of investment, and whether property can be parceled;

14 (C) Acreage; and

15 (D) Full legal property description.

16 (3) Maps:

17 (A) ALTA map;

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

20 (C) USGS topographical map; and

21 (D) Aerial map.

22 (4) Phase I environmental site assessment performed by a
23 certified professional within the prior six months, if appropriate,
24 a Phase II environmental site assessment performed by a certified

1 professional within the prior six months. For any properties being
2 remediated, documentation about the status and cleanup objectives.
3 Remediated sites provide documentation of liability protection.

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

7 (6) Water and wastewater infrastructure to property line or
8 demonstrate the ability to construct and pay for the infrastructure
9 up to property line. Capacity clearly defined.

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

13 (8) Electric infrastructure to property line. Capacity clearly
14 identified.

15 (9) Natural gas infrastructure to property line. Capacity
16 clearly identified.

17 (10) Water infrastructure to property line. Capacity clearly
18 identified.

19 (11) Sewer infrastructure to property line. Capacity clearly
20 identified.

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

23 (b) The complete list of certified sites criteria will be
24 developed into a program application along with appropriate fees

1 for participation as the certified sites program is implemented,
2 and will be revised from time to time as warranted.

3 PART 5. LAND BANK PROGRAM.

4 **§31-21-12. Land bank program.**

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

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

16 (c) The corporation may acquire by gift, devise, transfer,
17 exchange, foreclosure, purchase or otherwise on terms and
18 conditions and in a manner the corporation considers proper, real
19 or personal property or rights or interests in real or personal
20 property.

21 (d) Real property acquired by the corporation may be by
22 purchase and sale agreement, lease purchase agreement, installment
23 sales contract, land contract or otherwise as may be negotiated or
24 structured. The corporation may acquire real property or rights or

1 interests in real property for any purpose the corporation
2 considers necessary to carry out the purposes of this article
3 including, but not limited to, one or more of the following
4 purposes:

5 (1) Use or development of property the corporation has
6 otherwise acquired;

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

10 (3) Conduct environmental remediation and monitoring
11 activities.

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

15 (f) The corporation may hold and own in its name any property
16 acquired by it or conveyed to it by this state, a foreclosing
17 governmental unit, a local unit of government, an intergovernmental
18 entity created under the laws of this state or any other public or
19 private person including, but not limited to, tax reverted property
20 and property with or without clear title.

21 (g) All deeds, mortgages, contracts, leases, purchases or
22 other agreements regarding property of the corporation, including
23 agreements to acquire or dispose of real property, may be approved
24 by and executed in the name of the corporation or any single

1 purpose entity created for the transaction.

2 (h) All property held by the corporation shall be inventoried
3 and classified by the nonprofit according to title status and
4 suitability for use.

5 (i) A document including, but not limited to, a deed
6 evidencing the transfer under this article of one or more parcels
7 of property to the corporation by this state or a political
8 subdivision of this state may be recorded with the register of
9 deeds office in the county in which the property is located without
10 the payment of a fee.

11 **§31-21-13. Preserve property value.**

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

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

20 (1) Grant or acquire a license, easement, or option with
21 respect to property as the corporation determines is reasonably
22 necessary to achieve the purposes of this article;

23 (2) Fix, charge, and collect rents, fees and charges for use
24 of property under the control of the corporation or for services

1 provided by the corporation;

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

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

8 (5) Remediate environmental contamination on any property held
9 by the corporation.

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

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

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

22 (a) If the Department of Environmental Protection determines
23 that conditions on a property transferred to the corporation under
24 this article represents an immediate threat to public health,

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

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

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

22 (1) Upon reasonable written notice from the Department of
23 Environmental Protection, the corporation shall provide access to
24 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 Department of Environmental Protection to protect
8 public health, safety and welfare or the environment, the
9 corporation shall place and record deed restrictions on the
10 property as authorized under state environmental statute.

11 **§31-21-15. Liberal construction.**

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

23 **§31-21-16. Completed purpose.**

24 If the corporation has completed the purposes for which the

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

9 **§31-21-17. Conflicts of interest.**

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

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

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

24 **§31-21-19. Not obligation of the state.**

1 Obligations of the corporation are not debts or obligations of
2 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.