

COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 552

(By Senators Plymale, Browning, Jenkins and Foster)

[Originating in the Committee on the Judiciary;
reported February 24, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31-21-1, §31-21-2, §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8, §31-21-9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-14, §31-21-15, §31-21-16, §31-21-17, §31-21-18 and §31-21-19, all relating to authorizing the creation of a public nonprofit corporation and governmental instrumentality under the provisions of article two, chapter thirty-one-e of said code, to collectively address several environmental and economic

development programs established to promote the productive reuse of idled and underutilized commercial, industrial and mining properties, support more efficient use of existing public infrastructure and encourage increased job creation with living wages, renewed community vitality and tax revenue generation while protecting public health and our natural resources; providing short title; declaring policy and purpose of article; defining terms; creating West Virginia Land Stewardship Corporation; stating certain tax requirements; setting forth powers of West Virginia Land Stewardship Corporation; providing for board of directors and composition of same; providing for creation of voluntary land stewardship program; providing for underwriting review of land stewardship program applicants; authorizing establishment of state certified sites program; setting forth minimum standards for certification under state certified sites program; authorizing establishment of voluntary state land bank program; permitting land stewardship corporation to preserve property value of properties held by land stewardship corporation; providing requirements for handling of contaminated properties by land stewardship corporation; providing for liberal construction of article; providing procedure for dissolution of land steward-

ship corporation upon completion of purpose; providing provision for conflict of interest of land stewardship corporation officers, employees and board members; stating preservation of sovereign immunity; and providing that obligations of land stewardship are not obligations of Department of Environmental Protection or state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

PART 1. SHORT TITLE, DECLARATION OF POLICY,

PURPOSE OF ARTICLE AND DEFINITIONS.

§31-21-1. Short title.

- 1 This article shall be known and may be cited as The West
- 2 Virginia Land Stewardship Corporation Act.

§31-21-2. Declaration of policy.

- 1 (a) The Legislature finds and declares that developable
- 2 land is one of West Virginia's most valuable resources in

3 terms of net contributions to the state's economy and tax
4 base;

5 (b) The Legislature further finds that:

6 (1) Due to topography, the state has somewhat limited
7 amounts of developable land and that promoting the produc-
8 tive reuse of idled and underutilized commercial, industrial
9 and mining properties will maximize our most valuable
10 resource and foster reuse of sites with existing public
11 infrastructure;

12 (2) An entity that specializes in promoting the productive
13 reuse of idled or underutilized commercial, industrial and
14 mining properties will help the state and its citizenry to plan
15 more wisely for sustainable property reuse and economic
16 development efforts;

17 (3) An entity created to address and reduce regulatory
18 and economic uncertainty by being a repository of site
19 history and remediation information about formerly used
20 properties can be a benefit to attracting new employers or
21 encouraging businesses to relocate, remain or expand within
22 the state;

23 (4) An entity that assists the state's Department of
24 Environmental Protection (DEP) with a voluntary land

25 stewardship program for the long-term safeguarding of
26 remediated sites using institutional controls (ICs) and
27 engineering controls (ECs) (collectively IECs) to ensure that
28 the remedy remains protective of human health and the
29 environment is assisting the department to effectively
30 oversee these remediated sites (IEC Sites);

31 (5) An entity that also assists in identifying formerly used
32 properties that are ready for redevelopment and construction
33 within twelve months or less from acquisition and certifies
34 these properties as “project-ready” for specific industry
35 profiles can increase economic development efforts within
36 the state;

37 (6) An entity that also acts as a land bank to accept title
38 to formerly used properties as an intermediary step to help
39 seek a purchaser, ready the property for reuse through
40 environmental assessment, remediation, building demolition
41 or other efforts, can be a useful ally to the state, local
42 government, real estate developers and business for transact-
43 ing property conveyances, redevelopment and creating or
44 retaining jobs; and

45 (7) The promotion of private investment in our
46 developable land and West Virginia businesses will tend to

47 reduce unemployment by creating new or maintaining
48 existing opportunities for the citizens of this state.

§31-21-3. Purpose of article.

1 The purposes of this article are to create a special
2 purpose nonprofit corporation with a comprehensive mission
3 to:

4 (1) Assist the Department of Environmental Protection
5 in utilizing a voluntary land stewardship program for the
6 long-term safeguarding of IEC Sites to ensure that the
7 remedy remains protective of human health and the environ-
8 ment and to facilitate further economic development and
9 reuse opportunities;

10 (2) Provide the Department of Environmental Protection
11 and other parties with a reliable source of oversight, moni-
12 toring and information about IEC Sites under the voluntary
13 land stewardship program;

14 (3) Establish a land bank as a legal and financial mecha-
15 nism to accept title to properties and assist to transform
16 idled and underutilized property back to productive reuse;

17 (4) Facilitate the reuse and redevelopment of certain
18 property by authorizing the conveyance of certain properties
19 to a land bank under a voluntary land bank program and

20 assist the state and local governments with the assembly and
21 clearance of title to property in a coordinated manner;

22 (5) Promote economic growth by implementing a state
23 Certified Sites program to identify sites that are ready for
24 construction within twelve months or less and that are
25 certified “project-ready” for specific industry profiles as well
26 as other categories of sites identified for economic develop-
27 ment opportunities;

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

32 (7) Prescribe the powers and duties of the nonprofit
33 corporation; provide for the creation and appointment of
34 boards to govern nonprofit corporation and to prescribe their
35 powers and duties; and to extend protections against certain
36 environmental liabilities to the nonprofit corporation in
37 order to protect the entity from liability created by third
38 parties.

§31-21-4. Definitions.

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

4 (1) “Agreement” means any agreement being entered into
5 between the nonprofit corporation and a business, corpora-
6 tion, private party or local state government.

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

20 (3) “Board of directors” means the board of directors of
21 the corporation to be appointed under the provisions of
22 section seven of this article.

23 (4) “Certified sites” means such sites that are
24 developable properties that have been prequalified as having

25 proper land use designation, utilities, transportation im-
26 provements, availability and pricing. The criteria include
27 established pricing, terms and conditions so that property
28 acquisition can be negotiated quickly and without time-
29 consuming delays.

30 (5) “Charitable purposes” means the 501(c)(3) subclasses
31 of “lessening the burden of the government” where the
32 government identifies a need for the nonprofit entity to assist
33 with a governmental service and the nonprofit collaborates
34 with the government entity, and the “environmental protec-
35 tion for the benefit of the public” where the corporation’s
36 services benefit the general public by protecting public
37 health and the environment as well as assisting with state
38 and local economic development initiatives.

39 (6) “Contaminants” has the same meaning as defined in
40 the environmental acts.

41 (7) “Corporation” means the West Virginia Land Stew-
42 ards Corporation, a nonstock, nonprofit corporation to be
43 established under the West Virginia Nonprofit Corporation
44 Act, article thirty-one-e, article two of this code and with
45 nonprofit status under one or more charitable purposes
46 under 501(c) of the Internal Revenue Code of 1986, as

47 amended, or under any corresponding section of any future
48 tax code.

49 (8) “Corporate directors” means the members of the
50 board of directors of the corporation.

51 (9) “DEP” means the State of West Virginia, acting by
52 and through the Department of Environmental Protection or
53 any successor agency.

54 (10) “Enforcement tools” means any order, permit,
55 consent decree or environmental covenant or similar mecha-
56 nisms which restrict or control certain land uses imple-
57 mented at IEC Sites.

58 (11) “Engineering controls” or “ECs” means physical
59 controls or measures designed to eliminate the potential for
60 human exposure to contamination by limiting direct contact
61 with contaminated areas, or controlling contaminants from
62 migrating through environmental media into soil, groundwa-
63 ter or off-site.

64 (12) “Enrolled sites” means properties enrolled and
65 accepted for participation in the voluntary Land Steward-
66 ship Program.

67 (13) “Environmental acts” means the Surface Coal
68 Mining and Reclamation Act set forth in article three,

69 chapter twenty-two of this code; the Air Pollution Control
70 Act set forth in article five, chapter twenty-two of this code;
71 the Water Pollution Control Act set forth in article eleven,
72 chapter twenty-two of this code; the Groundwater Protection
73 Act set forth in article twelve, chapter twenty-two of this
74 code; the Solid Waste Landfill Closure Assistance Program
75 set forth in article sixteen, chapter twenty-two of this code;
76 the Hazardous Waste Management Act set forth in article
77 eighteen, chapter twenty-two of this code; section 103(a) of
78 the Comprehensive Environmental Response, Compensation
79 and Liability Act of 1980 (42 U. S. C. A. §9603(a)); section
80 304 of the Emergency Planning and Community Right-To-
81 Know Act of 1986 (42 U. S. C. A. §§11001 to 11050); the
82 Occupational Safety and Health Act set forth in 29 U. S. C.
83 A. §§ 651 to 678; the Resource Conservation and Recovery
84 Act, as amended, set forth in 42 U. S. C. A. §§6901, et seq.;
85 and the Toxic Substances Control Act set forth in 15 U. S. C.
86 A. §§2601, et seq. and any applicable regulation promulgated
87 thereunder.

88 (14) “Governmental controls” means any state laws,
89 ordinances, orders, permits, consent decrees and similar

90 mechanisms which restrict or control certain land uses
91 implemented at IEC Sites.

92 (15) "IEC Sites" means sites remediated or closed under
93 a federal or state environmental program, including
94 brownfields, underground storage tanks, closed landfills,
95 open dumps, hazardous waste sites, and former mining sites
96 with ongoing water treatment as part of mine reclamation
97 efforts.

98 (16) "Informational devices" means deed notices or other
99 written documents that describe the remediation that was
100 conducted on an IEC Site, the constituents of concern and
101 the remediation standards that were achieved. Informational
102 devices are filed with property records as an advisory to
103 provide environmental information to future buyers or users
104 of the IEC Site.

105 (17) "Institutional Controls" or "ICs" means administra-
106 tive and legal controls that do not involve construction or
107 physically changing the site and are generally divided into
108 four (4) categories: 1) Government controls, 2) Proprietary
109 controls, 3) Enforcement tools, and 4) Informational devices.
110 ICs are nonengineering measures that help minimize the

111 potential for human exposure to contamination and/or
112 protect the integrity of the remedy by limiting land or
113 resource use.

114 (18) “Nonprofit corporation” means a corporation
115 established under the West Virginia Nonprofit Corporation
116 Act, article thirty-one-e, article two of this code to fulfill the
117 purposes of this article.

118 (19) “Pollutants” has the same meaning as defined in the
119 environmental acts.

120 (20) “Proprietary controls” means legal property inter-
121 ests created under real property laws that rely on legal
122 documents recorded in the chain of title for the site, and “run
123 with the land” to bind future landowners. Examples of
124 proprietary controls may include environmental covenants,
125 deed land use restrictions, water withdrawal prohibitions
126 and continuing right-of-entry easements for former owners
127 or regulators to inspect, monitor and maintain the IECs.

128 (21) “Regulated substances” has the same meaning as
129 defined in the environmental acts.

130 (22) “Releases” has the same meaning as defined in the
131 environmental acts.

PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

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

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

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

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

11 (d) The corporation shall be a nonprofit and the corpora-
12 tion shall not have or issue shares of stock or make distribu-
13 tions from such shares of stock.

14 (e) Except as otherwise provided in this article, the
15 corporation may do all things necessary or convenient to
16 implement the purposes, objectives and provisions of this
17 article and the purposes, objectives and powers delegated to
18 the board of directors of a nonprofit corporation by other

19 laws or executive orders, including, but not limited to, all of
20 the following:

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

23 (2) Establish the service offerings and related fees for
24 such services under each of the voluntary programs de-
25 scribed herein;

26 (3) Sue and be sued in its own name and plead and be
27 impleaded, including, but not limited to, defending the
28 corporation in an action arising or resulting from the
29 services, programs and responsibilities arising under this
30 article;

31 (4) Solicit and accept gifts, grants, labor, loans, services
32 and other aid from any person, or the federal government,
33 this state or a political subdivision of this state or any agency
34 of the federal government or a state institution of higher
35 education or nonprofit affiliates or an intergovernmental
36 entity created under the laws of this state or participate in
37 any other way in a program of the federal government;

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

41 (6) Invest money of the corporation, at the discretion of
42 the board of directors in instruments, obligations, securities
43 or property determined proper by the board of directors of
44 the corporation and name and use depositories for its money;

45 (7) Employ legal and technical experts, contractors,
46 consultants, agents or employees, permanent or temporary,
47 paid from the funds of the corporation. The corporation shall
48 determine the qualifications, duties and compensation of
49 those it employs;

50 (8) Contract for goods and services and engage personnel
51 as necessary, contract with Regional Brownfield Assistance
52 Centers as set out in section seven, article eleven, chapter
53 eighteen-b, and engage the services of private consultants,
54 managers, legal counsel, engineers, accountants and auditors
55 for rendering professional environmental, legal and financial
56 assistance and advice payable from funds of the corporation;

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

60 (10) Study, develop and prepare the reports or plans the
61 corporation considers necessary to assist it in the exercise of

62 its powers under this article and to monitor and evaluate
63 progress under this article;

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

67 (12) Do all other things necessary or convenient to
68 achieve the objectives and purposes of the corporation or
69 other laws that relate to the purposes and responsibility of
70 the corporation.

§31-21-6. Powers.

1 (a) The enumeration of a power in this article may not be
2 construed as a limitation upon the general powers of the
3 corporation. The powers granted under this article are in
4 addition to those powers granted by any other statute or as
5 provided in articles of incorporation filed with the Secretary
6 of State.

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

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

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

14 (e) The exercise by the corporation of powers and duties
15 under this article and its activities under the programs
16 described herein shall be considered a necessary public
17 purpose and for the benefit of the public.

18 (f) The corporation shall report biannually to the Legis-
19 lature on the activities of the corporation.

20 (g) The operations of the corporation are subject to an
21 audit by an independent auditor or the State of West Vir-
22 ginia as determined by the Department of Environmental
23 Protection.

24 (h) The corporation is not liable under the environmental
25 acts or common law equivalents to the state or to any other
26 person by virtue of the fact that the corporation is fulfilling
27 the purposes of this article including, but not limited to,
28 providing land stewardship services or accepting title to
29 property under any program herein unless:

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

34 (2) The corporation, its employees or agents knowingly
35 and willfully do an action which caused an immediate
36 release of regulated substances or violates an environmental
37 act. Liability pursuant to this article is limited to the cost for
38 a response action which may be directly attributable to the
39 corporation's activities, and only if these activities are the
40 proximate and efficient cause of the release or violation.
41 Ownership or control of the property after accepting title in
42 the land bank program does not by itself trigger liability.

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

45 (j) The corporation shall establish policies and proce-
46 dures requiring the disclosure of relationships that may give
47 rise to a conflict of interest. The governing body of the
48 corporation shall require that any member of the governing
49 body with a direct or indirect interest in any matter before
50 the corporation disclose the member's interest to the govern-
51 ing body before the board takes any action on the matter.

52 (k) The programs that are established under this article
53 and administered by the corporation are voluntary programs.
54 Parties can participate in the land stewardship program,

55 certified sites program and land bank program at their
56 option.

57 (1) The state may contract with the corporation for
58 services for properties for which the state is responsible and
59 may enter into long-term contracts for services that are
60 funded under a trust agreement or provided in an escrow
61 account.

§31-21-7. Board of directors.

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

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

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

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

10 (4) The West Virginia Environmental Council shall
11 appoint one member;

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

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

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

20 (8) One member of the House of Delegates appointed by
21 the Speaker who shall serve as a nonvoting member.

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

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

31 (d) The corporate directors shall appoint a person to
32 serve as the executive director of the corporation. A member
33 of the board is not eligible to hold the position of executive
34 director.

35 (e) Subject to the approval of the board, the executive
36 director shall supervise, and be responsible for, the perfor-

37 mance of the functions and programs of the corporation
38 under this article. The executive director shall attend the
39 meetings of the board and shall provide the board of direc-
40 tors with a regular report describing the activities and
41 financial condition of the corporation. The executive director
42 shall furnish the board of directors with information or
43 reports governing the operation of the corporation as the
44 board requires.

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

PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

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

1 (a) When the voluntary land stewardship program is
2 implemented, remediation parties and site owners of IEC
3 Sites will have the option, for a fee, to participate in this
4 program. The fee will be established by the corporation for
5 services provided for an enrolled site as that term is defined
6 in section four of this article.

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

14 (c) The corporation is further authorized to provide at a
15 minimum the following voluntary land stewardship services
16 for enrolled sites:

17 (1) Establish or maintain any ICs by filing the appropri-
18 ate documents or updating such documents when the site is
19 leased, conveyed, subdivided or when remediation occurs:
20 *Provided*, That the corporation's responsibilities for such
21 activities are expressly identified for the entity itself and
22 provided in agreements for the IEC Site that will be negoti-
23 ated when a site is enrolled in the voluntary land steward-
24 ship program;

25 (2) Conduct physical inspections of the enrolled sites,
26 including inspecting or monitoring any ECs (e.g., media
27 treatment systems, fences, caps and other mechanisms used
28 as part of the remedy at the IEC Site) and site activities to

29 assure that the enrolled sites continue to comply with the
30 IECs, such as maintenance of ECs and inspecting for compli-
31 ance with restrictions of specific land uses;

32 (3) Monitor and operate any required media treatment
33 systems and/or conduct routine surface water, groundwater
34 and or gas monitoring and prepare any monitoring or
35 inspection reports that may be part of the corporation's
36 responsibilities under site enrollment agreements;

37 (4) Conduct periodic reviews of the county land records
38 to monitor transfers or deed filings to assure that such
39 records are consistent with the required IECs for the enrolled
40 sites, and provide notices to the clerk of the county commis-
41 sion about the results of monitoring or tracking of such
42 records;

43 (5) Develop administrative records concerning the
44 remediation at enrolled sites in an electronic database,
45 respond to inquiries and coordinate the sharing of such data
46 among various stakeholders, including the Department of
47 Environmental Protection, current owners, the remediating
48 parties, if not the owners, other state or local agencies (such
49 as economic development agencies), assessors, potential
50 purchasers, landowners and tenants;

51 (6) Develop and maintain records and information about
52 enrolled sites for posting on the Department of Environmen-
53 tal Protection environmental registry, or any other registry
54 that is used for tracking IECs for IEC Sites in West Virginia
55 and provide for public access to such information; and

56 (7) Coordinate and share data with West Virginia Miss
57 Utility, the “One-Call” System, including verifying the
58 location of ECs on enrolled sites, providing information
59 about the remediation, and sharing any health and safety
60 plans or soils management plans that may be associated with
61 an enrolled site in order to assist any planned excavation at
62 the enrolled site.

§31-21-9. Underwriting.

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

PART 4. STATE CERTIFIED SITES PROGRAM.

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

1 (a) This article hereby authorizes the establishment of a
2 state certified sites program. The program shall consist of the
3 development and preparation of certain site specific decision
4 ready documentation or reports that will enable the expe-
5 dited property transaction for sites that participate in the
6 certified sites program.

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

8 (1) Establish an inventory of identified sites that are
9 ready for redevelopment and construction within twelve
10 months or less from acquisition and certifies these properties
11 as “project-ready” for specific industry profiles and other
12 categories of developable properties available that can
13 increase economic development efforts within the state;

14 (2) Improve the state’s competitive edge by giving more
15 certainty in time, steps and costs to businesses expanding or
16 locating within the state;

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

20 (4) Develop a central source of certified sites and assist
21 local government in identifying potential redevelopment
22 properties; and

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

26 (c) The corporation shall issue a site certification if it
27 determines that the decision ready document has been
28 prepared and completed in accord with the requirements set
29 forth by the corporation. The corporation may require some
30 or all of the following information based on the site specific
31 circumstances of the property to be certified.

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

§31-21-11. Minimum standards.

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

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

5 (2) Site ownership/control:

6 (A) Preliminary fifty-year title report and description of
7 liens and encumbrances;

8 (B) Letter from property owner/option holder stating
9 that site is for sale/lease. If possible, proposed pricing or

10 transactional requirements with a description of any on-site
11 improvements, current level of investment, and whether
12 property can be parceled;

13 (C) Acreage; and

14 (D) Full legal property description.

15 (3) Maps:

16 (A) ALTA map;

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

19 (C) USGS topographical map; and

20 (D) Aerial map.

21 (4) Phase I environmental site assessment performed by
22 a certified professional within the prior six months, if
23 appropriate, a Phase II environmental site assessment
24 performed by a certified professional within the prior six
25 months. For any properties being remediated, documentation
26 about the status and cleanup objectives. Remediated sites
27 provide documentation of liability protection.

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

31 (6) Water and wastewater infrastructure to property line
32 or demonstrate the ability to construct and pay for the
33 infrastructure up to property line. Capacity clearly defined.

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

37 (8) Electric infrastructure to property line. Capacity
38 clearly identified.

39 (9) Natural gas infrastructure to property line. Capacity
40 clearly identified.

41 (10) Water infrastructure to property line. Capacity
42 clearly identified.

43 (11) Sewer infrastructure to property line. Capacity
44 clearly identified.

45 (12) Telecommunications and/or high speed communica-
46 tions infrastructure to property line. Capacity clearly
47 identified.

48 (b) The complete list of certified sites criteria will be
49 developed into a program application along with appropriate
50 fees for participation as the certified sites program is
51 implemented, and will be revised from time to time as
52 warranted.

PART 5. LAND BANK PROGRAM.

§31-21-12. Land bank program.

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

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

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

19 (d) Real property acquired by the corporation may be by
20 purchase and sale agreement, lease purchase agreement,

21 installment sales contract, land contract or otherwise as may
22 be negotiated or structured. The corporation may acquire
23 real property or rights or interests in real property for any
24 purpose the corporation considers necessary to carry out the
25 purposes of this article including, but not limited to, one or
26 more of the following purposes:

27 (1) Use or development of property the corporation has
28 otherwise acquired;

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

32 (3) Conduct environmental remediation and monitoring
33 activities.

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

37 (f) The corporation may hold and own in its name any
38 property acquired by it or conveyed to it by this state, a
39 foreclosing governmental unit, a local unit of government, an
40 intergovernmental entity created under the laws of this state
41 or any other public or private person including, but not

42 limited to, tax reverted property and property with or
43 without clear title.

44 (g) All deeds, mortgages, contracts, leases, purchases or
45 other agreements regarding property of the corporation,
46 including agreements to acquire or dispose of real property,
47 may be approved by and executed in the name of the corpo-
48 ration or any single purpose entity created for the transac-
49 tion.

50 (h) All property held by the corporation shall be invento-
51 ried and classified by the nonprofit according to title status
52 and suitability for use.

53 (i) A document including, but not limited to, a deed
54 evidencing the transfer under this article of one or more
55 parcels of property to the corporation by this state or a
56 political subdivision of this state may be recorded with the
57 register of deeds office in the county in which the property
58 is located without the payment of a fee.

§31-21-13. Preserve property value.

1 (a) The corporation may, without the approval of a local
2 unit of government in which property held by the corpora-
3 tion is located, control, hold, manage, maintain, operate,
4 repair, lease as lessor, secure, prevent the waste or deteriora-

5 tion of, demolish and take all other actions necessary to
6 preserve the value of the property it holds or owns.

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

9 (1) Grant or acquire a license, easement, or option with
10 respect to property as the corporation determines is reason-
11 ably necessary to achieve the purposes of this article;

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

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

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

21 (5) Remediate environmental contamination on any
22 property held by the corporation.

23 (c) Except as the corporation otherwise agrees by
24 agreement or otherwise, on terms and conditions, and in a
25 manner and for an amount of consideration the corporation
26 considers proper, fair and valuable, including for no mone-

27 tary consideration, the corporation may convey, sell, trans-
28 fer, exchange, lease as lessor or otherwise dispose of property
29 or rights or interests in property in which the corporation
30 holds a legal interest to any public or private person for
31 value determined by the corporation.

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

§31-21-14. Contaminated property.

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

13 of Environmental Protection about the corporations activi-
14 ties at such property.

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

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

27 (1) Upon reasonable written notice from the Department
28 of Environmental Protection, the corporation shall provide
29 access to the Department of Environmental Protection, its
30 employees, its contractors and any other person expressly
31 authorized by the Department of Environmental Protection
32 to conduct an investigation and/or response activities at the
33 property. Reasonable written notice may include, but is not
34 limited to, notice by electronic mail or facsimile, in advance

35 of access as the Department of Environmental Protection and
36 corporation may agree.

37 (2) If the Department of Environmental Protection
38 determines necessary to protect public health, safety and
39 welfare or the environment, the corporation shall place and
40 record deed restrictions on the property as authorized under
41 state environmental statute.

§31-21-15. Liberal construction.

1 This article shall be construed liberally to effectuate the
2 legislative intent and the purposes as complete and inde-
3 pendent authorization for the performance of every act and
4 thing authorized by this article, and all powers granted shall
5 be broadly interpreted to effectuate the intent and purposes
6 and not as a limitation of powers in the exercise of its powers
7 and duties under this article and its powers relating to
8 property held by the authority, the authority has complete
9 control as if it represented a private property owner and may
10 not be subject to restrictions imposed on the authority by the
11 charter, ordinances or resolutions of a local unit of govern-
12 ment.

§31-21-16. Completed purpose.

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

§31-21-17. Conflicts of interest.

1 Notwithstanding any other provision of this article to the
2 contrary, officers and employees of the corporation and its
3 board of directors may hold appointments to offices of any
4 other corporation or business and be corporate directors or
5 officers or employees of other entities but are prohibited to
6 be a party or otherwise participate in the transfer of real
7 property and funds from the corporation to the corporation
8 or business for which they work.

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

1 Nothing contained in this article may be determined or
2 construed to waive or abrogate in any way the sovereign

3 immunity of the state or to deprive a governing board of a
4 state created nonprofit corporation or any officer or em-
5 ployee thereof of sovereign immunity.

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

1 Obligations of the corporation are not debts or obliga-
2 tions of the Department of Environmental Protection or the
3 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.)