

**H. B. 2590**

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Introduced February 21, 2013; referred to the

Committee on Energy, Industry and Labor, Economic

Development and Small Business then the Judiciary.]

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

1 health and our natural resources; providing short title;  
2 declaring policy and purpose of article; defining terms;  
3 creating West Virginia Land Stewardship Corporation; stating  
4 certain tax requirements; setting forth powers and limitations  
5 of West Virginia Land Stewardship Corporation; providing for  
6 board of directors and composition of same; providing for  
7 creation of voluntary land stewardship program; providing for  
8 underwriting review of land stewardship program applicants;  
9 authorizing establishment of state certified sites program;  
10 setting forth minimum standards for certification under state  
11 certified sites program; authorizing establishment of  
12 voluntary state land bank program; permitting land stewardship  
13 corporation to preserve property value of properties held by  
14 land stewardship corporation; providing requirements for  
15 handling of contaminated properties by land stewardship  
16 corporation; providing for liberal construction of article;  
17 exempting corporation from state and local taxes; requiring  
18 audits and biannual reports; providing procedure for  
19 dissolution of land stewardship corporation upon completion of  
20 purpose; providing provision for conflict of interest of land  
21 stewardship corporation officers, employees and board members;  
22 stating preservation of sovereign immunity; providing that  
23 obligations of land stewardship corporation are not  
24 obligations of the Department of Environmental Protection or

1 the state; and providing for severability.

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, §31-21-19, §31-21-20 and §31-  
8 21-21, all to read as 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 this valuable resource and foster reuse of

1 sites with existing public infrastructure;

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

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

12 (4) An entity that assists the DEP with a voluntary land  
13 stewardship program for the long-term safeguarding of remediated  
14 sites using institutional controls and engineering controls can  
15 ensure that the remedy remains protective of human health and the  
16 environment;

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, and ready the properties for reuse through environmental

1 assessment, remediation, building demolition or other efforts, can  
2 be a useful ally to the state, local governments, real estate  
3 developers and businesses for transacting property conveyances,  
4 redevelopment and creating or retaining jobs; and

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

9 **§31-21-3. Purpose of article.**

10 The purpose of this article is to provide for the creation of  
11 a special purpose nonprofit corporation with a comprehensive  
12 mission to:

13 (1) Assist the DEP in utilizing a voluntary land stewardship  
14 program for the long-term safeguarding of IEC Sites to ensure that  
15 the remedy remains protective of human health and the environment  
16 and to facilitate further economic development and reuse  
17 opportunities;

18 (2) Provide the DEP and other parties with a reliable source  
19 of oversight, monitoring and information about IEC Sites under the  
20 voluntary land stewardship program;

21 (3) Establish a land bank as a legal and financial mechanism  
22 to accept title to properties and assist in transforming idled and  
23 underutilized properties back to productive reuse;

24 (4) Facilitate reuse and redevelopment by authorizing the

1 conveyance of certain properties to a land bank under a voluntary  
2 land bank program and assist the state and local governments with  
3 the assembly and clearance of title to property in a coordinated  
4 manner;

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

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

14 (7) Prescribe the powers and duties of the nonprofit  
15 corporation; provide for the creation and appointment of a board to  
16 govern the nonprofit corporation and to prescribe its powers and  
17 duties; and to extend protections against certain environmental  
18 liabilities to the nonprofit corporation in order to protect it  
19 from liabilities created by third parties.

20 **§31-21-4. Definitions.**

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

23 (1) "Agreement" means any agreement being entered into between  
24 the nonprofit corporation and a business, corporation, private

1 party or local or state government.

2 (2) "All appropriate inquiries" or "AAI" means the process of  
3 evaluating a property's environmental conditions and assessing the  
4 likelihood of any contamination. Every Phase I environmental  
5 assessment must be conducted in compliance with the All Appropriate  
6 Inquiries Final Rule at 40 CFR Part 312.

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

10 (4) "Certified sites" means those sites that are developable  
11 properties that have been prequalified as having proper land use  
12 designation, utilities, transportation improvements, availability,  
13 and pricing. Criteria for prequalification include, but are not  
14 limited to, established pricing terms and conditions so that  
15 property acquisition can be negotiated quickly and without time-  
16 consuming delays.

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

1 initiatives.

2 (6) "Contaminants" has the same meaning as defined in the  
3 environmental acts referenced in subdivision (13) of this section.

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

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

13 (9) "DEP" means the West Virginia Department of Environmental  
14 Protection or any successor agency.

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

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

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

1       (13) "Environmental acts" means the Surface Coal Mining and  
2 Reclamation Act set forth in article three, chapter twenty-two of  
3 this code; the Air Pollution Control Act set forth in article five,  
4 chapter twenty-two of this code; the Water Pollution Control Act  
5 set forth in article eleven, chapter twenty-two of this code; the  
6 Groundwater Protection Act set forth in article twelve, chapter  
7 twenty-two of this code; the Solid Waste Management Act set forth  
8 in article fifteen, chapter twenty-two of this code; the Solid  
9 Waste Landfill Closure Assistance Program set forth in article  
10 sixteen, chapter twenty-two of this code; the Underground Storage  
11 Tank Act set forth in article seventeen, chapter twenty-two of this  
12 code; the Hazardous Waste Management Act set forth in article  
13 eighteen, chapter twenty-two of this code; section 103(a) of the  
14 Comprehensive Environmental Response, Compensation and Liability  
15 Act of 1980 (42 U. S. C. §9603(a)); section 304 of the Emergency  
16 Planning and Community Right-To-Know Act of 1986 (42 U. S. C.  
17 §§11001 to 11050); the Occupational Safety and Health Act set forth  
18 in 29 U. S. C. §§651 to 678; the Hazardous and Solid Waste  
19 Amendments of 1984, as amended, set forth in 42 U. S. C. §§6901, et  
20 seq.; and the Toxic Substances Control Act set forth in 15 U. S. C.  
21 §§2601, et seq.; and any applicable regulations promulgated under  
22 the foregoing environmental statutes.

23       (14) "Governmental controls" means any state laws, ordinances,  
24 orders, permits, consent decrees and similar mechanisms which

1 restrict or control certain land uses implemented at IEC Sites in  
2 this state.

3 (15) "IEC Sites" means sites in this state that have been  
4 remediated or closed under a federal or state environmental  
5 program, including, but not limited to, brownfields, underground  
6 storage tanks, closed landfills, open dumps, hazardous waste sites,  
7 and former mining sites with ongoing water treatment as part of  
8 mine reclamation efforts.

9 (16) "Informational devices" means deed notices or other  
10 written documents that describe the remediation that was conducted  
11 on an IEC Site, the constituents of concern, and the remediation  
12 standards that were achieved. Informational devices shall be filed  
13 with property records in the office of the county clerk of the  
14 county in which the property is located as an advisory to provide  
15 environmental information to future buyers or users of the IEC  
16 Site.

17 (17) "Institutional Controls" or "ICs" means administrative  
18 and legal controls that do not involve construction or physically  
19 changing the site and are generally divided into four categories:  
20 1) Government controls, 2) Proprietary controls, 3) Enforcement  
21 tools, and 4) Informational devices. ICs are nonengineering  
22 measures that help minimize the potential for human exposure to  
23 contamination and/or protect the integrity of the remedy by  
24 limiting land or resource use.

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

5       (19) "Pollutants" has the same meaning as defined in the  
6 environmental acts referenced in subdivision (13) of this section.

7       (20) "Proprietary controls" mean legal property interests  
8 created under real property laws that rely on legal documents  
9 recorded in the chain of title for the site, and "run with the  
10 land" to bind future landowners. Examples of proprietary controls  
11 include, but are not limited to, environmental covenants, deed land  
12 use restrictions, water withdrawal prohibitions and continuing  
13 right-of-entry easements for former owners or regulators to  
14 inspect, monitor and maintain the IECs.

15       (21) "Regulated substances" has the same meaning as defined in  
16 the environmental acts referenced in subdivision (13) of this  
17 section.

18       (22) "Releases" has the same meaning as defined in the  
19 environmental acts referenced in subdivision (13) of this section.

20 PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

21 §31-21-5. Creation of the West Virginia Land Stewardship  
22 Corporation; powers and limitations.

23       (a) The corporation shall be organized as a nonprofit,  
24 nonstock corporation under the West Virginia Nonprofit Corporation

1 Act, article two, chapter thirty-one-e of this code, to fulfill the  
2 purposes of this article.

3 (b) The corporation shall apply for recognition of nonprofit  
4 exempt status by the United States Internal Revenue Service under  
5 one or more charitable purposes within the meaning of section  
6 501(c) of the Internal Revenue Code of 1986, as amended, or under  
7 any corresponding section of any future tax code.

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

10 (d) The corporation shall have all of the powers of a  
11 nonprofit corporation as set forth in chapter thirty-one-e of this  
12 code.

13 (e) Except as otherwise provided in chapter thirty-one-e of  
14 this code or in this article, the corporation may do all things  
15 necessary or convenient to implement the purposes, objectives and  
16 provisions of this article and the purposes, objectives and powers  
17 delegated to the board of directors of a nonprofit corporation by  
18 other laws or executive orders, including, but not limited to, all  
19 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  
10 program 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, contract with Regional Brownfield Assistance Centers as  
23 set out in section seven, article eleven, chapter eighteen-b of  
24 this code, and engage the services of private consultants,

1 managers, legal counsel, engineers, accountants and auditors for  
2 rendering professional environmental, legal and financial  
3 assistance and advice payable from funds of the corporation;

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

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

11 (11) Enter into contracts for the management of, the  
12 collection of rent from, or the sale of real property held by the  
13 corporation.

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

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

22 (h) The corporation may not issue tax-exempt financing or  
23 issue bonds.

24 (i) The corporation does not have the power of eminent domain

1 or the ability to condemn property.

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

6 (k) The corporation is not liable under the environmental acts  
7 or common law equivalents to the state or to any other person by  
8 virtue of the fact that the corporation is fulfilling the purposes  
9 of this article including, but not limited to, providing land  
10 stewardship services or accepting title to property under any  
11 program established under this article unless:

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

16 (2) The corporation, its employees or agents knowingly and  
17 willfully do an action which causes an immediate release of  
18 regulated substances or violates an environmental act. Liability  
19 pursuant to this article is limited to the cost for a response  
20 action which may be directly attributable to the corporation's  
21 activities, and only if these activities are the proximate and  
22 efficient cause of the release or violation. Ownership or control  
23 of the property after accepting title in the land bank program does  
24 not by itself trigger liability.

1       (l) The corporation shall adopt a code of ethics for its  
2 directors, officers and employees.

3       (m) The corporation shall establish policies and procedures  
4 requiring the disclosure of relationships that may give rise to a  
5 conflict of interest. The board of directors of the corporation  
6 shall require that any member of the board with a direct or  
7 indirect interest in any matter before the corporation disclose the  
8 member's interest to the governing body before the board takes any  
9 action on the matter.

10       (n) The programs that are established under this article and  
11 administered by the corporation are voluntary programs. Parties  
12 can participate in the land stewardship program, certified sites  
13 program and land bank program at their option.

14       (o) The state may contract with the corporation for services  
15 for properties for which the state is responsible and may enter  
16 into long-term contracts for services that are funded under a trust  
17 agreement or provided in an escrow account.

18 **§31-21-6. Board of directors.**

19       (a) The purposes, powers and duties of the corporation shall  
20 be exercised by its board of directors. Board meetings shall be  
21 chaired by the Governor or his or her designee. The corporation's  
22 board shall also consist of the following ten members:

23       (1) The Governor shall appoint three residents of this state;

24       (2) The West Virginia Chamber of Commerce shall nominate three

1 residents of this state for the Governor's consideration, one of  
2 whom the Governor shall appoint;

3 (3) The West Virginia Manufacturers' Association shall  
4 nominate three residents of this state for the Governor's  
5 consideration, one of whom the Governor shall appoint;

6 (4) The West Virginia Environmental Council shall nominate  
7 three residents of this state for the Governor's consideration, one  
8 of whom the Governor shall appoint;

9 (5) The Secretary of the DEP or his or her designee;

10 (6) The Secretary of the Department of Commerce or his or her  
11 designee;

12 (7) One member of the Senate appointed by the Senate President  
13 who shall serve as an ex officio nonvoting member; and

14 (8) One member of the House of Delegates appointed by the  
15 Speaker who shall serve as an ex officio nonvoting member.

16 (b) The members appointed by the Governor shall serve terms of  
17 four years: *Provided,* That for the initial appointments the  
18 Governor shall designate three to serve for four years each, two to  
19 serve for three years each and one to serve for two years. When an  
20 appointee resigns, dies or is removed during that person's term,  
21 his or her successor shall be appointed for the remaining portion  
22 of the unexpired term. Once appointed, a person may be reappointed  
23 to successive four-year terms.

24 (c) Corporate directors shall serve without compensation, but

1 shall be reimbursed for actual and necessary expenses in accordance  
2 with the regulations of the board.

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

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

16 (f) The board may do all other things necessary or convenient  
17 to achieve the objectives and purposes of the corporation or other  
18 laws that relate to the purposes and responsibilities of the  
19 corporation.

20 PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

21 **§31-21-7. 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

1 fee shall be established by the corporation for services provided  
2 for an enrolled site as that term is defined in section four of  
3 this article. The fees once established may be revised from time  
4 to time in the discretion of the board.

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

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

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

22 (2) Conduct physical inspections of the enrolled sites,  
23 including inspecting or monitoring any ECs (e.g., media treatment  
24 systems, fences, caps and other mechanisms used as part of the

1 remedy at the IEC Site) and site activities to assure that the  
2 enrolled sites continue to comply with the IECs, such as  
3 maintenance of ECs and inspecting for compliance with restrictions  
4 of specific land uses;

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

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

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

22 (6) Develop and maintain records and information about  
23 enrolled sites for posting on the DEP environmental registry, or  
24 any other registry that is used for tracking IECs for IEC Sites in

1 West Virginia and provide for public access to such information;

2 and

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

9 **§31-21-8. Underwriting.**

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

16 **PART 4. STATE CERTIFIED SITES PROGRAM.**

17 **§31-21-9. State certified sites program.**

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

24 (b) The objectives of the certified sites program include, but

1 are not limited to:

2 (1) Establishing an inventory of identified sites that are  
3 ready for development or redevelopment and construction within  
4 twelve months or less from the date of acquisition and certify  
5 these properties as "project-ready" for specific industry profiles  
6 and other categories of developable properties available that can  
7 increase economic development efforts within the state;

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

11 (3) Developing standard criteria that most real estate  
12 developers or businesses need when selecting a site for  
13 development;

14 (4) Developing a central source of certified sites and  
15 assisting local governments in identifying potential redevelopment  
16 properties; and

17 (5) Demonstrating that the state is committed to promoting and  
18 expediting economic development projects for the benefit of its  
19 citizenry.

20 (c) The corporation shall issue a site certification if it  
21 determines that the decision ready document has been prepared and  
22 completed in accordance with the requirements set forth by the  
23 corporation. The corporation may require some or all of the  
24 following information set forth in section ten of this article

1 based on the site specific circumstances of the property to be  
2 certified.

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

6 **§31-21-10. Minimum standards for certified sites.**

7 (a) The corporation shall establish minimum standards that a  
8 site must meet to be considered for certification. Minimum  
9 standards include, but are not limited to:

10 (1) Letter of support from a mayor, county commissioner, or  
11 county, regional, or municipal economic development official;

12 (2) Site ownership/control:

13 (A) Preliminary fifty-year title report and description of  
14 liens and encumbrances, unless the corporation determines a shorter  
15 period is adequate, or a longer period is necessary, to protect the  
16 corporation and a subsequent purchaser of the site;

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

22 (C) Acreage; and

23 (D) Full legal property description.

24 (3) Maps:

- 1       (A) ALTA map;  
2       (B) Site map showing lot layout, transportation access, roads  
3 and likely access points;  
4       (C) USGS topographical map; and  
5       (D) Aerial map.  
6       (4) Phase I environmental site assessment performed by a  
7 certified professional within the prior six months, and, if  
8 appropriate, any additional environmental site assessments  
9 performed by a certified professional within the prior six months.  
10 For any properties being remediated, documentation shall be  
11 provided about the status and cleanup objectives. For remediated  
12 sites, documentation shall be provided about liability protection.  
13       (5) Wetland delineation demonstrating that impacts to waters  
14 of the state will be avoided or a mitigation plan approved by the  
15 DEP.  
16       (6) Water and wastewater infrastructure to the property line  
17 with capacity clearly defined, or a demonstration of the ability to  
18 construct and pay for the infrastructure up to the property line.  
19       (7) Transportation infrastructure to the property line,  
20 including, but not limited to, the type of roads near the site and  
21 whether the roads are local, state or U. S. roads.  
22       (8) Electric infrastructure to the property line with its  
23 capacity clearly identified.  
24       (9) Natural gas infrastructure to the property line with its

1 capacity clearly identified.

2 (10) Water infrastructure to the property line with its  
3 capacity clearly identified.

4 (11) Sewer infrastructure to the property line with its  
5 capacity clearly identified.

6 (12) Telecommunications and/or high speed communications  
7 infrastructure to the property line with its capacity clearly  
8 identified.

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

13 PART 5. LAND BANK PROGRAM.

14 **§31-21-11. Land bank program.**

15 (a) This article hereby authorizes the establishment of a  
16 voluntary state land bank program. Under this program, the  
17 corporation 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 inquiries to  
20 determine the environmental conditions or issues associated with a  
21 particular property. The corporation shall not acquire title to  
22 any property unless all pending liens have been satisfied and  
23 released. Liabilities, including, but not limited to,  
24 environmental liabilities, shall not pass to the corporation by its

1 acquisition of title. Participation in the land bank program under  
2 this article shall not relieve an entity of any of its liabilities.

3 (b) The objective of the land bank program is to assist state  
4 and local government efforts for economic development by accepting  
5 formerly used or developable properties and preparing the  
6 properties so they can be conveyed to other parties to locate or  
7 expand businesses and create or retain jobs in this state.

8 (c) The corporation may acquire by gift, devise, transfer,  
9 exchange, foreclosure, purchase or otherwise on terms and  
10 conditions and in a manner the corporation considers proper, real  
11 or personal property or rights or interests in real or personal  
12 property.

13 (d) Real property acquired by the corporation may be by  
14 purchase and sale agreement, lease purchase agreement, installment  
15 sales contract, land contract or otherwise as may be negotiated or  
16 structured. The corporation may acquire real property or rights or  
17 interests in real property for any purpose the corporation  
18 considers necessary to carry out the purposes of this article  
19 including, but not limited to, one or more of the following  
20 purposes:

21 (1) Use or development of property the corporation has  
22 otherwise acquired;

23 (2) To facilitate the assembly of property for sale or lease  
24 to any other public or private person, including, but not limited

1 to, a nonprofit or for profit corporation;

2 (3) To conduct environmental remediation and monitoring  
3 activities.

4 (e) The corporation may also acquire by purchase, on terms and  
5 conditions and in a manner the corporation considers proper,  
6 property or rights or interests in property.

7 (f) The corporation may hold and own in its name any property  
8 acquired by it or conveyed to it by this state, a foreclosing  
9 governmental unit, a local unit of government, an intergovernmental  
10 entity created under the laws of this state or any other public or  
11 private person.

12 (g) All deeds, mortgages, contracts, leases, purchases or  
13 other agreements regarding property of the corporation, including  
14 agreements to acquire or dispose of real property, shall be  
15 approved by the board of directors and executed in the name of the  
16 corporation or any single purpose entity created by the board for  
17 the transaction.

18 (h) All property held by the corporation or a single purpose  
19 entity created by the board for a transaction shall be inventoried  
20 and classified by the corporation according to title status and  
21 suitability for use.

22 (i) A document including, but not limited to, a deed  
23 evidencing the transfer under this article of one or more parcels  
24 of property to the corporation by this state or a political

1 subdivision of this state may be recorded within the office of the  
2 county clerk of the county in which the property is located without  
3 the payment of a fee.

4 **§31-21-12. Preserve property value.**

5 (a) The corporation may, without the approval of a local unit  
6 of government in which property held by the corporation is located,  
7 control, hold, manage, maintain, operate, repair, lease as lessor,  
8 secure, prevent the waste or deterioration of, demolish and take  
9 all other actions necessary to preserve the value of the property  
10 held or owned directly by the corporation or by a single purpose  
11 entity created by the board for that purpose.

12 (b) The corporation may take or perform the following with  
13 respect to property held or owned by the corporation or by any  
14 special purpose entity created by the board:

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

18 (2) Fix, charge, and collect rents, fees and charges for use  
19 of property under the direct or indirect control of the corporation  
20 or for services provided by the corporation;

21 (3) Take any action, provide any notice or institute any  
22 proceeding required to clear or quiet title to property held by the  
23 corporation in order to establish ownership by and vest title to  
24 property in the corporation or a special purpose entity created by

1 the board; and

2 (4) Remediate environmental contamination on any property held  
3 by the corporation.

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

12 (d) The corporation shall be made a party to and shall defend  
13 any action or proceeding concerning title claims against property  
14 held directly or indirectly by the corporation.

15 **§31-21-13. Contaminated property.**

16 (a) If the DEP determines that conditions on a property  
17 transferred to the corporation under this article present an  
18 immediate threat to public health, safety and welfare, or to the  
19 environment, the corporation may not convey, sell, transfer,  
20 exchange, lease or otherwise dispose of the property until after a  
21 determination by the DEP that the threat has been remediated and/or  
22 eliminated and that conveyance, sale, transfer, exchange, lease or  
23 other disposal of the property by the corporation will not  
24 interfere with any of the DEP's response activities and will

1 coordinate with the DEP regarding the corporation's activities at  
2 the property.

3 (b) If the corporation has reason to believe that property  
4 held by the corporation may be the site of environmental  
5 contamination, the corporation shall provide the DEP with any  
6 information in the possession of the corporation that suggests that  
7 the property may be the site of environmental contamination.

8 (c) If property held directly or indirectly by the corporation  
9 is a site impacted by contamination, pollution, hazardous  
10 substances, hazardous or other wastes as defined in the  
11 environmental acts described in section four of this article, prior  
12 to the sale or transfer of the property under this section, the  
13 property is subject to all of the following:

14 (1) Upon reasonable written notice from the DEP, the  
15 corporation shall provide access to the DEP, its employees, its  
16 contractors and any other person expressly authorized by the DEP to  
17 conduct an investigation and/or response activities at the  
18 property. Reasonable written notice may include, but is not  
19 limited to, notice by electronic mail or facsimile, in advance of  
20 access as the DEP and corporation may agree.

21 (2) If the DEP determines it is necessary to protect public  
22 health, safety and welfare or the environment, the corporation  
23 shall place and record deed restrictions on the property as  
24 authorized under state environmental statutes.

1 **§31-21-14. Liberal construction.**

2 This article shall be construed liberally to effectuate the  
3 legislative intent and the purposes as complete and independent  
4 authorization for the performance of every act and thing authorized  
5 by this article. All powers granted shall be broadly interpreted  
6 to effectuate the intent and purposes of this article and not as a  
7 limitation thereof. The corporation has complete control as if it  
8 is a private property owner.

9 **§31-21-15. Exemption from taxation.**

10 The property of the corporation shall be exempt from ad  
11 valorem property taxation. The corporation shall be exempt from  
12 the taxes imposed by chapter eleven of this code, except that the  
13 corporation shall comply with the employer withholding of tax  
14 requirements in sections seventy-one through seventy-six, article  
15 twenty-one of said chapter eleven. The corporation shall be exempt  
16 from sales and use taxes, business and occupation taxes and all  
17 other taxes imposed by a county commission, a municipal corporation  
18 or other unit of local government, whether now or hereinafter in  
19 effect.

20 **§31-21-16. Audits and reports.**

21 (a) As soon as possible after the close of each year, the  
22 corporation shall cause an annual audit to be made by an  
23 independent certified public accountant of its books, records,  
24 accounts and operations. The person performing this audit shall

1 furnish copies of the audit report to the Governor, the secretary  
2 of the DEP and the Joint Committee on Government and Finance of the  
3 Legislature.

4 (b) The corporation shall report biannually to the Joint  
5 Committee on Government and Finance of the Legislature on the  
6 activities of the corporation. The first report shall be filed on  
7 or before the second Wednesday in January, 2016.

8 **§31-21-17. Completed purpose.**

9 If the corporation has completed the purposes for which the  
10 corporation was organized, the board of directors, by vote of at  
11 least a majority of a quorum of the directors and with the written  
12 consent of the Governor, may provide for the dissolution of the  
13 corporation and may provide for the transfer of any property held  
14 by the corporation as required by agreement or, if there are no  
15 related agreements, then to the DEP or another state agency or to  
16 another nonprofit corporation as directed by the DEP.

17 **§31-21-18. Conflicts of interest.**

18 Notwithstanding any other provision of this article to the  
19 contrary, officers and employees of the corporation and its board  
20 of directors may hold appointments to offices of any other  
21 corporations or businesses and be corporate directors or officers  
22 or employees of other entities but are prohibited to be a party or  
23 otherwise participate in the transfer of real property and funds  
24 from the corporation to the corporations or businesses for which

1 they serve.

2 **§31-21-19. No waiver of sovereign immunity.**

3 Nothing contained in this article may be determined or  
4 construed to waive or abrogate in any way the sovereign immunity of  
5 the state or to deprive the nonprofit corporation created pursuant  
6 to this article, its board of directors, or any officer or employee  
7 thereof of sovereign immunity.

8 **§31-21-20. No obligation of the state.**

9 Obligations of the corporation are not debts or obligations of  
10 the DEP or the state.

11 **§31-21-21. Severability.**

12 If any portion of this article or the application of any  
13 provision of this article to any person is held invalid, such  
14 invalidity shall not affect other provisions or applications of  
15 this article, and to this end the provisions of this article are  
16 declared to be severable.

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, renewed community vitality and tax revenue generation while protecting public health and our natural resources.

This article is new; therefore, it has been completely underscored.