

1 **Senate Bill No. 50**

2 (By Senators Plymale, Jenkins, Stollings and McCabe)

3 _____
4 [Introduced February 13, 2013; referred to the Committee on the
5 Judiciary; and then to the Committee on Finance.]

6 _____
7 **FISCAL**
8 **NOTE**

9
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,
14 §31-21-14, §31-21-15, §31-21-16, §31-21-17, §31-21-18 and
15 §31-21-19, all relating to creating the nonprofit West
16 Virginia Land Stewardship Corporation Act; making findings,
17 declaring policy and stating its purpose; establishing a land
18 bank program; defining terms; enumerating powers; establishing
19 a board of directors; setting forth responsibilities;
20 providing for underwriting; establishing a state certified
21 sites program; setting forth minimum standards; preserving
22 property values; providing for contaminated property;
23 providing for conflicts of interest; providing a nonwaiver of

1 sovereign immunity; collectively addressing several
2 environmental and economic development programs established to
3 promote the productive reuse of idled and underutilized
4 commercial, industrial and mining properties; supporting more
5 efficient use of existing public infrastructure; encouraging
6 increased job creation with living wages, renewed community
7 vitality and tax revenue generation while protecting public
8 health and natural resources; and providing that obligations
9 of the corporation are not those of the state.

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

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

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

18 Part 1. Short Title, Declaration of Policy, Purpose of Article and
19 Definitions.

20 **§31-21-1. Short title.**

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

23 **§31-21-2. Declaration of policy.**

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

4 (b) The Legislature further finds that:

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

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

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

20 (4) An entity that assists the state's Department of
21 Environmental Protection (DEP) with a voluntary land stewardship
22 program for the long-term safeguarding of remediated sites using
23 institutional controls (ICs) and engineering controls (ECs)

1 (collectively IECs) to ensure that the remedy remains protective of
2 human health and the environment is assisting the department to
3 effectively oversee these remediated sites (IEC Sites);

4 (5) An entity that also assists in identifying formerly used
5 properties that are ready for redevelopment and construction within
6 six months or less from acquisition and certifies these properties
7 as "project-ready" for specific industry profiles can increase
8 economic development efforts within the state;

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

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

20 **§31-21-3. Purpose of article.**

21 The purpose of this article is to create a special purpose
22 nonprofit corporation with a comprehensive mission to:

23 (1) Assist the Department of Environmental Protection in

1 utilizing a voluntary land stewardship program for the long-term
2 safeguarding of IEC Sites to ensure that the remedy remains
3 protective of human health and the environment and to facilitate
4 further economic development and reuse opportunities;

5 (2) Provide the Department of Environmental Protection and
6 other parties with a reliable source of oversight, monitoring and
7 information about IEC Sites under the voluntary land stewardship
8 program;

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

12 (4) Facilitate the reuse and redevelopment of certain property
13 by authorizing the conveyance of certain properties to a land bank
14 under a voluntary land bank program and assist the state and local
15 governments with the assembly and clearance of title to property in
16 a coordinated manner;

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

22 (6) Provide voluntary programs on a fee or subscription basis
23 with a nonprofit corporation to protect human health and the

1 environmental as well as assist with a variety of economic
2 development efforts throughout the state; and

3 (7) Prescribe the powers and duties of the nonprofit
4 corporation; provide for the creation and appointment of boards to
5 govern nonprofit corporation and to prescribe their powers and
6 duties; and to extend protections against certain environmental
7 liabilities to the nonprofit corporation in order to protect the
8 entity from liability created by third parties.

9 **§31-21-4. Definitions.**

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

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

15 (2) "All Appropriate Inquiries" or "AAI" means the process of
16 evaluating a property's environmental conditions and assessing the
17 likelihood of any contamination. Every Phase I environmental
18 assessment must be conducted in compliance with the All Appropriate
19 Inquiries Final Rule at 40 C.F.R Part 312. The All Appropriate
20 Inquiries Final Rule provides that the ASTM E1527-05 standard is
21 consistent with the requirements of the final rule and may be used
22 to comply with the provisions of the rule. The specific reporting
23 requirements for all appropriate inquiries are provided in 40

1 C.F.R. §312.21 (Results of Inquiry by an Environmental
2 Professional) and §312.31 (The Degree of Obviousness of the
3 Presence or Likely Presence of Contamination at the Property, and
4 the Ability to Detect the Contamination by Appropriate
5 Investigation) of the final rule and Section 12 of ASTM E1527-05.

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

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

15 (5) "Charitable purposes" means the Section 501(c)(3) of the
16 Internal Revenue Code of 1986, as amended, subclasses of "lessening
17 the burden of the government" where the government identifies a
18 need for the nonprofit entity to assist with a governmental service
19 and the nonprofit collaborates with the government entity, and the
20 "environmental protection for the benefit of the public" where the
21 corporation's services benefit the general public by protecting
22 public health and the environment as well as assisting with state
23 and local economic development initiatives.

1 (6) "Contaminants" has the same meaning as defined in the
2 environmental acts.

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

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

12 (9) "DEP" means the State of West Virginia, acting by and
13 through the Department of Environmental Protection or any successor
14 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" means physical controls or
19 measures designed to eliminate the potential for human exposure to
20 contamination by limiting direct contact with contaminated areas,
21 or controlling contaminants from migrating through environmental
22 media into soil, groundwater or off-site.

23 (12) "Enrolled sites" means properties enrolled and accepted

1 for participation in the voluntary Land Stewardship Program.

2 (13) "Environmental acts" means the Surface Coal Mining and
3 Reclamation Act set forth in article three, chapter twenty-two of
4 this code; the Air Pollution Control Act set forth in article five,
5 chapter twenty-two of this code; the Water Pollution Control Act
6 set forth in article eleven, chapter twenty-two of this code; the
7 Groundwater Protection Act set forth in article twelve, chapter
8 twenty-two of this code; the solid waste landfill closure
9 assistance program set forth in article sixteen, chapter twenty-two
10 of this code; the Hazardous Waste Management Act set forth in
11 article eighteen, chapter twenty-two of this code; Section 103(a)
12 of the Comprehensive Environmental Response, Compensation and
13 Liability Act of 1980 (42 U.S.C.A. §9603(a)); Section 304 of the
14 Emergency Planning and Community Right-To-Know Act of 1986 (42
15 U.S.C.A. Chapter 116); the Occupational Safety and Health Act (29
16 U.S.C.A. §§651 to 678); the Resource Conservation and Recovery Act,
17 as amended, (42 U.S.C.A. §6901, et seq.); and the Toxic Substances
18 Control Act (15 U.S.C.A. §2601, et seq.) and any applicable
19 regulation promulgated thereunder.

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

23 (15) "IEC Sites" means sites remediated or closed under a

1 federal or state environmental program, including brownfields,
2 underground storage tanks, closed landfills, open dumps, hazardous
3 waste sites, and former mining sites with ongoing water treatment
4 as part of mine reclamation efforts.

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

11 (17) "Institutional Controls" or "ICs" means administrative
12 and legal controls that do not involve construction or physically
13 changing the site and are generally divided into four categories:
14 (1) Government controls; (2) proprietary controls; (3) enforcement
15 tools; and (4) informational devices. ICs are nonengineering
16 measures that help minimize the potential for human exposure to
17 contamination and/or protect the integrity of the remedy by
18 limiting land or resource use.

19 (18) "Nonprofit corporation" means a corporation established
20 under the West Virginia Nonprofit Corporation Act, article
21 thirty-one-e, article two of this code to fulfill the purposes of
22 this article.

23 (19) "Pollutants" has the same meaning as defined in the

1 environmental acts.

2 (20) "Proprietary controls" means legal property interests
3 created under real property laws that rely on legal documents
4 recorded in the chain of title for the site, and "ran with the
5 land" to bind future landowners. Examples of proprietary controls
6 may include environmental covenants, deed land use restrictions,
7 water withdrawal prohibitions and continuing right-of-entry
8 easements for former owners or regulators to inspect, monitor and
9 maintain the IECs.

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

12 (22) "Releases" has the same meaning as defined in the
13 environmental acts.

14 Part 2. West Virginia Land Stewardship Corporation.

15 **§31-21-5. Creation of the West Virginia Land Stewardship**
16 **Corporation.**

17 (a) The corporation shall be organized as a nonprofit
18 corporation under the West Virginia Nonprofit Corporation Act,
19 chapter thirty-one-e of this code to fulfill the purposes of this
20 article.

21 (b) The corporation must seek nonprofit status under one or
22 more charitable purposes within the meaning of Section 501(c) of
23 the Internal Revenue Code of 1986, as amended, or under any

1 corresponding section of any future tax code.

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

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

7 (e) Except as otherwise provided in this article, the
8 corporation may do all things necessary or convenient to implement
9 the purposes, objectives and provisions of this article and the
10 purposes, objectives and powers delegated to the board of directors
11 of a nonprofit corporation by other laws or executive orders,
12 including, but not limited to, all of the following:

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

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

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

21 (4) Solicit and accept gifts, grants, labor, loans, services
22 and other aid from any person, or the federal government, this
23 state or a political subdivision of this state or any agency of the

1 federal government or a state institution of higher education or
2 nonprofit affiliates or an intergovernmental entity created under
3 the laws of this state or participate in any other way in a program
4 of the federal government;

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

7 (6) Invest money of the corporation, at the discretion of the
8 board of directors in instruments, obligations, securities or
9 property determined proper by the board of directors of the
10 corporation and name and use depositories for its money;

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

15 (8) Contract for goods and services and engage personnel as
16 necessary and engage the services of private consultants, managers,
17 legal counsel, engineers, accountants and auditors for rendering
18 professional environmental, legal and financial assistance and
19 advice payable from funds of the corporation;

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

23 (10) Study, develop and prepare the reports or plans the

1 corporation considers necessary to assist it in the exercise of its
2 powers under this article and to monitor and evaluate progress
3 under this article;

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

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

10 **§31-21-6. Powers.**

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

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

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

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

23 (e) The exercise by the corporation of powers and duties under

1 this article and its activities under the programs described herein
2 shall be considered a necessary public purpose and for the benefit
3 of the public.

4 (f) The corporation shall report biannually to the Legislature
5 on the activities of the corporation.

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

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

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

19 (2) The corporation, its employees or agents knowingly and
20 willfully do an action which caused an immediate release of
21 regulated substances or violates an environmental act. Liability
22 pursuant to this article is limited to the cost for a response
23 action which may be directly attributable to the corporation's

1 activities, and only if these activities are the proximate and
2 efficient cause of the release or violation. Ownership or control
3 of the property after accepting title in the land bank program does
4 not by itself trigger liability.

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

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

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

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

22 **§31-21-7. Board of directors.**

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

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

3 (1) The Governor shall appoint five residents of this state as
4 members;

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

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

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

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

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

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

18 (b) The members appointed by the Governor, the West Virginia
19 Chamber of Commerce and the West Virginia Manufacturers'
20 Association shall serve initial terms of four years. The members
21 appointed by the Secretary of the Department of Environmental
22 Protection and the Secretary of the Department of Commerce shall
23 serve initial appointments of three years. The members appointed

1 by the Senate President and the Speaker of the House shall serve
2 initial terms of two years. Thereafter, all terms shall be four
3 years for each member.

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

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

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

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

23 Part 3. Voluntary Land Stewardship Program.

1 **§31-21-8. Voluntary land stewardship program.**

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

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

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

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

1 voluntary land stewardship program;

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

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

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

19 (5) Develop administrative records concerning the remediation
20 at enrolled sites in an electronic database, respond to inquiries
21 and coordinate the sharing of such data among various stakeholders,
22 including the Department of Environmental Protection, current
23 owners, the remediating parties, if not the owners, other state or

1 local agencies (such as economic development agencies), assessors,
2 potential purchasers, landowners and tenants;

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

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

14 **§31-21-9. Underwriting.**

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

21 Part 4. State Certified Sites Program.

22 **§31-21-10. State certified sites program.**

23 (a) This article hereby authorizes the establishment of a

1 state certified sites program. The program shall consist of the
2 development and preparation of certain site specific decision ready
3 documentation or reports that will enable the expedited property
4 transaction for sites that participate in the certified sites
5 program.

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

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

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

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

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

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

1 (c) The corporation shall issue a site certification if it
2 determines that the decision ready document has been prepared and
3 completed in accord with the requirements set forth by the
4 corporation. The corporation may require some or all of the
5 following information based on the site specific circumstances of
6 the property to be certified.

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

10 **§31-21-11. Minimum standards.**

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

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

15 (2) Site ownership/control;

16 (A) Preliminary fifty-year title report and description of
17 liens and encumbrances;

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

22 (C) Acreage; and

23 (D) Full legal property description.

1 (3) Maps:

2 (A) ALTA map;

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

5 (C) USGS topographical map; and

6 (D) Aerial map.

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

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

16 (6) Water and wastewater infrastructure to property line or
17 demonstrate the ability to construct and pay for the infrastructure
18 up to property line. Capacity clearly defined.

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

22 (8) Electric infrastructure to property line. Capacity clearly
23 identified.

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

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

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

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

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

13 Part 5. Land Bank Program.

14 **§31-21-12. Land bank program.**

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

21 (b) The objective of the land bank program is to assist state
22 and local government efforts for economic develop by accepting
23 formerly used or developable properties and prepare the properties

1 so they can be conveyed to other parties to locate or expand
2 businesses and create or retain jobs in the state;

3 (c) The corporation may acquire by gift, devise, transfer,
4 exchange, foreclosure, purchase or otherwise on terms and
5 conditions and in a manner the corporation considers proper, real
6 or personal property or rights or interests in real or personal
7 property.

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

16 (1) Use or development of property the corporation has
17 otherwise acquired;

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

21 (3) Conduct environmental remediation and monitoring
22 activities.

23 (e) The corporation may also acquire by purchase, on terms and

1 conditions and in a manner the corporation considers proper,
2 property or rights or interest in property.

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

9 (g) All deeds, mortgages, contracts, leases, purchases or
10 other agreements regarding property of the corporation, including
11 agreements to acquire or dispose of real property, may be approved
12 by and executed in the name of the corporation or any single
13 purpose entity created for the transaction.

14 (h) All property held by the corporation shall be inventoried
15 and classified by the nonprofit according to title status and
16 suitability for use.

17 (i) A document including, but not limited to, a deed
18 evidencing the transfer under this article of one or more parcels
19 of property to the corporation by this state or a political
20 subdivision of this state may be recorded with the register of
21 deeds office in the county in which the property is located without
22 the payment of a fee.

23 **§31-21-13. Preserve property value.**

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

7 (b) The corporation may take or perform the following with
8 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 reasonably
11 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 services
14 provided by the corporation;

15 (3) Pay any tax or special assessment due on property acquired
16 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 the
19 corporation in order to establish ownership by and vest title to
20 property in the corporation; and

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

23 (c) Except as the corporation otherwise agrees by agreement or

1 otherwise, on terms and conditions, and in a manner and for an
2 amount of consideration the corporation considers proper, fair and
3 valuable, including for no monetary consideration, the corporation
4 may convey, sell, transfer, exchange, lease as lessor or otherwise
5 dispose of property or rights or interests in property in which the
6 corporation holds a legal interest to any public or private person
7 for value determined by the corporation.

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

11 **§31-21-14. Contaminated property.**

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

1 property.

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

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

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

22 (2) For the Department of Environmental Protection to protect
23 public health, safety and welfare or the environment, the

1 corporation shall place and record deed restrictions on the
2 property as authorized under state environmental statute.

3 **§31-21-15. Liberal construction.**

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

15 **§31-21-16. Completed purpose.**

16 If the corporation has completed the purposes for which the
17 corporation was organized, the board of directors, by vote of at
18 least a majority of a quorum of the directors and with the written
19 consent of the Governor, may provide for the dissolution of the
20 corporation and may provide for the transfer of any property held
21 by the corporation as required by agreement or, if there are no
22 related agreements, then to the Department of Environmental
23 Protection or state agency or to another nonprofit corporation as

1 directed by the Department of Environmental Protection.

2 **§31-21-17. Conflicts of interest.**

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

11 **§31-21-18. No waiver of sovereign immunity.**

12 Nothing contained in this article may be determined or
13 construed to waive or abrogate in any way the sovereign immunity of
14 the state or to deprive a governing board of a state created
15 nonprofit corporation or any officer or employee thereof of
16 sovereign immunity.

17 **§31-21-19. Corporation obligations are not state obligations.**

18 Obligations of the corporation are not debts or obligations of
19 the Department of Environmental Protection or the state.

NOTE: The purpose of this bill is to creates the nonprofit West Virginia Land Stewardship Corporation Act. The bill makes findings, declaring policy and stating its purpose. The bill defines terms. The bill enumerates powers. The bill establishes a board of directors. The bill sets forth responsibilities. The bill provides for underwriting. The bill establishes a state certified

sites program. The bill sets forth minimum standards. The bill establishes a land bank program. The bill preserves property values. The bill provides for contaminated property. The bill provides for conflicts of interest. The bill provides a nonwaiver of sovereign immunity. The bill collectively addresses several environmental and economic development programs established to promote the productive reuse of idled and underutilized commercial, industrial and mining properties. The bill supports more efficient use of existing public infrastructure. The bill encourages increased job creation with living wages, renewed community vitality and tax revenue generation while protecting public health and natural resources. The bill provides that obligations of the corporation are not those of the state.

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