

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2590

BY MR. SPEAKER, (MR. THOMPSON)

[BY REQUEST OF THE EXECUTIVE]

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT 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, §31-21-19 and §31-21-20, all relating to authorizing the creation of a public nonprofit corporation and governmental instrumentality to facilitate the redevelopment of former commercial, industrial and mining properties subject to federal and state regulations because of contamination or pollution discharge; providing short title; declaring policy and purpose of article; defining terms; creating West Virginia Land Stewardship Corporation; requiring corporation to apply for recognition of nonprofit status; providing eligibility for properties to participate; stating certain tax requirements; setting forth powers and limitations 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 and assessment of fees therefor; authorizing establishment of voluntary state land bank program; prohibiting the transfer of certain liabilities to land bank by prior owner; permitting land stewardship corporation to preserve property value of properties held by land stewardship corporation; authorizing land bank to acquire, dispose or otherwise manage real property; providing requirements for handling of contaminated properties by land stewardship corporation; providing for liberal construction of article; authorizing the Department of Environmental Protection to investigate corporation activities and take necessary actions; exempting corporation from certain state and local taxes; specifying payments in lieu of tax and tax exemption for leased property; requiring corporation to notify certain county officials upon receipt of an application for a site to participate in the land bank program; requiring audits and biannual reports; providing procedure for dissolution of land stewardship corporation upon completion of purpose and for disposal of properties possessed by the corporation; 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 corporation are not obligations of the Department of Environmental Protection or the 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, §31-21-19 and §31-21-20, all to read as follows:

ARTICLE 21. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

**PART I. 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. Definitions.

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

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

6 (2) “All appropriate inquiries” or “AAI” means the process
7 of evaluating a property’s environmental conditions and
8 assessing the likelihood of any contamination. Every Phase I
9 environmental assessment must be conducted in compliance with
10 the All Appropriate Inquiries Final Rule at 40 CFR Part 312.

11 (3) “Board of directors” or “board” means the board of
12 directors of the corporation to be appointed under the provisions
13 of section six of this article.

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

21 (5) “Charitable purposes” means the 501(c)(3) subclasses of
22 “lessening the burden of the government” where the government

23 identifies a need for the nonprofit entity to assist with a
24 governmental service and the nonprofit collaborates with the
25 government entity, and “environmental protection for the benefit
26 of the public” where the services of the corporation benefit the
27 general public by protecting public health and the environment
28 as well as assisting with state and local economic development
29 initiatives.

30 (6) “Contaminants” has the same meaning as defined in the
31 environmental acts referenced in subdivision (13) of this section.

32 (7) “Corporation” means the West Virginia Land
33 Stewardship Corporation, a nonstock, nonprofit corporation to be
34 established under the West Virginia Nonprofit Corporation Act,
35 article two, chapter thirty-one-e of this code, and with nonprofit
36 status under one or more charitable purposes under 501(c) of the
37 Internal Revenue Code of 1986, as amended.

38 (8) “Corporate directors” means the members of the board
39 of directors of the corporation.

40 (9) “Department of Environmental Protection” or the “DEP”
41 means the West Virginia Department of Environmental
42 Protection or any successor agency.

43 (10) “Enforcement tools” means any order, permit, consent
44 decree or environmental covenant or similar mechanisms which
45 restrict or control certain land uses implemented at IEC Sites.

46 (11) “Engineering controls” or “ECs” means physical
47 controls or measures designed to eliminate the potential for
48 human exposure to contamination by limiting direct contact with
49 contaminated areas, or controlling contaminants from migrating
50 through environmental media into soil, groundwater or off-site.

51 (12) “Enrolled sites” means properties enrolled and accepted
52 for participation in the voluntary Land Stewardship Program.

53 (13) “Environmental acts” means the Surface Coal Mining
54 and Reclamation Act set forth in article three, chapter twenty-
55 two of this code; the Air Pollution Control Act set forth in article
56 five, chapter twenty-two of this code; the Water Pollution
57 Control Act set forth in article eleven, chapter twenty-two of this
58 code; the Groundwater Protection Act set forth in article twelve,
59 chapter twenty-two of this code; the Solid Waste Management
60 Act set forth in article fifteen, chapter twenty-two of this code;
61 the Solid Waste Landfill Closure Assistance Program set forth
62 in article sixteen, chapter twenty-two of this code; the
63 Underground Storage Tank Act set forth in article seventeen,
64 chapter twenty-two of this code; the Hazardous Waste
65 Management Act set forth in article eighteen, chapter twenty-two
66 of this code; section 103(a) of the Comprehensive
67 Environmental Response, Compensation and Liability Act of
68 1980 (42 U. S. C. §9603(a)); section 304 of the Emergency
69 Planning and Community Right-To-Know Act of 1986 (42 U. S.
70 C. §§11001 to 11050); the Occupational Safety and Health Act
71 set forth in 29 U. S. C. §§651 to 678; the Hazardous and Solid
72 Waste Amendments of 1984, as amended, set forth in 42 U. S.
73 C. §§6901, *et seq.*; and the Toxic Substances Control Act set
74 forth in 15 U. S. C. §§2601, *et seq.*; and any applicable
75 regulations promulgated under the foregoing environmental
76 statutes.

77 (14) “Governmental controls” means any state laws,
78 ordinances, orders, permits, consent decrees and similar
79 mechanisms which restrict or control certain land uses
80 implemented at IEC Sites in this state.

81 (15) “Institutional and Engineering Control Sites” or “IEC
82 Sites” means sites in this state that have been remediated or
83 closed under a federal or state environmental program,
84 including, but not limited to, brownfields, underground storage
85 tanks, closed landfills, open dumps, hazardous waste sites, and
86 former mining sites with ongoing water treatment as part of mine
87 reclamation efforts.

88 (16) “Informational devices” means deed notices or other
89 written documents that describe the remediation that was
90 conducted on an IEC Site, the constituents of concern, and the
91 remediation standards that were achieved. Informational devices
92 shall be filed with property records in the office of the county
93 clerk of the county in which the property is located as an
94 advisory to provide environmental information to future buyers
95 or users of the IEC Site.

96 (17) “Institutional Controls” or “ICs” means administrative
97 and legal controls that do not involve construction or physically
98 changing the site and are generally divided into four categories:
99 1) Government controls, 2) Proprietary controls, 3) Enforcement
100 tools, and 4) Informational devices. ICs are nonengineering
101 measures that help minimize the potential for human exposure
102 to contamination and/or protect the integrity of the remedy by
103 limiting land or resource use.

104 (18) “Nonprofit corporation” means a corporation
105 established under the West Virginia Nonprofit Corporation Act,
106 article two, chapter thirty-one-e of this code, to fulfill the
107 purposes of this article.

108 (19) “Pollutants” has the same meaning as defined in the
109 environmental acts referenced in subdivision (13) of this section.

110 (20) “Proprietary controls” mean legal property interests
111 created under real property laws that rely on legal documents
112 recorded in the chain of title for the site, and “run with the land”
113 to bind future landowners. Examples of proprietary controls
114 include, but are not limited to, environmental covenants, deed
115 land use restrictions, water withdrawal prohibitions and
116 continuing right-of-entry easements for former owners or
117 regulators to inspect, monitor and maintain the IECs.

118 (21) “Regulated substances” has the same meaning as
119 defined in the environmental acts referenced in subdivision (13)
120 of this section.

121 (22) “Releases” has the same meaning as defined in the
122 environmental acts referenced in subdivision (13) of this section.

§31-21-3. 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
6 amounts of developable land and that promoting the productive
7 reuse of idled and underutilized commercial, industrial and
8 mining properties will maximize this valuable resource and
9 foster 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
18 a benefit to attracting new employers or encouraging businesses
19 to relocate, remain or expand within the state;

20 (4) An entity that assists the Department of Environmental
21 Protection with a voluntary land stewardship program for the
22 long-term safeguarding of remediated sites using institutional
23 controls and engineering controls can ensure that the remedy
24 remains protective of human health and the environment;

25 (5) An entity that also assists in identifying formerly used
26 properties that are ready for redevelopment and construction
27 within twelve months or less from acquisition and certifies these

28 properties as “project-ready” for specific industry profiles can
29 increase economic development efforts within the state;

30 (6) An entity that also acts as a land bank to accept title to
31 formerly used properties as an intermediary step to help seek a
32 purchaser, and ready the properties for reuse through
33 environmental assessment, remediation, building demolition or
34 other efforts, can be a useful ally to the state, local governments,
35 real estate developers and businesses for transacting property
36 conveyances, redevelopment and creating or retaining jobs; and

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

§31-21-4. Purpose of article.

1 The purpose of this article is to provide for the creation of a
2 special purpose nonprofit corporation with a comprehensive
3 mission to:

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

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

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

15 (4) Facilitate reuse and redevelopment by authorizing the
16 conveyance of certain properties to a land bank under a

17 voluntary land bank program and assist the state and local
18 governments with the assembly and clearance of title to property
19 in a coordinated manner;

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

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

30 (7) Prescribe the powers and duties of the nonprofit
31 corporation; provide for the creation and appointment of a board
32 to govern the nonprofit corporation and to prescribe its powers
33 and duties; and to extend protections against certain
34 environmental liabilities to the nonprofit corporation in order to
35 protect it from liabilities created by third parties.

PART II. WEST VIRGINIA
LAND STEWARDSHIP CORPORATION.

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

1 (a) The corporation shall be organized as a nonprofit,
2 nonstock corporation under the West Virginia Nonprofit
3 Corporation Act, article two, chapter thirty-one-e of this code.
4 The property thereof is deemed to be held for an area economic
5 development purpose under subdivision fourteen, subsection (a),
6 section nine, article three, chapter eleven of this code.

7 (b) The corporation shall apply for recognition of nonprofit
8 exempt status by the United States Internal Revenue Service

9 under one or more charitable purposes within the meaning of
10 section 501(c) of the Internal Revenue Code of 1986, as
11 amended.

12 (c) The corporate name for the corporation shall be the
13 “West Virginia Land Stewardship Corporation”.

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

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

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

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

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

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

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

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

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

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

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

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

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

68 (f) The enumeration of a power in this article may not be
69 construed as a limitation upon the general powers of the

70 corporation. The powers granted under this article are in addition
71 to those powers granted by any other statute or as provided in
72 articles of incorporation filed with the Secretary of State.

73 (g) The property of the corporation and its income and
74 operations are exempt from all taxation by this state or any of its
75 political subdivisions. Property owned and leased by the
76 corporation as lessor to a commercial lessee or an industrial
77 lessee is hereby declared to be tax exempt and held by the
78 corporation for a public purpose. A payment in lieu of taxes,
79 payable by the lessee, shall be established for any property so
80 leased, in an amount not less than the property tax otherwise
81 payable on the property. The lessee's leasehold interest therein
82 is hereby declared to be a tax exempt leasehold interest held for
83 a public purpose so long as the payment in lieu of taxes is timely
84 paid. Payments made to any county commission, county school
85 board or municipality in lieu of tax pursuant to such agreement
86 shall be distributed as if the payments resulted from ad valorem
87 property taxation.

88 (h) The corporation may not issue tax-exempt financing or
89 issue bonds.

90 (i) The corporation does not have the power of eminent
91 domain or the ability to condemn property.

92 (j) The exercise by the corporation of powers and duties
93 under this article and its activities under the programs described
94 herein shall be considered a necessary public purpose and for the
95 benefit of the public.

96 (k) The corporation is not liable under the environmental
97 acts or common law equivalents to the state or to any other
98 person by virtue of the fact that the corporation is fulfilling the
99 purposes of this article including, but not limited to, providing
100 land stewardship services or accepting title to property under any
101 program established under this article unless:

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

106 (2) The corporation, its employees or agents knowingly and
107 willfully do an action which causes an immediate release of
108 regulated substances or violates an environmental act. Liability
109 pursuant to this article is limited to the cost for a response action
110 which may be directly attributable to the corporation's activities,
111 and only if these activities are the proximate and efficient cause
112 of the release or violation. Ownership or control of the property
113 after accepting title in the land bank program does not by itself
114 trigger liability.

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

117 (m) The corporation shall establish policies and procedures
118 requiring the disclosure of relationships that may give rise to a
119 conflict of interest. The board of directors of the corporation
120 shall require that any member of the board with a direct or
121 indirect interest in any matter before the corporation disclose the
122 member's interest to the governing body before the board takes
123 any action on the matter.

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

128 (o) In the event of a conveyance of property to the
129 corporation, at the discretion of the corporation, the prior owner
130 may be required to post a bond or other type of financial
131 assurance for any potential future remediation, in order to ensure
132 the original owner's liability is maintained.

133 (p) The state may contract with the corporation for services
134 for properties for which the state is responsible and may enter
135 into long-term contracts for services that are funded under a trust
136 agreement or provided in an escrow account.

§31-21-6. Board of directors.

1 (a) The purposes, powers and duties of the corporation shall
2 be exercised by its board of directors. Board meetings shall be
3 chaired by the Governor or his or her designee. The
4 corporation's board shall also consist of the following thirteen
5 members:

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

7 (2) The West Virginia Chamber of Commerce shall
8 nominate three residents of this state for the Governor's
9 consideration, one of whom the Governor shall appoint;

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

13 (4) The West Virginia Coal Association shall nominate three
14 residents of this state for the Governor's consideration, one of
15 whom the Governor shall appoint;

16 (5) The United Mine Workers Association shall nominate
17 three residents of this state for the Governor's consideration, one
18 of whom the Governor shall appoint;

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

22 (7) The AFL-CIO shall nominate three residents of this state
23 for the Governor's consideration, one of whom the Governor
24 shall appoint;

25 (8) The Secretary of the DEP or his or her designee;

26 (9) The Secretary of the Department of Commerce or his or
27 her designee;

28 (10) One member of the Senate appointed by the Senate
29 President who shall serve as an ex officio nonvoting member;
30 and

31 (11) One member of the House of Delegates appointed by
32 the Speaker who shall serve as an ex officio nonvoting member.

33 (b) The members appointed by the Governor shall serve
34 terms of four years: *Provided*, That for the initial appointments
35 the Governor shall designate five to serve for four years each,
36 three to serve for three years each and one to serve for two years.
37 When an appointee resigns, dies or is removed during that
38 person's term, his or her successor shall be appointed for the
39 remaining portion of the unexpired term. Once appointed, a
40 person may be reappointed to successive four-year terms.

41 (c) Corporate directors shall serve without compensation, but
42 shall be reimbursed for actual and necessary expenses in
43 accordance with the regulations of the board.

44 (d) The corporate directors shall appoint a person to serve as
45 the executive director of the corporation and at the will and
46 pleasure of the board. A member of the board is not eligible to
47 hold the position of executive director.

48 (e) Subject to the approval of the board, the executive
49 director shall supervise, and be responsible for, the performance
50 of the functions and programs of the corporation under this
51 article. The executive director shall attend the meetings of the
52 board and shall provide the board of directors with a regular
53 report describing the activities and financial condition of the
54 corporation. The executive director shall furnish the board of

55 directors with information or reports governing the operation of
56 the corporation as the board requires.

57 (f) The board may do all other things necessary or
58 convenient to achieve the objectives and purposes of the
59 corporation or other laws that relate to the purposes and
60 responsibilities of the corporation.

PART III. VOLUNTARY LAND STEWARDSHIP PROGRAM.

§31-21-7. Voluntary land stewardship program.

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

8 (b) The universe of sites or properties covered under this
9 section of this article includes, but is not limited to, those IEC
10 Sites remediated or closed under a federal or state environmental
11 program, including brownfields, underground storage tanks,
12 closed landfills, open dumps, hazardous waste sites, and former
13 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,*
21 That the corporation's responsibilities for those activities are
22 expressly identified in agreements for the IEC Site that will be

23 negotiated when a site is enrolled in the voluntary land
24 stewardship 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 as
28 part of the remedy at the IEC Site) and site activities to assure
29 that the enrolled sites continue to comply with the IECs, such as
30 maintenance of ECs and inspecting for compliance with
31 restrictions of specific land uses;

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

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

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

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

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

§31-21-8. Underwriting.

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

PART IV. STATE CERTIFIED SITES PROGRAM.

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

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

7 (b) The objectives of the certified sites program include, but
8 are not limited to:

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

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

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

21 (4) Developing a central source of certified sites and
22 assisting local governments in identifying potential
23 redevelopment properties; and

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

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

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

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

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

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

6 (2) Site ownership/control:

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

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

16 (C) Acreage; and

17 (D) Full legal property description.

18 (3) Maps:

19 (A) ALTA map;

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

22 (C) USGS topographical map; and

23 (D) Aerial map.

24 (4) Phase I environmental site assessment performed by a
25 certified professional within the prior six months, and, if
26 appropriate, any additional environmental site assessments
27 performed by a certified professional within the prior six
28 months. For any properties being remediated, documentation
29 shall be provided about the status and cleanup objectives. For
30 remediated sites, documentation shall be provided about liability
31 protection.

32 (5) Wetland delineation demonstrating that impacts to waters
33 of the state will be avoided or a mitigation plan approved by the
34 DEP.

35 (6) Water and wastewater infrastructure to the property line
36 with capacity clearly defined, or a demonstration of the ability
37 to construct and pay for the infrastructure up to the property line.

38 (7) Transportation infrastructure to the property line,
39 including, but not limited to, the type of roads near the site and
40 whether the roads are local, state or U. S. roads.

41 (8) Electric infrastructure to the property line with its
42 capacity clearly identified.

43 (9) Natural gas infrastructure to the property line with its
44 capacity clearly identified.

45 (10) Water infrastructure to the property line with its
46 capacity clearly identified.

47 (11) Sewer infrastructure to the property line with its
48 capacity clearly identified.

49 (12) Telecommunications and/or high speed communications
50 infrastructure to the property line with its capacity clearly
51 identified.

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

PART V. LAND BANK PROGRAM.

§31-21-11. Land bank program.

1 (a) This article hereby authorizes the establishment of a
2 voluntary state land bank program. Under this program, the
3 corporation is authorized to acquire properties, hold title and
4 prepare them for future use. Prior to acquiring any properties, the
5 corporation shall conduct all appropriate inquiries to determine

6 the environmental conditions or issues associated with a
7 particular property. The corporation shall not acquire title to any
8 property unless all pending liens have been satisfied and
9 released. Liabilities, including, but not limited to, environmental
10 liabilities, shall not pass to the corporation by its acquisition of
11 title. Participation in the land bank program under this article
12 shall not relieve an entity of any of its liabilities.

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

18 (c) The corporation may acquire by gift, devise, transfer,
19 exchange, foreclosure, purchase or otherwise on terms and
20 conditions and in a manner the corporation considers proper, real
21 or personal property or rights or interests in real or personal
22 property. The corporation may not accept by any conveyance or
23 other action, any liability for prior pollution or contamination
24 liabilities that occurred on the property prior to its conveyance
25 to the corporation.

26 (d) Real property acquired by the corporation may be by
27 purchase and sale agreement, lease purchase agreement,
28 installment sales contract, land contract or otherwise as may be
29 negotiated or structured. The corporation may acquire real
30 property or rights or interests in real property for any purpose the
31 corporation considers necessary to carry out the purposes of this
32 article including, but not limited to, one or more of the following
33 purposes:

34 (1) Use or development of property the corporation has
35 otherwise acquired;

36 (2) To facilitate the assembly of property for sale or lease to
37 any other public or private person, including, but not limited to,
38 a nonprofit or for profit corporation;

39 (3) To conduct environmental remediation and monitoring
40 activities.

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

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

49 (g) All deeds, mortgages, contracts, leases, purchases or
50 other agreements regarding property of the corporation,
51 including agreements to acquire or dispose of real property, shall
52 be approved by the board of directors and executed in the name
53 of the corporation or any single purpose entity created by the
54 board for the transaction.

55 (h) All property held by the corporation or a single purpose
56 entity created by the board for a transaction shall be inventoried
57 and classified by the corporation according to title status and
58 suitability for use.

59 (i) A document including, but not limited to, a deed
60 evidencing the transfer under this article of one or more parcels
61 of property to the corporation by this state or a political
62 subdivision of this state may be recorded within the office of the
63 county clerk of the county in which the property is located
64 without the payment of a fee.

65 (j) The corporation shall notify the county commission and
66 county assessor in the affected county or counties upon receipt
67 of an application for participation in the land bank program.

§31-21-12. 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

3 located, control, hold, manage, maintain, operate, repair, lease as
4 lessor, secure, prevent the waste or deterioration of, demolish
5 and take all other actions necessary to preserve the value of the
6 property held or owned directly by the corporation or by a single
7 purpose entity created by the board for that purpose.

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

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

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

17 (3) 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 or a special purpose entity created by
21 the board; and

22 (4) Remediate environmental contamination on any property
23 held by the corporation.

24 (c) Except as the corporation otherwise agrees by agreement
25 or otherwise, on terms and conditions, and in a manner and for
26 an amount of consideration the corporation considers proper, fair
27 and valuable, including for no monetary consideration, the
28 corporation may convey, sell, transfer, exchange, lease as lessor
29 or otherwise dispose of property or rights or interests in property
30 in which the corporation directly or indirectly holds a legal
31 interest to any public or private person for value determined by
32 the corporation.

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

§31-21-13. Contaminated property.

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

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

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

24 (1) Upon reasonable written notice from the DEP, the
25 corporation shall provide access to the DEP, its employees, its
26 contractors and any other person expressly authorized by the
27 DEP to conduct an investigation and/or response activities at the
28 property. Reasonable written notice may include, but is not

29 limited to, notice by electronic mail or facsimile, in advance of
30 access as the DEP and corporation may agree.

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

§31-21-14. Liberal construction.

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

§31-21-15. Exemption from taxation.

1 The property of the corporation shall be exempt from ad
2 valorem property taxation. Property owned and leased by the
3 corporation as lessor to a commercial lessee or an industrial
4 lessee is hereby declared to be tax exempt and held by the
5 corporation for a public purpose. A payment in lieu of taxes,
6 payable by the lessee, shall be established for any property so
7 leased, in an amount not less than the property tax otherwise
8 payable on the property. The lessee's leasehold interest therein
9 is hereby declared to be a tax exempt leasehold interest held for
10 a public purpose so long as the payment in lieu of taxes is timely
11 paid. Payments made to any county commission, county school
12 board or municipality in lieu of tax pursuant to such agreement
13 shall be distributed as if the payments resulted from ad valorem
14 property taxation. The corporation shall be exempt from the
15 taxes imposed by chapter eleven of this code, except that the
16 corporation shall comply with the employer withholding of tax
17 requirements in sections seventy-one through seventy-six, article

18 twenty-one of said chapter eleven. The corporation shall be
19 exempt from sales and use taxes, business and occupation taxes
20 and all other taxes imposed by a county commission, a municipal
21 corporation or other unit of local government, whether now or
22 hereinafter in effect.

§31-21-16. Audits and reports.

1 (a) As soon as possible after the close of each year, the
2 corporation shall cause an annual audit to be made by an
3 independent certified public accountant of its books, records,
4 accounts and operations. The person performing this audit shall
5 furnish copies of the audit report to the Governor, the secretary
6 of the DEP and the Joint Committee on Government and Finance
7 of the Legislature.

8 (b) The corporation shall report biannually to the Joint
9 Committee on Government and Finance of the Legislature on the
10 activities of the corporation. The first report shall be filed on or
11 before the second Wednesday in January, 2016.

§31-21-17. Completed purpose.

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

§31-21-18. Conflicts of interest.

1 Notwithstanding any other provision of this article to the
2 contrary, officers and employees of the corporation and its board
3 of directors may hold appointments to offices of any other
4 corporations or businesses and be corporate directors or officers

5 or employees of other entities but are prohibited to be a party or
6 otherwise participate in the transfer of real property and funds
7 from the corporation to the corporations or businesses for which
8 they serve.

§31-21-19. 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 the nonprofit corporation
4 created pursuant to this article, its board of directors, or any
5 officer or employee thereof of sovereign immunity.

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

