

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 552**

6 (By Senators Plymale, Browning, Jenkins and Foster)

7 _____
8 [Originating in the Committee on the Judiciary;

9 reported February 24, 2012.]

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

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

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

24 That the Code of West Virginia, 1931, as amended, be amended
25 by adding thereto a new article, designated §31-21-1, §31-21-2,
26 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8, §31-21-

1 9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-14, §31-21-
2 15, §31-21-16, §31-21-17, §31-21-18 and §31-21-19, all to read as
3 follows:

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

5 PART 1. SHORT TITLE, DECLARATION OF POLICY, PURPOSE OF ARTICLE AND
6 DEFINITIONS.

7 **§31-21-1. Short title.**

8 This article shall be known and may be cited as The West
9 Virginia Land Stewardship Corporation Act.

10 **§31-21-2. Declaration of policy.**

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

14 (b) The Legislature further finds that:

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

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

25 (3) An entity created to address and reduce regulatory and

1 economic uncertainty by being a repository of site history and
2 remediation information about formerly used properties can be a
3 benefit to attracting new employers or encouraging businesses to
4 relocate, remain or expand within the state;

5 (4) An entity that assists the state's Department of
6 Environmental Protection (DEP) with a voluntary land stewardship
7 program for the long-term safeguarding of remediated sites using
8 institutional controls (ICs) and engineering controls (ECs)
9 (collectively IECs) to ensure that the remedy remains protective of
10 human health and the environment is assisting the department to
11 effectively oversee these remediated sites (IEC Sites);

12 (5) An entity that also assists in identifying formerly used
13 properties that are ready for redevelopment and construction within
14 twelve months or less from acquisition and certifies these
15 properties as "project-ready" for specific industry profiles can
16 increase economic development efforts within the state;

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

24 (7) The promotion of private investment in our developable
25 land and West Virginia businesses will tend to reduce unemployment
26 by creating new or maintaining existing opportunities for the

1 citizens of this state.

2 **§31-21-3. Purpose of article.**

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

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

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

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

17 (4) Facilitate the reuse and redevelopment of certain property
18 by authorizing the conveyance of certain properties to a land bank
19 under a voluntary land bank program and assist the state and local
20 governments with the assembly and clearance of title to property in
21 a coordinated manner;

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

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

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

11 **§31-21-4. Definitions.**

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

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

17 (2) "All Appropriate Inquiries" or "AAI" means the process of
18 evaluating a property's environmental conditions and assessing the
19 likelihood of any contamination. Every Phase I environmental
20 assessment must be conducted in compliance with the All Appropriate
21 Inquiries Final Rule at 40 CFR Part 312. The All Appropriate
22 Inquiries Final Rule provides that the ASTM E1527-05 standard is
23 consistent with the requirements of the final rule and may be used
24 to comply with the provisions of the rule. The specific reporting
25 requirements for all appropriate inquiries are provided in 40 CFR
26 §312.21 (Results of Inquiry by an Environmental Professional) and

1 §312.31 of the final rule and in §12 of ASTM E1527-05.

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

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

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

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

22 (7) "Corporation" means the West Virginia Land Stewardship
23 Corporation, a nonstock, nonprofit corporation to be established
24 under the West Virginia Nonprofit Corporation Act, article thirty-
25 one-e, article two of this code and with nonprofit status under one
26 or more charitable purposes under 501(c) of the Internal Revenue

1 Code of 1986, as amended, or under any corresponding section of any
2 future tax code.

3 (8) "Corporate directors" means the members of the board of
4 directors of the corporation.

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

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

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

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

18 (13) "Environmental acts" means the Surface Coal Mining and
19 Reclamation Act set forth in article three, chapter twenty-two of
20 this code; the Air Pollution Control Act set forth in article five,
21 chapter twenty-two of this code; the Water Pollution Control Act
22 set forth in article eleven, chapter twenty-two of this code; the
23 Groundwater Protection Act set forth in article twelve, chapter
24 twenty-two of this code; the Solid Waste Landfill Closure
25 Assistance Program set forth in article sixteen, chapter twenty-two
26 of this code; the Hazardous Waste Management Act set forth in

1 article eighteen, chapter twenty-two of this code; section 103(a)
2 of the Comprehensive Environmental Response, Compensation and
3 Liability Act of 1980 (42 U. S. C. A. §9603(a)); section 304 of the
4 Emergency Planning and Community Right-To-Know Act of 1986 (42 U.
5 S. C. A. §§11001 to 11050); the Occupational Safety and Health Act
6 set forth in 29 U. S. C. A. §§ 651 to 678; the Resource
7 Conservation and Recovery Act, as amended, set forth in 42 U. S. C.
8 A. §§6901, et seq.; and the Toxic Substances Control Act set forth
9 in 15 U. S. C. A. §§2601, et seq. and any applicable regulation
10 promulgated thereunder.

11 (14) "Governmental controls" means any state laws, ordinances,
12 orders, permits, consent decrees and similar mechanisms which
13 restrict or control certain land uses implemented at IEC Sites.

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

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

25 (17) "Institutional Controls" or "ICs" means administrative
26 and legal controls that do not involve construction or physically

1 changing the site and are generally divided into four (4)
2 categories: 1) Government controls, 2) Proprietary controls, 3)
3 Enforcement tools, and 4) Informational devices. ICs are
4 nonengineering measures that help minimize the potential for human
5 exposure to contamination and/or protect the integrity of the
6 remedy by limiting land or resource use.

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

11 (19) "Pollutants" has the same meaning as defined in the
12 environmental acts.

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

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

23 (22) "Releases" has the same meaning as defined in the
24 environmental acts.

25 PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

26 **§31-21-5. Creation of the West Virginia Land Stewardship**

1 **Corporation.**

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

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

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

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

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

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

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

25 (3) Sue and be sued in its own name and plead and be
26 impleaded, including, but not limited to, defending the corporation

1 in an action arising or resulting from the services, programs and
2 responsibilities arising under this article;

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

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

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

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

20 (8) Contract for goods and services and engage personnel as
21 necessary, contract with Regional Brownfield Assistance Centers as
22 set out in section seven, article eleven, chapter eighteen-b, and
23 engage the services of private consultants, managers, legal
24 counsel, engineers, accountants and auditors for rendering
25 professional environmental, legal and financial assistance and
26 advice payable from funds of the corporation;

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

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

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

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

14 **§31-21-6. Powers.**

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

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

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

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

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

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

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

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

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

20 (2) The corporation, its employees or agents knowingly and
21 willfully do an action which caused an immediate release of
22 regulated substances or violates an environmental act. Liability
23 pursuant to this article is limited to the cost for a response
24 action which may be directly attributable to the corporation's
25 activities, and only if these activities are the proximate and
26 efficient cause of the release or violation. Ownership or control

1 of the property after accepting title in the land bank program does
2 not by itself trigger liability.

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

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

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

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

20 **§31-21-7. Board of directors.**

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

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

25 (2) The West Virginia Chamber of Commerce shall appoint one
26 member;

1 (3) The West Virginia Manufacturers' Association shall appoint
2 one member;

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

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

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

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

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

14 (b) The members appointed by the Governor, the West Virginia
15 Chamber of Commerce and the West Virginia Manufacturers'
16 Association shall serve terms of four years: *Provided*, That for
17 the initial appointments the parties making the appointments shall
18 designate three to serve for four years, two to serve for three
19 years and two to serve for two years.

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

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

25 (e) Subject to the approval of the board, the executive
26 director shall supervise, and be responsible for, the performance

1 of the functions and programs of the corporation under this
2 article. The executive director shall attend the meetings of the
3 board and shall provide the board of directors with a regular
4 report describing the activities and financial condition of the
5 corporation. The executive director shall furnish the board of
6 directors with information or reports governing the operation of
7 the corporation as the board requires.

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

13 PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

14 **§31-21-8. Voluntary land stewardship program.**

15 (a) When the voluntary land stewardship program is
16 implemented, remediation parties and site owners of IEC Sites will
17 have the option, for a fee, to participate in this program. The fee
18 will be established by the corporation for services provided for an
19 enrolled site as that term is defined in section four of this
20 article.

21 (b) The universe of sites or properties covered under this
22 section of the statute includes, but is not limited, to those with
23 IEC Sites remediated or closed under a federal or state
24 environmental program, including brownfields, underground storage
25 tanks, closed landfills, open dumps, hazardous waste sites, and
26 former mining sites with ongoing water treatment as part of mine

1 reclamation efforts.

2 (c) The corporation is further authorized to provide at a
3 minimum the following voluntary land stewardship services for
4 enrolled sites:

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

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

19 (3) Monitor and operate any required media treatment systems
20 and/or conduct routine surface water, groundwater and or gas
21 monitoring and prepare any monitoring or inspection reports that
22 may be part of the corporation's responsibilities under site
23 enrollment agreements;

24 (4) Conduct periodic reviews of the county land records to
25 monitor transfers or deed filings to assure that such records are
26 consistent with the required IECs for the enrolled sites, and

1 provide notices to the clerk of the county commission about the
2 results of monitoring or tracking of such records;

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

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

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

21 **§31-21-9. Underwriting.**

22 The enrollment and acceptance process to the land stewardship
23 program will be developed and include an underwriting review that
24 focuses on: (1) The nature and extent of contamination; (2) the
25 selected remedy; (3) the type of services selected and duration
26 thereof; and (4) the financial costs and risks associated with

1 fulfilling the services.

2 PART 4. STATE CERTIFIED SITES PROGRAM.

3 **§31-21-10. State certified sites program.**

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

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

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

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

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

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

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

1 citizenry.

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

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

11 **§31-21-11. Minimum standards.**

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

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

16 (2) Site ownership/control:

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

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

23 (C) Acreage; and

24 (D) Full legal property description.

25 (3) Maps:

26 (A) ALTA map;

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

3 (C) USGS topographical map; and

4 (D) Aerial map.

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

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

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

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

20 (8) Electric infrastructure to property line. Capacity clearly
21 identified.

22 (9) Natural gas infrastructure to property line. Capacity
23 clearly identified.

24 (10) Water infrastructure to property line. Capacity clearly
25 identified.

26 (11) Sewer infrastructure to property line. Capacity clearly

1 identified.

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

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

8 PART 5. LAND BANK PROGRAM.

9 **§31-21-12. Land bank program.**

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

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

21 (c) The corporation may acquire by gift, devise, transfer,
22 exchange, foreclosure, purchase or otherwise on terms and
23 conditions and in a manner the corporation considers proper, real
24 or personal property or rights or interests in real or personal
25 property.

26 (d) Real property acquired by the corporation may be by

1 purchase and sale agreement, lease purchase agreement, installment
2 sales contract, land contract or otherwise as may be negotiated or
3 structured. The corporation may acquire real property or rights or
4 interests in real property for any purpose the corporation
5 considers necessary to carry out the purposes of this article
6 including, but not limited to, one or more of the following
7 purposes:

8 (1) Use or development of property the corporation has
9 otherwise acquired;

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

13 (3) Conduct environmental remediation and monitoring
14 activities.

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

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

24 (g) All deeds, mortgages, contracts, leases, purchases or
25 other agreements regarding property of the corporation, including
26 agreements to acquire or dispose of real property, may be approved

1 by and executed in the name of the corporation or any single
2 purpose entity created for the transaction.

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

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

12 **§31-21-13. Preserve property value.**

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

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

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

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

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

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

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

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

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

20 **§31-21-14. Contaminated property.**

21 (a) If the Department of Environmental Protection determines
22 that conditions on a property transferred to the corporation under
23 this article represents an immediate threat to public health,
24 safety and welfare, or to the environment, the corporation may not
25 convey, sell, transfer, exchange, lease or otherwise dispose of the
26 property until after a determination by the Department of

1 Environmental Protection that the threat has been remediated and/or
2 eliminated and that conveyance, sale, transfer, exchange, lease or
3 other disposal of the property by the corporation will not
4 interfere with any of the Department of Environmental Protection's
5 response activities and will coordinate with the Department of
6 Environmental Protection about the corporations activities at such
7 property.

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

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

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

1 Environmental Protection and corporation may agree.

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

7 **§31-21-15. Liberal construction.**

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

19 **§31-21-16. Completed purpose.**

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

1 Protection or state agency or to another nonprofit corporation as
2 directed by the Department of Environmental Protection.

3 **§31-21-17. Conflicts of interest.**

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

12 **§31-21-18. No waiver of sovereign immunity.**

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

18 **§31-21-19. Not obligation of the state.**

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

(NOTE: The purpose of this bill is to authorize the creation of a public nonprofit corporation and governmental instrumentality under the provisions of article two, chapter thirty-one-e of the code, to collectively address several environmental and economic development programs. The corporation is established to promote the productive reuse of idled and underutilized commercial, industrial and mining properties; to support more efficient use of

existing public infrastructure; encourage increased job creation with living wages; and renewed community vitality and tax revenue generation while protecting public health and our natural resources.

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