

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2590**

5 By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
6 [By Request of the Executive]
7

8 (Originating in the House Committee on the Judiciary)

9 [March 21, 2013]

10

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §31-21-1, §31-21-2,
13 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8,
14 §31-21-9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-
15 14, §31-21-15, §31-21-16, §31-21-17, §31-21-18, §31-21-19 and
16 §31-21-20, all relating to authorizing the creation of a
17 public nonprofit corporation and governmental instrumentality
18 to facilitate the redevelopment of former commercial,
19 industrial and mining properties subject to federal and state
20 regulations because of contamination or pollution discharge;
21 providing short title; declaring policy and purpose of
22 article; defining terms; creating West Virginia Land
23 Stewardship Corporation; providing eligibility for properties
24 to participate; stating certain tax requirements; setting
25 forth powers and limitations of West Virginia Land Stewardship
26 Corporation; providing for board of directors and composition
27 of same; providing for creation of voluntary land stewardship

1 program; providing for underwriting review of land stewardship
2 program applicants; authorizing establishment of state
3 certified sites program; setting forth minimum standards for
4 certification under state certified sites program and
5 assessment of fees therefor; authorizing establishment of
6 voluntary state land bank program; prohibiting the transfer of
7 certain liabilities to land bank by prior owner; permitting
8 land stewardship corporation to preserve property value of
9 properties held by land stewardship corporation; authorizing
10 land bank to acquire, dispose or otherwise manage real
11 property; providing requirements for handling of contaminated
12 properties by land stewardship corporation; providing for
13 liberal construction of article; authorizing the Department of
14 Environmental Protection to investigate corporation activities
15 and take necessary actions; exempting corporation from certain
16 state and local taxes; requiring audits and biannual reports;
17 providing procedure for dissolution of land stewardship
18 corporation upon completion of purpose and for disposal of
19 properties possessed by the corporation; providing provision
20 for conflict of interest of land stewardship corporation
21 officers, employees and board members; stating preservation of
22 sovereign immunity; and providing that obligations of land
23 stewardship corporation are not obligations of the Department
24 of Environmental Protection or the state.

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

26 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §31-21-1, §31-21-2,
2 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8, §31-21-
3 9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-14, §31-21-
4 15, §31-21-16, §31-21-17, §31-21-18, §31-21-19 and §31-21-20, all
5 to read as follows:

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

7 PART 1. SHORT TITLE, DECLARATION OF POLICY, PURPOSE OF ARTICLE AND
8 DEFINITIONS.

9 **§31-21-1. Short title.**

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

12 **§31-21-2. Definitions.**

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

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

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

23 (3) "Board of directors" or "board" means the board of
24 directors of the corporation to be appointed under the provisions
25 of section six of this article.

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

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

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

19 (7) "Corporation" means the West Virginia Land Stewardship
20 Corporation, a nonstock, nonprofit corporation to be established
21 under the West Virginia Nonprofit Corporation Act, article two,
22 chapter thirty-one-e of this code, and with nonprofit status under
23 one or more charitable purposes under 501(c) of the Internal
24 Revenue Code of 1986, as amended.

25 (8) "Corporate directors" means the members of the board of
26 directors of the corporation.

1 (9) "Department of Environmental Protection" or the "DEP"
2 means the West Virginia Department of Environmental Protection or
3 any successor agency.

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

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

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

14 (13) "Environmental acts" means the Surface Coal Mining and
15 Reclamation Act set forth in article three, chapter twenty-two of
16 this code; the Air Pollution Control Act set forth in article five,
17 chapter twenty-two of this code; the Water Pollution Control Act
18 set forth in article eleven, chapter twenty-two of this code; the
19 Groundwater Protection Act set forth in article twelve, chapter
20 twenty-two of this code; the Solid Waste Management Act set forth
21 in article fifteen, chapter twenty-two of this code; the Solid
22 Waste Landfill Closure Assistance Program set forth in article
23 sixteen, chapter twenty-two of this code; the Underground Storage
24 Tank Act set forth in article seventeen, chapter twenty-two of this
25 code; the Hazardous Waste Management Act set forth in article
26 eighteen, chapter twenty-two of this code; section 103(a) of the

1 Comprehensive Environmental Response, Compensation and Liability
2 Act of 1980 (42 U. S. C. §9603(a)); section 304 of the Emergency
3 Planning and Community Right-To-Know Act of 1986 (42 U. S. C.
4 §§11001 to 11050); the Occupational Safety and Health Act set forth
5 in 29 U. S. C. §§651 to 678; the Hazardous and Solid Waste
6 Amendments of 1984, as amended, set forth in 42 U. S. C. §§6901, et
7 seq.; and the Toxic Substances Control Act set forth in 15 U. S. C.
8 §§2601, et seq.; and any applicable regulations promulgated under
9 the foregoing environmental statutes.

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

14 (15) "Institutional and Engineering Control Sites" or "IEC
15 Sites" means sites in this state that have been remediated or
16 closed under a federal or state environmental program, including,
17 but not limited to, brownfields, underground storage tanks, closed
18 landfills, open dumps, hazardous waste sites, and former mining
19 sites with ongoing water treatment as part of mine reclamation
20 efforts.

21 (16) "Informational devices" means deed notices or other
22 written documents that describe the remediation that was conducted
23 on an IEC Site, the constituents of concern, and the remediation
24 standards that were achieved. Informational devices shall be filed
25 with property records in the office of the county clerk of the
26 county in which the property is located as an advisory to provide

1 environmental information to future buyers or users of the IEC
2 Site.

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

11 (18) "Nonprofit corporation" means a corporation established
12 under the West Virginia Nonprofit Corporation Act, article two,
13 chapter thirty-one-e of this code, to fulfill the purposes of this
14 article.

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

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

25 (21) "Regulated substances" has the same meaning as defined in
26 the environmental acts referenced in subdivision (13) of this

1 section.

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

4 **§31-21-3. Declaration of policy.**

5 (a) The Legislature finds and declares that developable land
6 is one of West Virginia's most valuable resources in terms of net
7 contributions to the state's economy and tax base.

8 (b) The Legislature further finds that:

9 (1) Due to topography, the state has somewhat limited amounts
10 of developable land and that promoting the productive reuse of
11 idled and underutilized commercial, industrial and mining
12 properties will maximize this valuable resource and foster reuse of
13 sites with existing public infrastructure;

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

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

24 (4) An entity that assists the Department of Environmental
25 Protection with a voluntary land stewardship program for the long-
26 term safeguarding of remediated sites using institutional controls

1 and engineering controls can ensure that the remedy remains
2 protective of human health and the environment;

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

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

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

19 **§31-21-4. Purpose of article.**

20 The purpose of this article is to provide for the creation of
21 a special purpose nonprofit corporation with a comprehensive
22 mission to:

23 (1) Assist the DEP in utilizing a voluntary land stewardship
24 program for the long-term safeguarding of IEC Sites to ensure that
25 the remedy remains protective of human health and the environment
26 and to facilitate further economic development and reuse

1 opportunities;

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

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

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

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

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

22 (7) Prescribe the powers and duties of the nonprofit
23 corporation; provide for the creation and appointment of a board to
24 govern the nonprofit corporation and to prescribe its powers and
25 duties; and to extend protections against certain environmental
26 liabilities to the nonprofit corporation in order to protect it

1 from liabilities created by third parties.

2 PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

3 **§31-21-5. Creation of the West Virginia Land Stewardship**
4 **Corporation; powers and limitations.**

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

9 (b) The corporation shall apply for recognition of nonprofit
10 exempt status by the United States Internal Revenue Service under
11 one or more charitable purposes within the meaning of section
12 501(c) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

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

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

16 (6) Invest money of the corporation, at the discretion of the
17 board of directors, in instruments, obligations, securities or
18 property determined proper by the board of directors of the
19 corporation and name and use depositories for its money;

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

24 (8) Contract for goods and services and engage personnel as
25 necessary, contract with Regional Brownfield Assistance Centers as
26 set out in section seven, article eleven, chapter eighteen-b of

1 this code, and engage the services of private consultants,
2 managers, legal counsel, engineers, accountants and auditors for
3 rendering professional environmental, legal and financial
4 assistance and advice payable from funds of the corporation;

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

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

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

15 (f) 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 (g) 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 (h) The corporation may not issue tax-exempt financing or
24 issue bonds.

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

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

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

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

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

26 (m) The corporation shall establish policies and procedures

1 requiring the disclosure of relationships that may give rise to a
2 conflict of interest. The board of directors of the corporation
3 shall require that any member of the board with a direct or
4 indirect interest in any matter before the corporation disclose the
5 member's interest to the governing body before the board takes any
6 action on the matter.

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

11 (o) In the event of a conveyance of property to the
12 corporation, at the discretion of the corporation, the prior owner
13 may be required to post a bond or other type of financial assurance
14 for any potential future remediation, in order to insure the
15 original owner's liability is maintained.

16 (o) 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 **§31-21-6. Board of directors.**

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

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

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

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

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

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

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

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

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

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

19 (9) The Secretary of the Department of Commerce or his or her
20 designee;

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

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

25 (b) The members appointed by the Governor shall serve terms of
26 four years: Provided, That for the initial appointments the

1 Governor shall designate five to serve for four years each, three
2 to serve for three years each and one to serve for two years. When
3 an appointee resigns, dies or is removed during that person's term,
4 his or her successor shall be appointed for the remaining portion
5 of the unexpired term. Once appointed, a person may be reappointed
6 to successive four-year terms.

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

10 (d) The corporate directors shall appoint a person to serve as
11 the executive director of the corporation and at the will and
12 pleasure of the board. A member of the board is not eligible to
13 hold the position of executive director.

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

23 (f) The board may do all other things necessary or convenient
24 to achieve the objectives and purposes of the corporation or other
25 laws that relate to the purposes and responsibilities of the
26 corporation.

1 PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

2 **§31-21-7. Voluntary land stewardship program.**

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

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

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

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

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

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

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

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

25 (6) Develop and maintain records and information about
26 enrolled sites for posting on the DEP environmental registry, or

1 any other registry that is used for tracking IECs for IEC Sites in
2 West Virginia and provide for public access to such information;
3 and

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

10 **§31-21-8. Underwriting.**

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

17 PART 4. STATE CERTIFIED SITES PROGRAM.

18 **§31-21-9. State certified sites program.**

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

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

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

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

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

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

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

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

26 (d) The issuance of a site certification shall be based on the

1 review and approval of the information submitted to the corporation
2 in an application for the site certification.

3 **§31-21-10. Minimum standards for certified sites.**

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

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

9 (2) Site ownership/control:

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

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

19 (C) Acreage; and

20 (D) Full legal property description.

21 (3) Maps:

22 (A) ALTA map;

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

25 (C) USGS topographical map; and

26 (D) Aerial map.

1 (4) Phase I environmental site assessment performed by a
2 certified professional within the prior six months, and, if
3 appropriate, any additional environmental site assessments
4 performed by a certified professional within the prior six months.

5 For any properties being remediated, documentation shall be
6 provided about the status and cleanup objectives. For remediated
7 sites, documentation shall be provided about liability protection.

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

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

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

17 (8) Electric infrastructure to the property line with its
18 capacity clearly identified.

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

21 (10) Water infrastructure to the property line with its
22 capacity clearly identified.

23 (11) Sewer infrastructure to the property line with its
24 capacity clearly identified.

25 (12) Telecommunications and/or high speed communications
26 infrastructure to the property line with its capacity clearly

1 identified.

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

6 PART 5. LAND BANK PROGRAM.

7 **§31-21-11. Land bank program.**

8 (a) This article hereby authorizes the establishment of a
9 voluntary state land bank program. Under this program, the
10 corporation is authorized to acquire properties, hold title and
11 prepare them for future use. Prior to acquiring any properties,
12 the corporation shall conduct all appropriate inquiries to
13 determine the environmental conditions or issues associated with a
14 particular property. The corporation shall not acquire title to
15 any property unless all pending liens have been satisfied and
16 released. Liabilities, including, but not limited to,
17 environmental liabilities, shall not pass to the corporation by its
18 acquisition of title. Participation in the land bank program under
19 this article shall not relieve an entity of any of its liabilities.

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

25 (c) The corporation may acquire by gift, devise, transfer,
26 exchange, foreclosure, purchase or otherwise on terms and

1 conditions and in a manner the corporation considers proper, real
2 or personal property or rights or interests in real or personal
3 property. The corporation may not accept by any conveyance or
4 other action, any liability for prior pollution or contamination
5 liabilities that occurred on the property prior to its conveyance
6 to the corporation.

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

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

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

20 (3) To conduct environmental remediation and monitoring
21 activities.

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

25 (f) The corporation may hold and own in its name any property
26 acquired by it or conveyed to it by this state, a foreclosing

1 governmental unit, a local unit of government, an intergovernmental
2 entity created under the laws of this state or any other public or
3 private person.

4 (g) All deeds, mortgages, contracts, leases, purchases or
5 other agreements regarding property of the corporation, including
6 agreements to acquire or dispose of real property, shall be
7 approved by the board of directors and executed in the name of the
8 corporation or any single purpose entity created by the board for
9 the transaction.

10 (h) All property held by the corporation or a single purpose
11 entity created by the board for a transaction shall be inventoried
12 and classified by the corporation according to title status and
13 suitability for use.

14 (I) A document including, but not limited to, a deed
15 evidencing the transfer under this article of one or more parcels
16 of property to the corporation by this state or a political
17 subdivision of this state may be recorded within the office of the
18 county clerk of the county in which the property is located without
19 the payment of a fee.

20 **§31-21-12. Preserve property value.**

21 (a) The corporation may, without the approval of a local unit
22 of government in which property held by the corporation is located,
23 control, hold, manage, maintain, operate, repair, lease as lessor,
24 secure, prevent the waste or deterioration of, demolish and take
25 all other actions necessary to preserve the value of the property
26 held or owned directly by the corporation or by a single purpose

1 entity created by the board for that purpose.

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

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

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

11 (3) Take any action, provide any notice or institute any
12 proceeding required to clear or quiet title to property held by the
13 corporation in order to establish ownership by and vest title to
14 property in the corporation or a special purpose entity created by
15 the board; and

16 (4) Remediate environmental contamination on any property held
17 by the corporation.

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

26 (d) The corporation shall be made a party to and shall defend

1 any action or proceeding concerning title claims against property
2 held directly or indirectly by the corporation.

3 **§31-21-13. Contaminated property.**

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

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

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

26 (1) Upon reasonable written notice from the DEP, the

1 corporation shall provide access to the DEP, its employees, its
2 contractors and any other person expressly authorized by the DEP to
3 conduct an investigation and/or response activities at the
4 property. Reasonable written notice may include, but is not
5 limited to, notice by electronic mail or facsimile, in advance of
6 access as the DEP and corporation may agree.

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

11 **§31-21-14. Liberal construction.**

12 This article shall be construed liberally to effectuate the
13 legislative intent and the purposes as complete and independent
14 authorization for the performance of every act and thing authorized
15 by this article. All powers granted shall be broadly interpreted
16 to effectuate the intent and purposes of this article and not as a
17 limitation thereof. The corporation has complete control as if it
18 is a private property owner.

19 **§31-21-15. Exemption from taxation.**

20 The property of the corporation shall be exempt from ad
21 valorem property taxation. The corporation shall be exempt from
22 the taxes imposed by chapter eleven of this code, except that the
23 corporation shall comply with the employer withholding of tax
24 requirements in sections seventy-one through seventy-six, article
25 twenty-one of said chapter eleven. The corporation shall be exempt
26 from sales and use taxes, business and occupation taxes and all

1 other taxes imposed by a county commission, a municipal corporation
2 or other unit of local government, whether now or hereinafter in
3 effect.

4 **§31-21-16. Audits and reports.**

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

12 (b) The corporation shall report biannually to the Joint
13 Committee on Government and Finance of the Legislature on the
14 activities of the corporation. The first report shall be filed on
15 or before the second Wednesday in January, 2016.

16 **§31-21-17. Completed purpose.**

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

25 **§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.

9 **§31-21-19. No waiver of sovereign immunity.**

10 Nothing contained in this article may be determined or
11 construed to waive or abrogate in any way the sovereign immunity of
12 the state or to deprive the nonprofit corporation created pursuant
13 to this article, its board of directors, or any officer or employee
14 thereof of sovereign immunity.

15 **§31-21-20. No obligation of the state.**

16 Obligations of the corporation are not debts or obligations of
17 the DEP or the state.