

1 ENROLLED

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

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

1 stewardship program; providing for underwriting review of land
2 stewardship program applicants; authorizing establishment of
3 state certified sites program; setting forth minimum standards
4 for 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; specifying payments in lieu of tax and
17 tax exemption for leased property; requiring corporation to
18 notify certain county officials upon receipt of an application
19 for a site to participate in the land bank program; requiring
20 audits and biannual reports; providing procedure for
21 dissolution of land stewardship corporation upon completion of
22 purpose and for disposal of properties possessed by the
23 corporation; providing provision for conflict of interest of
24 land stewardship corporation officers, employees and board
25 members; stating preservation of sovereign immunity; and
26 providing that obligations of land stewardship corporation are

1 not obligations of the Department of Environmental Protection
2 or the state.

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

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §31-21-1, §31-21-2,
6 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8, §31-21-
7 9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §31-21-14, §31-21-
8 15, §31-21-16, §31-21-17, §31-21-18, §31-21-19 and §31-21-20, all
9 to read as follows:

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

11 PART I. SHORT TITLE, DECLARATION OF POLICY, PURPOSE
12 OF ARTICLE AND DEFINITIONS.

13 **§31-21-1. Short title.**

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

16 **§31-21-2. Definitions.**

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

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

22 (2) "All appropriate inquiries" or "AAI" means the process of
23 evaluating a property's environmental conditions and assessing the
24 likelihood of any contamination. Every Phase I environmental
25 assessment must be conducted in compliance with the All Appropriate

1 Inquiries Final Rule at 40 CFR Part 312.

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

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

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

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

23 (7) "Corporation" means the West Virginia Land Stewardship
24 Corporation, a nonstock, nonprofit corporation to be established
25 under the West Virginia Nonprofit Corporation Act, article two,
26 chapter thirty-one-e of this code, and with nonprofit status under

1 one or more charitable purposes under 501(c) of the Internal
2 Revenue Code of 1986, as amended.

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

5 (9) "Department of Environmental Protection" or the "DEP"
6 means the West Virginia Department of Environmental Protection or
7 any successor 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 Management Act set forth
25 in article fifteen, chapter twenty-two of this code; the Solid
26 Waste Landfill Closure Assistance Program set forth in article

1 sixteen, chapter twenty-two of this code; the Underground Storage
2 Tank Act set forth in article seventeen, chapter twenty-two of this
3 code; the Hazardous Waste Management Act set forth in article
4 eighteen, chapter twenty-two of this code; section 103(a) of the
5 Comprehensive Environmental Response, Compensation and Liability
6 Act of 1980 (42 U. S. C. §9603(a)); section 304 of the Emergency
7 Planning and Community Right-To-Know Act of 1986 (42 U. S. C.
8 §§11001 to 11050); the Occupational Safety and Health Act set forth
9 in 29 U. S. C. §§651 to 678; the Hazardous and Solid Waste
10 Amendments of 1984, as amended, set forth in 42 U. S. C. §§6901, *et*
11 *seq.*; and the Toxic Substances Control Act set forth in 15 U. S. C.
12 §§2601, *et seq.*; and any applicable regulations promulgated under
13 the foregoing environmental statutes.

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

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

25 (16) "Informational devices" means deed notices or other
26 written documents that describe the remediation that was conducted

1 on an IEC Site, the constituents of concern, and the remediation
2 standards that were achieved. Informational devices shall be filed
3 with property records in the office of the county clerk of the
4 county in which the property is located as an advisory to provide
5 environmental information to future buyers or users of the IEC
6 Site.

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

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

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

21 (20) "Proprietary controls" mean legal property interests
22 created under real property laws that rely on legal documents
23 recorded in the chain of title for the site, and "run with the
24 land" to bind future landowners. Examples of proprietary controls
25 include, but are not limited to, environmental covenants, deed land
26 use restrictions, water withdrawal prohibitions and continuing

1 right-of-entry easements for former owners or regulators to
2 inspect, monitor and maintain the IECs.

3 (21) "Regulated substances" has the same meaning as defined in
4 the environmental acts referenced in subdivision (13) of this
5 section.

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

8 **§31-21-3. Declaration of policy.**

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

12 (b) The Legislature further finds that:

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

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

23 (3) An entity created to address and reduce regulatory and
24 economic uncertainty by being a repository of site history and
25 remediation information about formerly used properties can be a
26 benefit to attracting new employers or encouraging businesses to

1 relocate, remain or expand within the state;

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

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

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

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

23 **§31-21-4. Purpose of article.**

24 The purpose of this article is to provide for the creation of
25 a special purpose nonprofit corporation with a comprehensive
26 mission to:

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

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

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

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

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

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

26 (7) Prescribe the powers and duties of the nonprofit

1 corporation; provide for the creation and appointment of a board to
2 govern the nonprofit corporation and to prescribe its powers and
3 duties; and to extend protections against certain environmental
4 liabilities to the nonprofit corporation in order to protect it
5 from liabilities created by third parties.

6 PART II. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

7 **§31-21-5. Creation of the West Virginia Land Stewardship**
8 **Corporation; powers and limitations.**

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

15 (b) The corporation shall apply for recognition of nonprofit
16 exempt status by the United States Internal Revenue Service under
17 one or more charitable purposes within the meaning of section
18 501(c) of the Internal Revenue Code of 1986, as amended.

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

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

24 (e) Except as otherwise provided in chapter thirty-one-e of
25 this code or in this article, the corporation may do all things
26 necessary or convenient to implement the purposes, objectives and

1 provisions of this article and the purposes, objectives and powers
2 delegated to the board of directors of a nonprofit corporation by
3 other laws or executive orders, including, but not limited to, all
4 of the following:

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

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

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

13 (4) Solicit and accept gifts, grants, labor, loans, services
14 and other aid from any person, or the federal government, this
15 state or a political subdivision of this state or any agency of the
16 federal government or a state institution of higher education or
17 nonprofit affiliates or an intergovernmental entity created under
18 the laws of this state, or participate in any other way in a
19 program of the federal government;

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

22 (6) Invest money of the corporation, at the discretion of the
23 board of directors, in instruments, obligations, securities or
24 property determined proper by the board of directors of the
25 corporation and name and use depositories for its money;

26 (7) Employ legal and technical experts, contractors,

1 consultants, agents or employees, permanent or temporary, paid from
2 the funds of the corporation. The corporation shall determine the
3 qualifications, duties and compensation of those it employs;

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

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

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

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

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

26 (g) The property of the corporation and its income and

1 operations are exempt from all taxation by this state or any of its
2 political subdivisions. 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 board
12 or municipality in lieu of tax pursuant to such agreement shall be
13 distributed as if the payments resulted from ad valorem property
14 taxation.

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

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

19 (j) The exercise by the corporation of powers and duties under
20 this article and its activities under the programs described herein
21 shall be considered a necessary public purpose and for the benefit
22 of the public.

23 (k) The corporation is not liable under the environmental acts
24 or common law equivalents to the state or to any other person by
25 virtue of the fact that the corporation is fulfilling the purposes
26 of this article including, but not limited to, providing land

1 stewardship services or accepting title to property under any
2 program established under this article unless:

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

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

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

18 (m) The corporation shall establish policies and procedures
19 requiring the disclosure of relationships that may give rise to a
20 conflict of interest. The board of directors of the corporation
21 shall require that any member of the board with a direct or
22 indirect interest in any matter before the corporation disclose the
23 member's interest to the governing body before the board takes any
24 action on the matter.

25 (n) The programs that are established under this article and
26 administered by the corporation are voluntary programs. Parties

1 can participate in the land stewardship program, certified sites
2 program and land bank program at their option.

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

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

12 **§31-21-6. Board of directors.**

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

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

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

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

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

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

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

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

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

11 (9) The Secretary of the Department of Commerce or his or her
12 designee;

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

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

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

25 (c) Corporate directors shall serve without compensation, but
26 shall be reimbursed for actual and necessary expenses in accordance

1 with the regulations of the board.

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

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

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

19 PART III. VOLUNTARY LAND STEWARDSHIP PROGRAM.

20 **§31-21-7. Voluntary land stewardship program.**

21 (a) When the voluntary land stewardship program is
22 implemented, remediation parties and site owners of IEC Sites will
23 have the option, for a fee, to participate in this program. The
24 fee shall be established by the corporation for services provided
25 for an enrolled site as that term is defined in section four of
26 this article. The fees once established may be revised from time

1 to time in the discretion of the board.

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

9 (c) The corporation is further authorized to provide at a
10 minimum the following voluntary land stewardship services for
11 enrolled sites:

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

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

26 (3) Monitor and operate any required media treatment systems

1 and/or conduct routine surface water, groundwater and or gas
2 monitoring and prepare any monitoring or inspection reports that
3 may be part of the corporation's responsibilities under site
4 enrollment agreements;

5 (4) Conduct periodic reviews of the county land records to
6 monitor transfers or deed filings to assure that the records are
7 consistent with the required IECs for the enrolled sites, and
8 provide notices to the clerk of the county commission about the
9 results of monitoring or tracking of such records;

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

17 (6) Develop and maintain records and information about
18 enrolled sites for posting on the DEP environmental registry, or
19 any other registry that is used for tracking IECs for IEC Sites in
20 West Virginia and provide for public access to such information;
21 and

22 (7) Coordinate and share data with West Virginia Miss Utility,
23 the "One-Call" System, including verifying the location of ECs on
24 enrolled sites, providing information about remediation, and
25 sharing any health and safety plans or soil management plans that
26 may be associated with an enrolled site in order to assist any

1 planned excavation at the enrolled site.

2 **§31-21-8. Underwriting.**

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

9 PART IV. STATE CERTIFIED SITES PROGRAM.

10 **§31-21-9. State certified sites program.**

11 (a) This article hereby authorizes the establishment of a
12 statewide certified sites program. The program shall consist of
13 the development and preparation of certain site specific decision
14 ready documentation or reports that will enable the expedited
15 property transaction for sites that participate in the certified
16 sites program.

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

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

25 (2) Improving the state's competitive edge by giving more
26 certainty in time, steps and costs to businesses expanding or

1 locating within the state;

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

5 (4) Developing a central source of certified sites and
6 assisting local governments in identifying potential redevelopment
7 properties; and

8 (5) Demonstrating that the state is committed to promoting and
9 expediting economic development projects for the benefit of its
10 citizenry.

11 (c) The corporation shall issue a site certification if it
12 determines that the decision ready document has been prepared and
13 completed in accordance with the requirements set forth by the
14 corporation. The corporation may require some or all of the
15 following information set forth in section ten of this article
16 based on the site specific circumstances of the property to be
17 certified.

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

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

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

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

- 1 (2) Site ownership/control:
 - 2 (A) Preliminary fifty-year title report and description of
 - 3 liens and encumbrances, unless the corporation determines a shorter
 - 4 period is adequate, or a longer period is necessary, to protect the
 - 5 corporation and a subsequent purchaser of the site;
 - 6 (B) Letter from the property owner/option holder stating that
 - 7 the site is for sale/lease. If possible, proposed pricing or
 - 8 transactional requirements with a description of any on-site
 - 9 improvements, the current level of investment, and whether the
 - 10 property can be parceled;
 - 11 (C) Acreage; and
 - 12 (D) Full legal property description.
- 13 (3) Maps:
 - 14 (A) ALTA map;
 - 15 (B) Site map showing lot layout, transportation access, roads
 - 16 and likely access points;
 - 17 (C) USGS topographical map; and
 - 18 (D) Aerial map.
- 19 (4) Phase I environmental site assessment performed by a
- 20 certified professional within the prior six months, and, if
- 21 appropriate, any additional environmental site assessments
- 22 performed by a certified professional within the prior six months.
- 23 For any properties being remediated, documentation shall be
- 24 provided about the status and cleanup objectives. For remediated
- 25 sites, documentation shall be provided about liability protection.
- 26 (5) Wetland delineation demonstrating that impacts to waters

1 of the state will be avoided or a mitigation plan approved by the
2 DEP.

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

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

9 (8) Electric infrastructure to the property line with its
10 capacity clearly identified.

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

13 (10) Water infrastructure to the property line with its
14 capacity clearly identified.

15 (11) Sewer infrastructure to the property line with its
16 capacity clearly identified.

17 (12) Telecommunications and/or high speed communications
18 infrastructure to the property line with its capacity clearly
19 identified.

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

24 PART V. LAND BANK PROGRAM.

25 **§31-21-11. Land bank program.**

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

1 voluntary state land bank program. Under this program, the
2 corporation is authorized to acquire properties, hold title and
3 prepare them for future use. Prior to acquiring any properties,
4 the corporation shall conduct all appropriate inquiries to
5 determine the environmental conditions or issues associated with a
6 particular property. The corporation shall not acquire title to
7 any property unless all pending liens have been satisfied and
8 released. Liabilities, including, but not limited to,
9 environmental liabilities, shall not pass to the corporation by its
10 acquisition of title. Participation in the land bank program under
11 this article shall not relieve an entity of any of its liabilities.

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

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

25 (d) Real property acquired by the corporation may be by
26 purchase and sale agreement, lease purchase agreement, installment

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

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

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

12 (3) To conduct environmental remediation and monitoring
13 activities.

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

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

22 (g) All deeds, mortgages, contracts, leases, purchases or
23 other agreements regarding property of the corporation, including
24 agreements to acquire or dispose of real property, shall be
25 approved by the board of directors and executed in the name of the
26 corporation or any single purpose entity created by the board for

1 the transaction.

2 (h) All property held by the corporation or a single purpose
3 entity created by the board for a transaction shall be inventoried
4 and classified by the corporation 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 within the office of the
10 county clerk of the county in which the property is located without
11 the payment of a fee.

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

15 **§31-21-12. Preserve property value.**

16 (a) The corporation may, without the approval of a local unit
17 of government in which property held by the corporation is located,
18 control, hold, manage, maintain, operate, repair, lease as lessor,
19 secure, prevent the waste or deterioration of, demolish and take
20 all other actions necessary to preserve the value of the property
21 held or owned directly by the corporation or by a single purpose
22 entity created by the board for that purpose.

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

26 (1) Grant or acquire a license, easement, or option with

1 respect to property as the corporation determines is reasonably
2 necessary to achieve the purposes of this article;

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

6 (3) Take any action, provide any notice or institute any
7 proceeding required to clear or quiet title to property held by the
8 corporation in order to establish ownership by and vest title to
9 property in the corporation or a special purpose entity created by
10 the board; and

11 (4) Remediate environmental contamination on any property held
12 by the corporation.

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

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

24 **§31-21-13. Contaminated property.**

25 (a) If the DEP determines that conditions on a property
26 transferred to the corporation under this article present an

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

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

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

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

1 access as the DEP and corporation may agree.

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

6 **§31-21-14. Liberal construction.**

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

14 **§31-21-15. Exemption from taxation.**

15 The property of the corporation shall be exempt from ad
16 valorem property taxation. Property owned and leased by the
17 corporation as lessor to a commercial lessee or an industrial
18 lessee is hereby declared to be tax exempt and held by the
19 corporation for a public purpose. A payment in lieu of taxes,
20 payable by the lessee, shall be established for any property so
21 leased, in an amount not less than the property tax otherwise
22 payable on the property. The lessee's leasehold interest therein
23 is hereby declared to be a tax exempt leasehold interest held for
24 a public purpose so long as the payment in lieu of taxes is timely
25 paid. Payments made to any county commission, county school board
26 or municipality in lieu of tax pursuant to such agreement shall be

1 distributed as if the payments resulted from ad valorem property
2 taxation. The corporation shall be exempt from the taxes imposed
3 by chapter eleven of this code, except that the corporation shall
4 comply with the employer withholding of tax requirements in
5 sections seventy-one through seventy-six, article twenty-one of
6 said chapter eleven. The corporation shall be exempt from sales
7 and use taxes, business and occupation taxes and all other taxes
8 imposed by a county commission, a municipal corporation or other
9 unit of local government, whether now or hereinafter in effect.

10 **§31-21-16. Audits and reports.**

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

18 (b) The corporation shall report biannually to the Joint
19 Committee on Government and Finance of the Legislature on the
20 activities of the corporation. The first report shall be filed on
21 or before the second Wednesday in January, 2016.

22 **§31-21-17. Completed purpose.**

23 If the corporation has completed the purposes for which the
24 corporation was organized, the board of directors, by vote of at
25 least a majority of a quorum of the directors and with the written
26 consent of the Governor, may provide for the dissolution of the

1 corporation and may provide for the transfer of any property held
2 by the corporation as required by agreement or, if there are no
3 related agreements, then to the DEP or another state agency or to
4 another nonprofit corporation as directed by the DEP.

5 **§31-21-18. Conflicts of interest.**

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

14 **§31-21-19. No waiver of sovereign immunity.**

15 Nothing contained in this article may be determined or
16 construed to waive or abrogate in any way the sovereign immunity of
17 the state or to deprive the nonprofit corporation created pursuant
18 to this article, its board of directors, or any officer or employee
19 thereof of sovereign immunity.

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

21 Obligations of the corporation are not debts or obligations of
22 the DEP or the state.