

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2590**

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

7 (Originating in the House Committee on the Judiciary)

8 [March 21, 2013]
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §31-21-1, §31-21-2,
12 §31-21-3, §31-21-4, §31-21-5, §31-21-6, §31-21-7, §31-21-8,
13 §31-21-9, §31-21-10, §31-21-11, §31-21-12, §31-21-13, §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; providing eligibility for properties
23 to participate; stating certain tax requirements; setting
24 forth powers and limitations of West Virginia Land Stewardship
25 Corporation; providing for board of directors and composition
26 of same; providing for creation of voluntary land stewardship
27 program; providing for underwriting review of land stewardship

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

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

25 That the Code of West Virginia, 1931, as amended, be amended
26 by adding thereto a new article, designated §31-21-1, §31-21-2,

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

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

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

8 **§31-21-1. Short title.**

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

11 **§31-21-2. Definitions.**

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

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

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

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

25 (4) "Certified sites" means those sites that are developable

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

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

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

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

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

26 (9) "Department of Environmental Protection" or the "DEP"

1 means the West Virginia Department of Environmental Protection or
2 any successor agency.

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

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

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

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

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

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

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

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

1 Site.

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

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

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

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

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

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

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

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

7 (b) The Legislature further finds that:

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

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

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

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

1 protective of human health and the environment;

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

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

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

18 **§31-21-4. Purpose of article.**

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

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

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

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

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

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

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

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

1 PART 2. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

2 §31-21-5. Creation of the West Virginia Land Stewardship
3 Corporation; powers and limitations.

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

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

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

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

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

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

26 (2) Establish the service offerings and related fees for such

1 services under each of the voluntary programs described herein;

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

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

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

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

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

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

1 managers, legal counsel, engineers, accountants and auditors for
2 rendering professional environmental, legal and financial
3 assistance and advice payable from funds of the corporation;

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

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

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

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

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

22 (h) The corporation may not issue tax-exempt financing or
23 issue bonds.

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

26 (j) The exercise by the corporation of powers and duties under

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

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

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

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

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

25 (m) The corporation shall establish policies and procedures
26 requiring the disclosure of relationships that may give rise to a

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

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

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

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

19 **§31-21-6. Board of directors.**

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

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

25 (2) The West Virginia Chamber of Commerce shall nominate three
26 residents of this state for the Governor's consideration, one of

1 whom the Governor shall appoint;

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

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

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

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

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

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

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

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

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

24 (b) The members appointed by the Governor shall serve terms of
25 four years: *Provided*, That for the initial appointments the
26 Governor shall designate three to serve for four years each, two to

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

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

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

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

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

26 PART 3. VOLUNTARY LAND STEWARDSHIP PROGRAM.

1 **§31-21-7. Voluntary land stewardship program.**

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

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

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

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

26 (2) Conduct physical inspections of the enrolled sites,

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

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

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

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

24 (6) Develop and maintain records and information about
25 enrolled sites for posting on the DEP environmental registry, or
26 any other registry that is used for tracking IECs for IEC Sites in

1 West Virginia and provide for public access to such information;

2 and

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

9 **§31-21-8. Underwriting.**

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

16 **PART 4. STATE CERTIFIED SITES PROGRAM.**

17 **§31-21-9. State certified sites program.**

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

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

26 (1) Establishing an inventory of identified sites that are

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

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

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

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

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

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

25 (d) The issuance of a site certification shall be based on the
26 review and approval of the information submitted to the corporation

1 in an application for the site certification.

2 **§31-21-10. Minimum standards for certified sites.**

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

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

8 (2) Site ownership/control:

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

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

18 (C) Acreage; and

19 (D) Full legal property description.

20 (3) Maps:

21 (A) ALTA map;

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

24 (C) USGS topographical map; and

25 (D) Aerial map.

26 (4) Phase I environmental site assessment performed by a

1 certified professional within the prior six months, and, if
2 appropriate, any additional environmental site assessments
3 performed by a certified professional within the prior six months.

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

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

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

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

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

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

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

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

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

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

5 PART 5. LAND BANK PROGRAM.

6 **§31-21-11. Land bank program.**

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

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

24 (c) The corporation may acquire by gift, devise, transfer,
25 exchange, foreclosure, purchase or otherwise on terms and
26 conditions and in a manner the corporation considers proper, real

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

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

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

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

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

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

24 (f) The corporation may hold and own in its name any property
25 acquired by it or conveyed to it by this state, a foreclosing
26 governmental unit, a local unit of government, an intergovernmental

1 entity created under the laws of this state or any other public or
2 private person.

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

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

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

19 **§31-21-12. Preserve property value.**

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

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

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

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

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

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

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

25 (d) The corporation shall be made a party to and shall defend
26 any action or proceeding concerning title claims against property

1 held directly or indirectly by the corporation.

2 **§31-21-13. Contaminated property.**

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

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

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

25 (1) Upon reasonable written notice from the DEP, the
26 corporation shall provide access to the DEP, its employees, its

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

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

10 **§31-21-14. Liberal construction.**

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

18 **§31-21-15. Exemption from taxation.**

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

1 or other unit of local government, whether now or hereinafter in
2 effect.

3 **§31-21-16. Audits and reports.**

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

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

15 **§31-21-17. Completed purpose.**

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

24 **§31-21-18. Conflicts of interest.**

25 Notwithstanding any other provision of this article to the

1 contrary, officers and employees of the corporation and its board
2 of directors may hold appointments to offices of any other
3 corporations or businesses and be corporate directors or officers
4 or employees of other entities but are prohibited to be a party or
5 otherwise participate in the transfer of real property and funds
6 from the corporation to the corporations or businesses for which
7 they serve.

8 **§31-21-19. No waiver of sovereign immunity.**

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

14 **§31-21-20. No obligation of the state.**

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