

**FILED**

**2003 MAR 27 P 4: 08**

**OFFICE WEST VIRGINIA  
SECRETARY OF STATE**

# **WEST VIRGINIA LEGISLATURE**

**FIRST REGULAR SESSION, 2003**



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

## **House Bill No. 2512**

**(By Delegates R. Thompson and Perdue)**



**Passed March 7, 2003**

**In Effect Ninety Days from Passage**

**FILED**

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**E N R O L L E D**

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FOR

**H. B. 2512**

(BY DELEGATES R. THOMPSON AND PERDUE)

[Passed March 7, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, five and six, article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishing a special public land corporation; requirements for leasing minerals; consultation the office of the attorney general; contracting for consulting services; and accounting for revenues.

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

That sections three, five and six, article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.**

**§20-1A-3. Public land corporation, powers and duties.**

1 (a) The corporation is hereby authorized and empowered to:

2 (1) Acquire from any persons or the state auditor or any  
3 local, state or federal agency, by purchase, lease or other  
4 agreement, any lands necessary and required for public use;

5 (2) Acquire by purchase, condemnation, lease or agreement,  
6 receive by gifts and devises, or exchange, rights-of-way,  
7 easements, waters and minerals suitable for public use;

8 (3) Sell or exchange public lands where it is determined  
9 that the sale or exchange of such tract meets any or all of the  
10 following disposal criteria:

11 (A) The tract was acquired for a specific purpose and the  
12 tract is no longer required for that or any other state purpose;

13 (B) Disposal of the tract serves important public objectives  
14 including, but not limited to, expansion of communities and  
15 economic development which cannot be achieved on lands  
16 other than public lands and which clearly outweigh other public  
17 objectives and values including, but not limited to, recreation  
18 and scenic values which would be served by maintaining the  
19 tract in state ownership; or

20 (C) The tract, because of its location or other characteris-  
21 tics, is difficult and uneconomic to manage as part of the public  
22 lands and is not suitable for management by another state  
23 department or agency.

24 (4) Sell, purchase or exchange lands or stumpage for the  
25 purpose of consolidating lands under state or federal govern-  
26 ment administration subject to the disposal criteria specified in  
27 subdivision three of this section;

28 (5) Negotiate and effect loans or grants from the govern-  
29 ment of the United States or any agency thereof for acquisition

30 and development of lands as may be authorized by law to be  
31 acquired for public use;

32 (6) Expend the income from the use and development of  
33 public lands for the following purposes:

34 (A) Liquidate obligations incurred in the acquisition,  
35 development and administration of lands, until all obligations  
36 have been fully discharged;

37 (B) Purchase, develop, restore and preserve for public use,  
38 sites, structures, objects and documents of prehistoric, histori-  
39 cal, archaeological, recreational, architectural and cultural  
40 significance to the state of West Virginia; and

41 (C) Obtain grants or matching moneys available from the  
42 government of the United States or any of its instrumentalities  
43 for prehistoric, historic, archaeological, recreational, architec-  
44 tural and cultural purposes.

45 (7) Designate lands, to which it has title, for development  
46 and administration for the public use including recreation,  
47 wildlife stock grazing, agricultural rehabilitation and  
48 homesteading or other conservation activities;

49 (8) Enter into leases as a lessor for the development and  
50 extraction of minerals, including coal, oil, gas, sand or gravel,  
51 except as otherwise circumscribed herein: *Provided*, That leases  
52 for the development and extraction of minerals shall be made  
53 in accordance with the provisions of sections five and six of this  
54 article. The corporation shall reserve title and ownership to the  
55 mineral rights in all cases.

56 (9) Convey, assign, or allot lands to the title or custody of  
57 proper departments or other agencies of state government for  
58 administration and control within the functions of departments  
59 or other agencies as provided by law;

60       (10) Make proper lands available for the purpose of  
61 cooperating with the government of the United States in the  
62 relief of unemployment and hardship or for any other public  
63 purpose.

64       (b) There is hereby created in the state treasury a special  
65 public land corporation fund into which shall be paid all  
66 proceeds from public land sales and exchanges and rents,  
67 royalties and other payments from mineral leases. The corpora-  
68 tion may acquire public lands from use of the payments made  
69 to the fund, along with any interest accruing to the fund. The  
70 corporation shall report annually, just prior to the beginning of  
71 the regular session of the Legislature, to the finance committees  
72 of the Legislature on the financial condition of the special fund.  
73 The corporation shall report annually to the Legislature on its  
74 public land holdings and all its leases, its financial condition  
75 and its operations and shall make such recommendations to the  
76 Legislature concerning the acquisition, leasing, development,  
77 disposition and use of public lands.

78       (c) All state agencies, institutions, divisions and depart-  
79 ments shall make an inventory of the public lands of the state  
80 as may be by law specifically allocated to and used by each and  
81 provide to the corporation a list of such public lands and  
82 minerals, including their current use, intended use or best use  
83 to which lands and minerals may be put: *Provided*, That the  
84 division of highways need not provide the inventory of public  
85 lands allocated to and used by it. The inventory shall identify  
86 those parcels of land which have no present or foreseeable  
87 useful purpose to the state of West Virginia. The inventory shall  
88 be submitted annually to the corporation by the first day of  
89 August. The corporation shall compile the inventory of all  
90 public lands and minerals and report annually to the Legislature  
91 by no later than the first day of January, on its public lands and  
92 minerals and the lands and minerals of the other agencies,  
93 institutions, divisions or departments of this state which are

94 required to report their holdings to the corporation as set forth  
95 in this subsection, and its financial condition and its operations.

**§20-1A-5. Public land corporation to hold public hearing before  
sale, lease, exchange or transfer of land or minerals.**

1 (a) Prior to any final decision of any state agency to sell,  
2 lease as a lessor, exchange or transfer land or minerals title to  
3 which is vested in the public land corporation pursuant to  
4 section one of this article, the public land corporation shall:

5 (1) Prepare and reduce to writing the reasons and support-  
6 ing data regarding the sale, lease, exchange or transfer of land  
7 or minerals. The written reasons required under this section  
8 shall be available for public inspection at the office of the  
9 county clerk at the county courthouse of each county in which  
10 the affected lands or minerals are located during the two  
11 successive weeks before the date of the public hearing required  
12 by this section;

13 (2) Provide for a public hearing to be held at a reasonable  
14 time and place within each county in which the affected lands  
15 or minerals are located to allow interested members of the  
16 public to attend the hearing without undue hardship. Members  
17 of the public may be present, submit statements and testimony  
18 and question the corporation's representative appointed  
19 pursuant to this section;

20 (3) Not less than thirty days prior to the public hearing,  
21 provide notice to all members of the Legislature, to the head of  
22 the governing body of any political subdivision having zoning  
23 or other land use regulatory responsibility in the geographic  
24 area within which the public lands or minerals are located and  
25 to the head of any political subdivision having administrative or  
26 public services responsibility in the geographic area within  
27 which the lands or minerals are located;

28       (4) Cause to be published a notice of the required public  
29 hearing. The notice shall be published as a Class II legal  
30 advertisement in compliance with the provisions of article  
31 three, chapter fifty-nine of this code and the publication area  
32 shall be each county in which the affected lands or minerals are  
33 located. The public hearing shall be held no earlier than the  
34 fourteenth successive day and no later than the twenty-first  
35 successive day following the first publication of the notice. The  
36 notice shall contain the time and place of the public hearing  
37 along with a brief description of the affected lands or minerals;

38       (5) Cause a copy of the required notice to be posted in a  
39 conspicuous place at the affected land for members of the  
40 public to observe. The notice shall remain posted for two  
41 successive weeks prior to the date of the public hearing;

42       (6) Appoint a representative of the corporation who shall  
43 conduct the required public hearing. The corporation's repre-  
44 sentative shall have full knowledge of all the facts and circum-  
45 stances surrounding the proposed sale, lease, exchange or  
46 transfer. The representative of the corporation conducting the  
47 public hearing shall make the results of the hearing available to  
48 the corporation for its consideration prior to the board making  
49 final decisions regarding the affected lands or minerals. The  
50 representative of the corporation shall make a report of the  
51 public hearing available for inspection by the public or, upon  
52 written request of any interested person, provide a written copy  
53 thereof and to all individuals previously receiving written  
54 notice of the hearing within thirty days following the public  
55 hearing; and

56       (7) If the evidence at the public hearing establishes by a  
57 preponderance that the appraisal provided for in subsection (c),  
58 section four of this article does not reflect the true, fair market  
59 value, the public land corporation shall cause another appraisal  
60 to be made.

61 (8) If the evidence at the public hearing establishes by a  
62 preponderance that the sale or exchange of land does not meet  
63 the criteria set forth in subdivision three, subsection (a), section  
64 three of this article, the public land corporation may not  
65 proceed with the sale or exchange of said land without judicial  
66 approval.

67 (b) The corporation may not sell, lease as lessor, exchange  
68 or transfer lands or minerals before the thirtieth successive day  
69 following the public hearing required by this section, but in no  
70 event may the sale, lease, exchange or transfer of lands or  
71 minerals be made prior to fifteen days after the report of the  
72 public hearings are made available to the public in general.

73 (c) If the corporation authorizes the staff to proceed with  
74 consideration of the lease or sale under the terms of this article,  
75 all requirements of this section shall be completed within one  
76 year of date of the authorization by the corporation.

**§20-1A-6. Competitive bidding and notice requirements before  
the development or extraction of minerals on  
certain lands; related standards.**

1 (a) The corporation may enter into a lease or contract for  
2 the development of minerals, including, but not limited to, coal,  
3 gas, oil, sand or gravel on or under lands in which the corpora-  
4 tion holds any right, title or interest: *Provided*, That no lease or  
5 contract may be entered into for the extraction and removal of  
6 minerals by surface mining or auger mining of coal.

7 (b) With the exception of deep mining operations which are  
8 already in progress and permitted as of the fifth day of July, one  
9 thousand nine hundred eighty-nine, the extraction of coal by  
10 deep mining methods under state forests or wildlife refuges  
11 may be permitted only if the lease or contract provides that no  
12 entries, portals, air shafts or other incursions upon and into the  
13 land incident to the mining operations may be placed or

14 constructed upon the lands or within three thousand feet of its  
15 boundary.

16 (c) Any lease or contract entered into by the corporation for  
17 the development of minerals shall reserve to the state all rights  
18 to subjacent surface support with which the state is seized or  
19 possessed at the time of such lease or contract.

20 (d) Notwithstanding any other provisions of the code to the  
21 contrary, nothing herein may be construed to permit extraction  
22 of minerals by any method from, on or under any state park or  
23 state recreation area, nor the extraction of minerals by strip or  
24 auger mining upon any state forest or wildlife refuge.

25 (e) The corporation may enter into a lease or contract for  
26 the development of minerals where the lease or contract is not  
27 prohibited by any other provisions of this code, only after  
28 receiving sealed bids therefor, after notice by publication as a  
29 Class II legal advertisement in compliance with the provisions  
30 of article three, chapter fifty-nine of this code. The area for  
31 publication shall be each county in which the minerals are  
32 located.

33 (f) The minerals so advertised may be leased or contracted  
34 for development at not less than the fair market value, as  
35 determined by an appraisal made by an independent person or  
36 firm chosen by the corporation, to the highest responsible  
37 bidder, who shall give bond for the proper performance of the  
38 contract or lease as the corporation designates: *Provided*, That  
39 the corporation may reject any and all bids and to readvertise  
40 for bids.

41 (g) If the provisions of this section have been complied  
42 with, and no bid equal to or in excess of the fair market value  
43 is received, the corporation may, at any time during a period of  
44 six months after the opening of the bids, lease or contract for

45 the development of the minerals, but the lease or contract price  
46 may not be less than the fair market value.

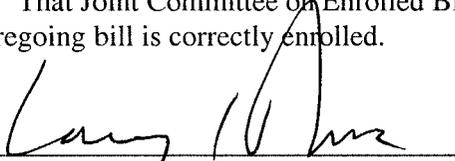
47 (h) Any lease or contract for the development of minerals  
48 entered into after the effective date of this section shall be made  
49 in accordance with the provisions of this section and section  
50 five of this article.

51 (i) The corporation will consult with the office of the  
52 attorney general to assist the corporation in carrying out the  
53 provisions of this section.

54 (j) The corporation shall consult with an independent  
55 mineral consultant and any other competent third parties with  
56 experience and expertise in the leasing of minerals, to assist the  
57 corporation in carrying out the provisions of this section,  
58 including determining fair market value and negotiating terms  
59 and conditions of mineral leases.

60 (k) Once the lessee commences the production of minerals  
61 and royalties become due and are paid to the public land  
62 corporation, the public land corporation shall hire an independ-  
63 ent auditing firm to periodically review the lessee's books and  
64 accounts for compliance of payment of appropriate royalties  
65 due the public land corporation for its minerals as produced  
66 under the lease agreement.

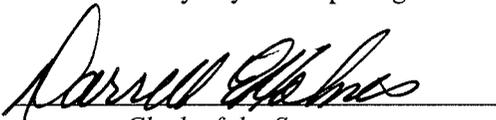
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

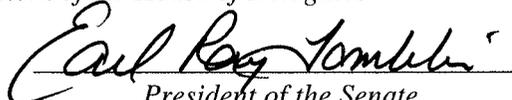
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage

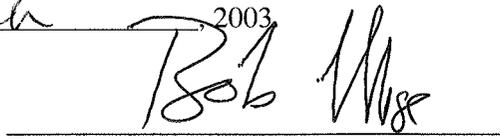
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of March, 2003

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/03

Time 9:35am