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SB 582
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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 582

(By SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
By REQUEST OF THE EXECUTIVE)

[Passed March 10, 2007; to take effect July 1, 2007.]

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(BY SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
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AN ACT to repeal §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended; to repeal §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; to amend said code by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; to amend and reenact §5F-2-1 and §5F-2-2 of said code; and to amend and reenact §20-1-7 of said code, all relating to the creation of the Real Estate Division in the Department

of Administration; providing the Real Estate Division approval of leases; exempting the acquisition and management of public lands and streams by the Division of Natural Resources; creating the position of Executive Director of the Real Estate Division; granting the division authority; requiring inspection of leased or rental property; requiring agencies to maintain and submit real estate inventory records to the Real Estate Division; requiring review of real property inventory; granting rule-making authority; transferring the Public Land Corporation to the Real Estate Division; continuing the Public Land Corporation's board of directors; continuing the Public Land Corporation powers and duties related to the acquisition, leasing, development, disposition and use of public lands; requiring sales of public land to be conducted by competitive bidding and exceptions; requiring public hearing before the sale, lease, exchange or transfer of land or minerals; requiring competitive bidding and notice before the development or extraction of minerals and related standards; and providing for the transfer and transition of the Public Land Corporation to the Real Estate Division.

Be it enacted by the Legislature of West Virginia:

That §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended, be repealed; that §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code be repealed; that said code be amended by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; that said code be amended by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; and that §20-1-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-1. Division created; purpose; director.

1 (a) There is hereby created the Real Estate Division
2 within the Department of Administration for the
3 purpose of establishing a centralized office to provide
4 leasing, appraisal and other real estate services to the
5 Secretary of the Department of Administration.

6 (b) The division shall be under the supervision and
7 control of an executive director, who shall be appointed
8 by the Governor, by and with the advice and consent of
9 the Senate.

10 (c) Candidates for the position of executive director
11 shall:

12 (1) Have at least a bachelor of arts or science degree
13 from an accredited four-year college or university; and

14 (2) (A) Be a licensed real estate broker, pursuant to the
15 provisions of article forty, chapter thirty of this code; or

16 (B) Be a licensed or certified real estate appraiser
17 pursuant to the provisions of article thirty-eight,
18 chapter thirty of this code; or

19 (3) (A) Be considered based on their demonstrated
20 education, knowledge and a minimum of ten years'
21 experience in the areas of commercial real estate
22 leasing, commercial real estate appraisal; or

23 (B) Any relevant experience of a minimum of ten years
24 which demonstrates an ability to effectively accomplish
25 the purposes of this article.

26 (d) The Real Estate Division is authorized to employ
27 such employees, including, but not limited to, real estate
28 appraisers licensed in accordance with the provisions of
29 article thirty-eight, chapter thirty of this code, as may
30 be necessary to discharge the duties of the division.

**§5A-10-2. Leases for space to be made in accordance with
article; exceptions.**

1 (a) Notwithstanding any other provision of this code,
2 no department, agency or institution of state
3 government may lease, or offer to lease, as lessee, any
4 grounds, buildings, office or other space except in
5 accordance with the provisions of this article and article
6 three of this chapter.

7 (b) The provisions of the article, except as to office
8 space, do not apply to the Division of Highways of the
9 Department of Transportation.

10 (c) The provisions of this article do not apply to:

11 (1) Public lands, rivers and streams acquired,
12 managed or which title is vested in or transferred to the
13 Division of Natural Resources of the Department of
14 Commerce, pursuant to section seven, article one,
15 chapter twenty of this code and section two, article five
16 of said chapter;

17 (2) The Higher Education Policy Commission;

18 (3) The West Virginia Council for Community and
19 Technical College Education;

20 (4) The institutional boards of governors in
21 accordance with the provisions of subsection (v), section
22 four, article five, chapter eighteen-b of this code;

23 (5) The real property held by the Department of
24 Agriculture, including all institutional farms,
25 easements, mineral rights, appurtenances, farm
26 equipment, agricultural products, inventories, farm
27 facilities and operating revenue funds for those
28 operations;

29 (6) The real property held by the West Virginia State
30 Conservation Committee, including all easements,
31 mineral rights, appurtenances and operating revenue
32 funds for those operations.

§5A-10-3. Powers and duties of Real Estate Division.

1 The Real Estate Division has the following powers and
2 duties:

3 (1) To provide leasing, appraisal and other real estate
4 services to state spending units;

5 (2) To ensure that the purchase of real estate and all
6 contracts for lease are based on established real estate
7 standards and fair market price;

8 (3) To develop and implement minimum lease space
9 standards for the lease of any grounds, buildings, office
10 or other space required by any spending unit of state
11 government;

12 (4) To develop and implement minimum standards for
13 the selection and acquisition, by contract or lease, of all
14 grounds, buildings, office space or other space by a
15 spending unit of state government except as otherwise
16 provided in this article;

17 (5) To establish and maintain a comprehensive
18 database of all state real estate contracts and leases;

19 (6) To develop policies and procedures for statewide
20 real property management;

21 (7) To maintain a statewide real property management
22 system that has consolidated real property, building and
23 lease information for all departments, agencies and
24 institutions of state government;

25 (8) To develop and maintain a centralized repository
26 of comprehensive space needs for all state departments,
27 agencies and institutions of state government, including
28 up-to-date space and resource utilization, anticipated
29 needs and recommended options;

30 (9) To provide statewide policy leadership and
31 coordinate master planning to guide and organize
32 capital asset management; and

33 (10) To provide assistance to all state departments,

34 agencies or institutions in acquiring, leasing and
35 disposing of real property.

§5A-10-4. Leasing of space by executive director; delegation of authority.

1 The executive director is authorized to lease, in the
2 name of the state, any grounds, buildings, office or other
3 space required by any department, agency or institution
4 of state government: *Provided*, That the executive
5 director may expressly delegate, in writing, the
6 authority granted to him or her by this article to the
7 appropriate department, agency or institution of state
8 government when the rental and other costs to the state
9 do not exceed the sum specified by regulation in any one
10 fiscal year or when necessary to meet bona fide
11 emergencies arising from unforeseen causes.

§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

1 (a) The executive director has sole authority to select
2 and to acquire by contract or lease, in the name of the
3 state, all grounds, buildings, office space or other space,
4 the rental of which is necessarily required by any
5 spending unit, upon a certificate from the chief
6 executive officer or his designee of said spending unit
7 that the grounds, buildings, office space or other space
8 requested is necessarily required for the proper function
9 of said spending unit, that the spending unit will be
10 responsible for all rent and other necessary payments in
11 connection with the contract or lease and that
12 satisfactory grounds, buildings, office space or other
13 space is not available on grounds and in buildings now
14 owned or leased by the state.

15 (b) The executive director shall, before executing any
16 rental contract or lease, determine the fair rental value
17 for the rental of the requested grounds, buildings, office
18 space or other space, in the condition in which they
19 exist and shall contract for or lease said premises at a
20 price not to exceed the fair rental value thereof.

21 (c) The executive director may enter into long-term
22 agreements for buildings, land and space for periods
23 longer than one fiscal year: *Provided*, That such long-
24 term lease agreements are not for periods in excess of
25 forty years, except that the secretary may, in the case of
26 the Adjutant General's department, enter into lease
27 agreements for a term of fifty years or a specific term of
28 more than fifty years so as to comply with federal
29 regulatory requirements and shall contain, in substance,
30 all the following provisions:

31 (1) That the Department of Administration, as lessee,
32 has the right to cancel the lease without further
33 obligation on the part of the lessee upon giving thirty
34 days' written notice to the lessor, such notice being
35 given at least thirty days prior to the last day of the
36 succeeding month;

37 (2) That the lease shall be considered canceled without
38 further obligation on the part of the lessee if the state
39 Legislature or the federal government should fail to
40 appropriate sufficient funds therefor or should
41 otherwise act to impair the lease or cause it to be
42 canceled; and

43 (3) That the lease shall be considered renewed for each
44 ensuing fiscal year during the term of the lease unless it
45 is canceled by the Department of Administration before
46 the end of the then current fiscal year.

**§5A-10-6. Long-term leases of public lands for wireless
communication towers.**

1 (a) Notwithstanding any provision of law to the
2 contrary, the executive director has sole authority to
3 negotiate and enter into long-term lease agreements for
4 lease of public lands to be used for placement of
5 wireless communication towers: *Provided*, That such
6 long-term lease agreements may not be for periods in
7 excess of thirty years: *Provided, however*, That for the
8 governmental units named in subsection (d) of this
9 section, any lease proposed by the executive director
10 may only be entered into upon approval in writing of

11 the ranking administrator of the respective
12 governmental unit described in said subsection.

13 (b) All revenues derived from leases established upon
14 the enactment of this section shall be deposited into the
15 General Revenue Fund except as provided in
16 subsections (c) and (d) of this section.

17 (c) Revenues from leases initiated prior to the
18 enactment of this section or subsequently renewed shall
19 continue to be treated as they were prior to the
20 enactment of this section.

21 (d) Revenues derived from the lease of property under
22 the control of the Department of Transportation shall be
23 deposited into the State Road Fund. Revenues derived
24 from the lease of property under the control of the
25 Division of Natural Resources shall be retained by the
26 Division of Natural Resources and deposited into the
27 appropriate fund. Revenues derived from the lease of
28 property under the control of the Department of
29 Agriculture shall be deposited into the Agriculture Fees
30 Fund. Revenues derived from the lease of property
31 under the control of the Division of Forestry shall be
32 deposited into the Division of Forestry Fund. Revenues
33 derived from the lease of property under the control of
34 institutions of higher education shall be deposited into
35 the institution's education and general capital fees fund.
36 Revenues derived from the lease of property under the
37 control of Higher Education Policy Commission shall be
38 deposited into the commission's State Gifts Grants and
39 Contracts Fund. Revenues derived from the lease of
40 property under the control of the West Virginia Council
41 for Community and Technical College Education shall
42 be deposited into the council's Tuition and Required
43 Educational and General Fees Fund.

44 (e) Any long-term lease agreement entered into
45 pursuant to this section shall contain provisions
46 allowing for the nonexclusive use of the public lands
47 and allowance for use of the same public space for
48 additional towers by competing persons or corporations.

49 (f) The executive director is further authorized to
50 enter into long-term lease agreements for additional
51 wireless communication towers by other persons or
52 corporations upon the same public lands in which there
53 already exists a lease and tower provided for under this
54 section.

55 (g) Any long-term lease agreement entered into
56 pursuant to this section shall be recorded in the office of
57 the county clerk where public land which is the subject
58 of the lease agreement is located.

**§5A-10-7. Leases and other instruments for space signed by
executive director; approval as to form; filing.**

1 Leases and other instruments for grounds, buildings,
2 office or other space shall be signed by the Executive
3 Director of the Real Estate Division in the name of the
4 state. They shall be approved as to form by the
5 Attorney General. A lease or other instrument for
6 grounds, buildings, office or other space that contains a
7 term, including any options, of more than six months for
8 its fulfillment shall be filed with the State Auditor.

**§5A-10-8. Inspection of leased property; requiring approval of
executive director for permanent changes.**

1 (a) The executive director of the real estate division
2 shall inspect as necessary any property which may be
3 under a lease or rental agreement in order to determine
4 whether the property is being kept, preserved, cared for,
5 repaired, maintained, used and operated in accordance
6 with the terms and conditions of the lease or rental
7 agreement. The executive director is authorized to take
8 such action necessary to correct any violation of the
9 terms and conditions of the lease or rental agreement.

10 (b) A spending unit which is granted any grounds,
11 buildings, office space or other space leased in
12 accordance with the provisions of this article may not
13 order or make permanent changes of any type thereto,
14 unless the executive director of the real estate division
15 has first determined that the change is necessary for the

16 proper, efficient and economically sound operation of
17 the spending unit.

18 (c) For purposes of this section, a "permanent change"
19 means any addition, alteration, improvement,
20 remodeling, repair or other change involving the
21 expenditure of state funds for the installation of any
22 tangible effect which cannot be economically removed
23 from the grounds, buildings, office space or other space
24 when vacated by the spending unit.

§5A-10-9. Real property accounting and records.

1 (a) All real property owned or leased by the state shall
2 be accounted for by the state spending unit that owns,
3 leases or is in the possession of the real property.

4 (b) Each state spending unit shall establish and
5 maintain a record of each item of real property it owns
6 and/or leases and annually furnish its records to the
7 Real Estate Division.

8 (c) The accounting and reporting requirements of this
9 section, except as to office space, do not apply to:

10 (1) The Division of Highways of the Department of
11 Transportation;

12 (2) Public lands, rivers and streams acquired,
13 managed or which title is vested in or transferred to the
14 Division of Natural Resources of the Department of
15 Commerce, pursuant to section seven, article one,
16 chapter twenty of this code and section two, article five
17 of said chapter;

18 (3) The Higher Education Policy Commission;

19 (4) The West Virginia Council for Community and
20 Technical College Education; or

21 (5) The institutional boards of Governors in
22 accordance with the provisions of subsection (v), section
23 four, article five, chapter eighteen-b of this code.

24 (d) With regard to public lands that may be by law
25 specifically allocated to and used by any state agency,
26 institution, division, or department, such agency,
27 institution, division, or department shall provide an
28 inventory of such public land(s) to the public land
29 corporation in accordance with the provisions of article
30 eleven of this chapter.

31 (e) The records furnished to the Real Estate Division
32 shall include the following information, if applicable:

33 (1) A description of each item of real property
34 including:

35 (A) A reference to a book, page and/or image number
36 from the county records in a particular county; or

37 (B) A legal description;

38 (2) The date of purchase and the purchase price of the
39 real property;

40 (3) The date of lease and the rental costs of the real
41 property;

42 (4) The name of the state spending unit holding title to
43 the real property for the state;

44 (5) A description of the current uses of the real
45 property and the projected future use of the real
46 property; and

47 (6) A description of each building or other
48 improvement located on the real property.

49 (f) If the description of real property required under
50 this section is excessively voluminous, the Real Estate
51 Division may direct the spending unit in possession of
52 the real property to furnish the description only in
53 summary form, as agreed to by the division and the
54 spending unit.

§5A-10-10. Real property review.

1 (a) At least once every four years, the Real Estate
2 Division shall review the inventory of real property for
3 each state spending unit submitted pursuant to this
4 article to verify the accuracy of the inventory records.

5 (b) Based on the review of the inventory of real
6 property, the Real Estate Division shall:

7 (1) Identify any real property owned or leased by the
8 state that is not being used or that is being substantially
9 underused;

10 (2) Make recommendations to the Governor and the
11 Secretary of the Department of Administration
12 regarding the use of real property, which shall include:

13 (A) An analysis of the highest and best use to which
14 the real property may legally be placed; and

15 (B) An analysis of alternative uses of the real property
16 addressing the potential for any other transaction or use
17 that the Real Estate Division determines to be in the
18 best interest of the state; and

19 (3) Submit to the Governor and the Secretary of the
20 Department of Administration any information
21 pertinent to the evaluation of a potential transaction
22 involving the real property, including:

23 (A) An evaluation of any proposals received from
24 private parties that would be of significant benefit to
25 the state; and

26 (B) The market value of such real property.

§5A-10-11. Rulemaking.

1 The executive director shall propose rules for
2 legislative approval, in accordance with the provisions
3 of article three, chapter twenty-nine-a of this code, to
4 implement and enforce the provisions of this article.

ARTICLE 11. PUBLIC LAND CORPORATION.

§5A-11-1. Public Land Corporation.

1 (a) The Public Land Corporation, heretofore created
2 and established as a unit of the Division of Natural
3 Resources, is hereby continued and established as a unit
4 of the Real Estate Division of the Department of
5 Administration.

6 (b) The corporation is a public benefit corporation and
7 an instrumentality of the state and may sue or be sued,
8 contract and be contracted with, plead and be
9 impleaded, have and use a common seal.

10 (c) The corporation is vested with the title of the state
11 of West Virginia in public lands, the title to which now
12 is or may hereafter become vested in the State of West
13 Virginia by reason of any law governing the title of
14 lands of the state: *Provided*, That those lands for which
15 title is specifically vested by law in other state agencies,
16 institutions and departments shall continue to be vested
17 in such state agencies, institutions and departments.

18 (d) The provisions of this article do not apply to:

19 (1) The State of West Virginia's interest in the rivers,
20 streams, creeks or beds thereof and all other public
21 lands managed or acquired by the Division of Natural
22 Resources pursuant to the provisions of section seven,
23 article one, chapter twenty of this code and section two,
24 article five, chapter twenty of this code, the title to all of
25 which shall collectively be transferred to and vested in
26 the Division of Natural Resources for the use and
27 enjoyment of the citizens of the state; or

28 (2) Public lands acquired by the Division of Forestry
29 pursuant to article one-a, chapter nineteen of this code.

**§5A-11-2. Corporation boards of directors, members,
expenses, appointment, terms, qualifications;
director as board chairman; meetings,
quorum; executive secretary, secretary to
board; professional and support staff;
execution of legal documents, permits and
licenses.**

1 (a) The Public Land Corporation is governed by a
2 board of directors comprised of six members of which
3 four shall be ex officio and two shall be appointed by
4 the Governor. The members of the board shall receive
5 no compensation for their service thereon. The board
6 members who are not ex officio shall be reimbursed by
7 the Secretary of the Department of Administration for
8 their actual and necessary expenses incurred pursuant
9 to their duties under this article from funds authorized
10 for such purposes.

11 (b) The following serve as ex officio members of the
12 board:

13 (1) The executive director of the Real Estate Division
14 or a designee, who shall serve as chair;

15 (2) The director of the Division of Natural Resources
16 or a designee;

17 (3) The commissioner of the Department of Culture
18 and History or a designee; and

19 (4) The secretary of the Department of Administration,
20 or a designee.

21 (c) The Governor shall appoint, by and with the advice
22 and consent of the Senate, two members with a
23 demonstrated interest and knowledge in the
24 conservation and protection of the aesthetic, biological,
25 geological, historical, archeological, cultural or
26 recreational values of the public lands of the state. The
27 terms are for four years and no member may serve more
28 than two consecutive terms. The members on the Board
29 as of the first day of January, two thousand seven, shall
30 continue to serve until their term has expired and may
31 be reappointed.

32 (d) A majority of the board constitutes a quorum for
33 the transaction of business. The board shall meet at
34 such times and places as it may determine and shall
35 meet on call of the chair. It shall be the duty of the
36 chair to call a meeting of the board on the written
37 request of any three members.

38 (e) The Executive Director of the Real Estate Division
39 shall appoint and supervise an executive secretary of
40 the public land corporation, and may employ other
41 necessary professional and support staff for the
42 purposes of this article, who shall be employees of the
43 Department of Administration with merit system status.

44 (f) An affirmative vote of a majority of the members of
45 the corporation is required for any action of the
46 corporation with respect to the sale or exchange of
47 public lands or for the issuance of a lease or contract for
48 the development of minerals, oil or gas. All actions
49 must be taken at a scheduled meeting of the corporation
50 held in compliance with the provisions of article nine-a,
51 chapter six of this code.

52 (g) The powers and duties of the corporation are
53 nondelegable, except that the executive secretary may
54 negotiate and enter into preliminary agreements on
55 behalf of the corporation, and shall, upon authorization
56 of the corporation, be entitled to engage in valid actions
57 of the corporation in respect of day-to-day
58 administrative activities. An agreement entered into by
59 the executive secretary on behalf of the corporation is
60 not valid until such agreement is approved by an
61 affirmative vote of a majority of the corporation.

§5A-11-3. Public Land Corporation, powers and duties.

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

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

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

11 (3) Sell or exchange public lands where it is
12 determined that the sale or exchange of such tract meets

13 any or all of the following disposal criteria:

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

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

25 (C) The tract, because of its location or other
26 characteristics, is difficult and uneconomic to manage
27 as part of the public lands and is not suitable for
28 management by another state department or agency.

29 (4) Sell, purchase or exchange lands or stumpage for
30 the purpose of consolidating lands under state or federal
31 government administration subject to the disposal
32 criteria specified in subdivision (3) of this subsection;

33 (5) Negotiate and effect loans or grants from the
34 government of the United States or any agency thereof
35 for acquisition and development of lands as may be
36 authorized by law to be acquired for public use;

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

39 (A) Liquidate obligations incurred in the
40 acquisition, development and administration of lands,
41 until all obligations have been fully discharged;

42 (B) Purchase, develop, restore and preserve for
43 public use, sites, structures, objects and documents of
44 prehistoric, historical, archaeological, recreational,
45 architectural and cultural significance to the State of
46 West Virginia; and

47 (C) Obtain grants or matching moneys available

48 from the government of the United States or any of its
49 instrumentalities for prehistoric, historic,
50 archaeological, recreational, architectural and cultural
51 purposes.

52 (7) Designate lands, to which it has title, for
53 development and administration for the public use
54 including recreation, wildlife stock grazing, agricultural
55 rehabilitation and homesteading or other conservation
56 activities;

57 (8) Enter into leases as a lessor for the development
58 and extraction of minerals, including coal, oil, gas, sand
59 or gravel, except as otherwise circumscribed herein:
60 *Provided*, That leases for the development and
61 extraction of minerals shall be made in accordance with
62 the provisions of sections five and six of this article.
63 The corporation shall reserve title and ownership to the
64 mineral rights in all cases;

65 (9) Convey, assign or allot lands to the title or
66 custody of proper departments or other agencies of state
67 government for administration and control within the
68 functions of departments or other agencies as provided
69 by law;

70 (10) Make proper lands available for the purpose of
71 cooperating with the government of the United States in
72 the relief of unemployment and hardship or for any
73 other public purpose.

74 (b) There is hereby continued in the State Treasury
75 a special public land corporation fund into which shall
76 be paid all proceeds from public land sales and
77 exchanges and rents, royalties and other payments from
78 mineral leases: *Provided*, That all royalties and
79 payments derived from rivers, streams or public lands
80 acquired or managed by the Division of Natural
81 Resources pursuant to section seven, article one, chapter
82 twenty of this code and section two, article five, chapter
83 twenty of this code shall be retained by the Division of
84 Natural Resources. The corporation may acquire public
85 lands from use of the payments made to the fund, along
86 with any interest accruing to the fund. The corporation

87 shall report annually, just prior to the beginning of the
88 regular session of the Legislature, to the finance
89 committees of the Legislature on the financial condition
90 of the special fund. The corporation shall report
91 annually to the Legislature on its public land holdings
92 and all its leases, its financial condition and its
93 operations and shall make such recommendations to the
94 Legislature concerning the acquisition, leasing,
95 development, disposition and use of public lands.

96 (c) All state agencies, institutions, divisions and
97 departments shall make an inventory of the public lands
98 of the state as may be by law specifically allocated to
99 and used by each and provide to the corporation a list of
100 such public lands and minerals, including their current
101 use, intended use or best use to which lands and
102 minerals may be put: *Provided*, That the Division of
103 Highways need not provide the inventory of public
104 lands allocated to and used by it, and the Division of
105 Natural Resources need not provide the inventory of
106 rivers, streams and public lands acquired or managed
107 by it. The inventory shall identify those parcels of land
108 which have no present or foreseeable useful purpose to
109 the State of West Virginia. The inventory shall be
110 submitted annually to the corporation by the first day
111 of August. The corporation shall compile the inventory
112 of all public lands and minerals and report annually to
113 the Legislature by no later than the first day of January,
114 on its public lands and minerals and the lands and
115 minerals of the other agencies, institutions, divisions or
116 departments of this state which are required to report
117 their holdings to the corporation as set forth in this
118 subsection, and its financial condition and its
119 operations.

**§5A-11-4. Public Land Corporation to conduct sales of public
lands by competitive bidding, modified
competitive bidding or direct sale.**

1 (a) Sales, exchanges or transfers of public lands under
2 this article shall be conducted under competitive
3 bidding procedures. However, where the secretary or
4 executive director determines it necessary and proper in
5 order to assure the following public policies, including,

6 but not limited to, a preference to users, lands may be
7 sold by modified competitive bidding or without
8 competitive bidding. In recognizing public policies, the
9 secretary or director shall give consideration to the
10 following potential purchasers:

11 (1) The local government entities which are in the
12 vicinity of the lands; and

13 (2) Adjoining landowners.

14 (b) The policy for selecting the methods of sale is as
15 follows:

16 (1) Competitive sale is the general procedure for sales
17 of public lands and shall be used in the following
18 circumstances:

19 (A) Wherever in the judgment of the secretary the
20 lands are accessible and usable regardless of adjoining
21 land ownership; or

22 (B) Wherever the lands are within a developing or
23 urbanizing area and land values are increasing due to
24 the location of the land and interest on the competitive
25 market.

26 (2) Modified competitive sales may be used to permit
27 the adjoining landowner or local governmental entity to
28 meet the high bid at the public sale. Lands otherwise
29 offered under this procedure would normally be public
30 lands not located near urban expansion areas, or not
31 located near areas with rapidly increasing land values,
32 and where existing use of adjacent lands would be
33 jeopardized by sale under competitive bidding
34 procedures.

35 (3) Direct sale may be used when the lands offered for
36 sale are completely surrounded by lands in one
37 ownership with no public access, or where the lands are
38 needed by local governments.

39 (4) In no event shall lands be offered for sale by
40 "modified competitive sales" or "direct sale" unless and

41 until the corporation makes a written finding of
42 justification for use of an alternative bidding procedure.

43 (5) Subject to the bidding procedures set forth herein,
44 the corporation is authorized, at its discretion, to sell
45 public lands subject to rights-of-way, restrictive
46 covenants or easements retained by the corporation,
47 limiting the use of such lands to purposes consistent
48 with the use of adjoining or nearby lands owned by the
49 corporation.

50 (c) When lands have been offered for sale by one
51 method of sale and the lands remain unsold, then the
52 lands may be reoffered by another method of sale.

53 (d) Except as provided in this article and section
54 seven-a, article one, chapter twenty of this code, public
55 lands may not be sold, exchanged or transferred by the
56 corporation for less than fair market value. Fair market
57 value shall be determined by an appraisal made by the
58 Real Estate Division. The appraisal shall be performed
59 using the principles contained in the current Uniform
60 Appraisal Standards for Federal Land Acquisitions
61 published under the auspices of the Interagency Land
62 Acquisition Conference: *Provided*, That public lands not
63 acquired or managed by the Division of Natural
64 Resources pursuant to section seven, article one, chapter
65 twenty of this code or section two, article five of said
66 chapter may be sold, exchanged or transferred to any
67 federal agency or to the state or any of its political
68 subdivisions for less than fair market value if, upon a
69 specific written finding of fact, the Executive Director
70 of the Real Estate Division determines that such a
71 transfer would be in the best interests of the corporation
72 and state.

73 (e) The corporation may reject all bids when such bids
74 do not represent the corporation's considered value of
75 the property exclusive of the fair market value.

76 (f) The corporation shall propose rules for legislative
77 approval, in accordance with the provisions of article
78 three, chapter twenty-nine-a of this code, regarding
79 procedures for conducting public land sales by

80 competitive bidding, modified competitive bidding and
81 direct sales.

**§5A-11-5. 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
2 sell, lease as a lessor, exchange or transfer land or
3 minerals title to which is vested in the Public Land
4 Corporation pursuant to this article, the Public Land
5 Corporation shall:

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

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

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

33 (4) Cause to be published a notice of the required

34 public hearing. The notice shall be published as a Class
35 II legal advertisement in compliance with the provisions
36 of article three, chapter fifty-nine of this code and the
37 publication area shall be each county in which the
38 affected lands or minerals are located. The public
39 hearing shall be held no earlier than the fourteenth
40 successive day and no later than the twenty-first
41 successive day following the first publication of the
42 notice. The notice shall contain the time and place of
43 the public hearing along with a brief description of the
44 affected lands or minerals;

45 (5) Cause a copy of the required notice to be posted in
46 a conspicuous place at the affected land for members of
47 the public to observe. The notice shall remain posted
48 for two successive weeks prior to the date of the public
49 hearing;

50 (6) Appoint a representative of the corporation who
51 shall conduct the required public hearing. The
52 corporation's representative shall have full knowledge
53 of all the facts and circumstances surrounding the
54 proposed sale, lease, exchange or transfer. The
55 representative of the corporation conducting the public
56 hearing shall make the results of the hearing available
57 to the executive director of the Real Estate Division and
58 the Secretary of the Department of Administration for
59 consideration prior to making final decisions regarding
60 the affected lands or minerals. The representative of the
61 corporation shall make a report of the public hearing
62 available for inspection by the public or, upon written
63 request of any interested person, provide a written copy
64 thereof and to all individuals previously receiving
65 written notice of the hearing within thirty days
66 following the public hearing; and

67 (7) If the evidence at the public hearing establishes by
68 a preponderance that the appraisal provided for in
69 subsection (d), section four of this article does not
70 reflect the true, fair market value, the Public Land
71 Corporation shall cause another appraisal to be made.

72 (8) If the evidence at the public hearing establishes by
73 a preponderance that the sale or exchange of land does

74 not meet the criteria set forth in subdivision three,
75 subsection (a), section three of this article, the public
76 land corporation may not proceed with the sale or
77 exchange of said land without judicial approval.

78 (b) The corporation may not sell, lease as lessor,
79 exchange or transfer lands or minerals before the
80 thirtieth successive day following the public hearing
81 required by this section, but in no event may the sale,
82 lease, exchange or transfer of lands or minerals be made
83 prior to fifteen days after the report of the public
84 hearings are made available to the public in general.

85 (c) If the corporation authorizes the staff to proceed
86 with consideration of the lease or sale under the terms
87 of this article, all requirements of this section shall be
88 completed within one year of date of the authorization
89 by the corporation.

**§5A-11-6. 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
2 for the development of minerals, including, but not
3 limited to, coal, gas, oil, sand or gravel on or under
4 lands in which the corporation holds any right, title or
5 interest: *Provided*, That no lease or contract may be
6 entered into for the extraction and removal of minerals
7 by surface mining or auger mining of coal.

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

18 (c) Any lease or contract entered into by the
19 corporation for the development of minerals shall

20 reserve to the state all rights to subjacent surface
21 support with which the state is seized or possessed at
22 the time of such lease or contract.

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

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

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

46 (g) If the provisions of this section have been complied
47 with, and no bid equal to or in excess of the fair market
48 value is received, the corporation may, at any time
49 during a period of six months after the opening of the
50 bids, lease or contract for the development of the
51 minerals, but the lease or contract price may not be less
52 than the fair market value.

53 (h) Any lease or contract for the development of
54 minerals entered into after the effective date of this
55 section shall be made in accordance with the provisions
56 of this section and section five of this article.

57 (i) The corporation will consult with the office of the

58 Attorney General to assist the corporation in carrying
59 out the provisions of this section.

60 (j) The corporation shall consult with an independent
61 mineral consultant and any other competent third
62 parties with experience and expertise in the leasing of
63 minerals, to assist the corporation in carrying out the
64 provisions of this section, including determining fair
65 market value and negotiating terms and conditions of
66 mineral leases.

67 (k) Once the lessee commences the production of
68 minerals and royalties become due and are paid to the
69 public land corporation, the public land corporation
70 shall hire an independent auditing firm to periodically
71 review the lessee's books and accounts for compliance
72 of payment of appropriate royalties due the public land
73 corporation for its minerals as produced under the lease
74 agreement.

**§5A-11-7. Effectuation of transfer of public land corporation
and transition.**

1 To effectuate the transfer of the public land
2 corporation to real estate division of the Department of
3 Administration upon the effective date of this section in
4 the year two thousand seven:

5 (1) Subject to the provisions of section one-d of this
6 article, the Secretary of the Department of
7 Administration or a designee and the Secretary of the
8 Department of Commerce or a designee shall determine
9 which employees, records, responsibilities, obligations,
10 assets and property, of whatever kind and character, of
11 the Public Land Corporation will be transferred to the
12 Real Estate Division of the Department of
13 Administration beginning the effective date of this
14 section in the year two thousand seven: *Provided*, That
15 any title transferred to or vested in the Public Land
16 Corporation, formerly existing under the provisions of
17 article one-a, chapter twenty of this code, as of the first
18 day of July, two thousand seven, or which may hereafter
19 become vested in the Public Land Corporation in
20 accordance with the provisions of this article, shall

21 continue to be vested in the Public Land Corporation.

22 (2) All orders, determinations, rules, permits, grants,
23 contracts, certificates, licenses, waivers, bonds,
24 authorizations and privileges which have been issued,
25 made, granted or allowed to become effective by the
26 Governor, by any state department or agency or official
27 thereof, or by a court of competent jurisdiction, in the
28 performance of functions which have been transferred
29 to the Real Estate Division of the Department of
30 Administration and were in effect on the date the
31 transfer occurred continue in effect, for the benefit of
32 the department, according to their terms until modified,
33 terminated, superseded, set aside or revoked in
34 accordance with the law by the Governor, the secretary
35 of the Department of Administration, or other
36 authorized official, a court of competent jurisdiction or
37 by operation of law.

38 (3) Any proceedings, including, but not limited to,
39 notices of proposed rulemaking, in which the Public
40 Land Corporation was an initiating or responding party
41 are not affected by the transfer of the Public Land
42 Corporation to the Real Estate Division of the
43 Department of Administration. Orders issued in any
44 proceedings continue in effect until modified,
45 terminated, superseded or revoked by the Governor, the
46 Secretary of Administration, by a court of competent
47 jurisdiction or by operation of law. Nothing in this
48 subdivision prohibits the discontinuance or
49 modification of any proceeding under the same terms
50 and conditions and to the same extent that a proceeding
51 could have been discontinued or modified if the Public
52 Land Corporation had not been transferred to the Real
53 Estate Division of the Department of Administration.
54 Transfer of the Public Land Corporation does not affect
55 suits commenced prior to the effective date of the
56 transfer and all such suits and proceedings shall be had,
57 appeals taken and judgments rendered in the same
58 manner and with like effect as if the transfer had not
59 occurred, except that the Secretary of the Department
60 of Administration or other officer may, in an
61 appropriate case, be substituted or added as a party.

§5A-11-8. Continuation of the Public Land Corporation.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the Public Land Corporation shall continue
3 to exist until the first day of July, two thousand nine,
4 unless sooner terminated, continued or reestablished.

**CHAPTER 5F. REORGANIZATION OF THE
EXECUTIVE BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

**§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and
3 funds associated with any agency or board, are
4 incorporated in and administered as a part of the
5 Department of Administration:

6 (1) Building Commission provided in article six,
7 chapter five of this code;

8 (2) Public Employees Insurance Agency and Public
9 Employees Insurance Agency Advisory Board provided
10 in article sixteen, chapter five of this code;

11 (3) Governor's Mansion Advisory Committee provided
12 for in article five, chapter five-a of this code;

13 (4) Commission on Uniform State Laws provided in
14 article one-a, chapter twenty-nine of this code;

15 (5) West Virginia Public Employees Grievance Board
16 provided for in article three, chapter six-c of this code;

17 (6) Board of Risk and Insurance Management provided
18 for in article twelve, chapter twenty-nine of this code;

19 (7) Boundary Commission provided in article twenty-
20 three, chapter twenty-nine of this code;

21 (8) Public Defender Services provided in article

22 twenty-one, chapter twenty-nine of this code;

23 (9) Division of Personnel provided in article six,
24 chapter twenty-nine of this code;

25 (10) The West Virginia Ethics Commission provided in
26 article two, chapter six-b of this code;

27 (11) Consolidated Public Retirement Board provided
28 in article ten-d, chapter five of this code; and

29 (12) Real Estate Division provided in article ten,
30 chapter five-a of this code.

31 (b) The following agencies and boards, including all of
32 the allied, advisory, affiliated or related entities and
33 funds associated with any agency or board, are
34 incorporated in and administered as a part of the
35 Department of Commerce:

36 (1) Division of Labor provided in article one, chapter
37 twenty-one of this code, which includes:

38 (A) Occupational Safety and Health Review
39 Commission provided in article three-a, chapter twenty-
40 one of this code; and

41 (B) Board of Manufactured Housing Construction and
42 Safety provided in article nine, chapter twenty-one of
43 this code;

44 (2) Office of Miners' Health, Safety and Training
45 provided in article one, chapter twenty-two-a of this
46 code. The following boards are transferred to the Office
47 of Miners' Health, Safety and Training for purposes of
48 administrative support and liaison with the Office of the
49 Governor:

50 (A) Board of Coal Mine Health and Safety and Coal
51 Mine Safety and Technical Review Committee provided
52 in article six, chapter twenty-two-a of this code;

53 (B) Board of Miner Training, Education and
54 Certification provided in article seven, chapter twenty-

55 two-a of this code; and

56 (C) Mine Inspectors' Examining Board provided in
57 article nine, chapter twenty-two-a of this code;

58 (3) The West Virginia Development Office, which
59 includes the Division of Tourism and the Tourism
60 Commission provided in article two, chapter five-b of
61 this code;

62 (4) Division of Natural Resources and Natural
63 Resources Commission provided in article one, chapter
64 twenty of this code;

65 (5) Division of Forestry provided in article one-a,
66 chapter nineteen of this code;

67 (6) Geological and Economic Survey provided in
68 article two, chapter twenty-nine of this code; and

69 (7) Workforce West Virginia provided in chapter
70 twenty-one-a of this code, which includes:

71 (A) Division of Unemployment Compensation;

72 (B) Division of Employment Service;

73 (C) Division of Workforce Development; and

74 (D) Division of Research, Information and Analysis;
75 and

76 (8) Division of Energy provided in article two-f,
77 chapter five-b of this code.

78 (c) The Economic Development Authority provided in
79 article fifteen, chapter thirty-one of this code is
80 continued as an independent agency within the
81 executive branch.

82 (d) The Water Development Authority and Board
83 provided in article one, chapter twenty-two-c of this
84 code is continued as an independent agency within the
85 executive branch.

86 (e) The following agencies and boards, including all of
87 the allied, advisory and affiliated entities, are
88 transferred to the Department of Environmental
89 Protection for purposes of administrative support and
90 liaison with the Office of the Governor:

91 (1) Air Quality Board provided in article two, chapter
92 twenty-two-b of this code;

93 (2) Solid Waste Management Board provided in article
94 three, chapter twenty-two-c of this code;

95 (3) Environmental Quality Board, or its successor
96 board, provided in article three, chapter twenty-two-b
97 of this code;

98 (4) Surface Mine Board provided in article four,
99 chapter twenty-two-b of this code;

100 (5) Oil and Gas Inspectors' Examining Board provided
101 in article seven, chapter twenty-two-c of this code;

102 (6) Shallow Gas Well Review Board provided in article
103 eight, chapter twenty-two-c of this code; and

104 (7) Oil and Gas Conservation Commission provided in
105 article nine, chapter twenty-two-c of this code.

106 (f) The following agencies and boards, including all of
107 the allied, advisory, affiliated or related entities and
108 funds associated with any agency or board, are
109 incorporated in and administered as a part of the
110 Department of Education and the Arts:

111 (1) Library Commission provided in article one,
112 chapter ten of this code;

113 (2) Educational Broadcasting Authority provided in
114 article five, chapter ten of this code;

115 (3) Division of Culture and History provided in article
116 one, chapter twenty-nine of this code;

117 (4) Division of Rehabilitation Services provided in

118 section two, article ten-a, chapter eighteen of this code.

119 (g) The following agencies and boards, including all of
120 the allied, advisory, affiliated or related entities and
121 funds associated with any agency or board, are
122 incorporated in and administered as a part of the
123 Department of Health and Human Resources:

124 (1) Human Rights Commission provided in article
125 eleven, chapter five of this code;

126 (2) Division of Human Services provided in article
127 two, chapter nine of this code;

128 (3) Bureau for Public Health provided in article one,
129 chapter sixteen of this code;

130 (4) Office of Emergency Medical Services and
131 Advisory Council provided in article four-c, chapter
132 sixteen of this code;

133 (5) Health Care Authority provided in article twenty-
134 nine-b, chapter sixteen of this code;

135 (6) Commission on Mental Retardation provided in
136 article fifteen, chapter twenty-nine of this code;

137 (7) Women's Commission provided in article twenty,
138 chapter twenty-nine of this code; and

139 (8) The Child Support Enforcement Division provided
140 in chapter forty-eight of this code.

141 (h) The following agencies and boards, including all of
142 the allied, advisory, affiliated or related entities and
143 funds associated with any agency or board, are
144 incorporated in and administered as a part of the
145 Department of Military Affairs and Public Safety:

146 (1) Adjutant General's Department provided in article
147 one-a, chapter fifteen of this code;

148 (2) Armory Board provided in article six, chapter
149 fifteen of this code;

150 (3) Military Awards Board provided in article one-g,
151 chapter fifteen of this code;

152 (4) West Virginia State Police provided in article two,
153 chapter fifteen of this code;

154 (5) Division of Homeland Security and Emergency
155 Management and Disaster Recovery Board provided in
156 article five, chapter fifteen of this code and Emergency
157 Response Commission provided in article five-a of said
158 chapter;

159 (6) Sheriffs' Bureau provided in article eight, chapter
160 fifteen of this code;

161 (7) Division of Corrections provided in chapter
162 twenty-five of this code;

163 (8) Fire Commission provided in article three, chapter
164 twenty-nine of this code;

165 (9) Regional Jail and Correctional Facility Authority
166 provided in article twenty, chapter thirty-one of this
167 code;

168 (10) Board of Probation and Parole provided in article
169 twelve, chapter sixty-two of this code; and

170 (11) Division of Veterans' Affairs and Veterans'
171 Council provided in article one, chapter nine-a of this
172 code.

173 (i) The following agencies and boards, including all of
174 the allied, advisory, affiliated or related entities and
175 funds associated with any agency or board, are
176 incorporated in and administered as a part of the
177 Department of Revenue:

178 (1) Tax Division provided in article one, chapter
179 eleven of this code;

180 (2) Racing Commission provided in article twenty-
181 three, chapter nineteen of this code;

182 (3) Lottery Commission and position of Lottery
183 Director provided in article twenty-two, chapter
184 twenty-nine of this code;

185 (4) Agency of Insurance Commissioner provided in
186 article two, chapter thirty-three of this code;

187 (5) Office of Alcohol Beverage Control Commissioner
188 provided in article sixteen, chapter eleven of this code
189 and article two, chapter sixty of this code;

190 (6) Board of Banking and Financial Institutions
191 provided in article three, chapter thirty-one-a of this
192 code;

193 (7) Lending and Credit Rate Board provided in
194 chapter forty-seven-a of this code;

195 (8) Division of Banking provided in article two,
196 chapter thirty-one-a of this code;

197 (9) The State Budget Office provided in article two of
198 this chapter;

199 (10) The Municipal Bond Commission provided in
200 article three, chapter thirteen of this code;

201 (11) The Office of Tax Appeals provided in article ten-
202 a, chapter eleven of this code; and

203 (12) The State Athletic Commission provided in article
204 five-a, chapter twenty-nine of this code.

205 (j) The following agencies and boards, including all of
206 the allied, advisory, affiliated or related entities and
207 funds associated with any agency or board, are
208 incorporated in and administered as a part of the
209 Department of Transportation:

210 (1) Division of Highways provided in article two-a,
211 chapter seventeen of this code;

212 (2) Parkways, Economic Development and Tourism
213 Authority provided in article sixteen-a, chapter

214 seventeen of this code;

215 (3) Division of Motor Vehicles provided in article two,
216 chapter seventeen-a of this code;

217 (4) Driver's Licensing Advisory Board provided in
218 article two, chapter seventeen-b of this code;

219 (5) Aeronautics Commission provided in article two-a,
220 chapter twenty-nine of this code;

221 (6) State Rail Authority provided in article eighteen,
222 chapter twenty-nine of this code; and

223 (7) Port Authority provided in article sixteen-b,
224 chapter seventeen of this code.

225 (k) Except for powers, authority and duties that have
226 been delegated to the secretaries of the departments by
227 the provisions of section two of this article, the position
228 of administrator and the powers, authority and duties of
229 each administrator and agency are not affected by the
230 enactment of this chapter.

231 (l) Except for powers, authority and duties that have
232 been delegated to the secretaries of the departments by
233 the provisions of section two of this article, the
234 existence, powers, authority and duties of boards and
235 the membership, terms and qualifications of members of
236 the boards are not affected by the enactment of this
237 chapter. All boards that are appellate bodies or are
238 independent decisionmakers shall not have their
239 appellate or independent decision-making status
240 affected by the enactment of this chapter.

241 (m) Any department previously transferred to and
242 incorporated in a department by prior enactment of this
243 section means a division of the appropriate department.
244 Wherever reference is made to any department
245 transferred to and incorporated in a department created
246 in section two, article one of this chapter, the reference
247 means a division of the appropriate department and any
248 reference to a division of a department so transferred
249 and incorporated means a section of the appropriate

250 division of the department.

251 (n) When an agency, board or commission is
252 transferred under a bureau or agency other than a
253 department headed by a secretary pursuant to this
254 section, that transfer is solely for purposes of
255 administrative support and liaison with the office of the
256 Governor, a department secretary or a bureau. Nothing
257 in this section extends the powers of department
258 secretaries under section two of this article to any
259 person other than a department secretary and nothing
260 limits or abridges the statutory powers and duties of
261 statutory commissioners or officers pursuant to this
262 code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, the secretary of each department shall
3 have plenary power and authority within and for the
4 department to:

5 (1) Employ and discharge within the office of the
6 secretary employees as may be necessary to carry out
7 the functions of the secretary, which employees shall
8 serve at the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be
10 operated effectively, efficiently and economically, and
11 develop goals, objectives, policies and plans that are
12 necessary or desirable for the effective, efficient and
13 economical operation of the department;

14 (3) Eliminate or consolidate positions, other than
15 positions of administrators or positions of board
16 members and name a person to fill more than one
17 position;

18 (4) Transfer permanent state employees between
19 departments in accordance with the provisions of
20 section seven of this article;

21 (5) Delegate, assign, transfer or combine
22 responsibilities or duties to or among employees, other

23 than administrators or board members;

24 (6) Reorganize internal functions or operations;

25 (7) Formulate comprehensive budgets for
26 consideration by the Governor, and transfer within the
27 department funds appropriated to the various agencies
28 of the department which are not expended due to cost
29 savings resulting from the implementation of the
30 provisions of this chapter: *Provided*, That no more than
31 twenty-five percent of the funds appropriated to any
32 one agency or board may be transferred to other
33 agencies or boards within the department: *Provided*,
34 *however*, That no funds may be transferred from a
35 special revenue account, dedicated account, capital
36 expenditure account or any other account or funds
37 specifically exempted by the Legislature from transfer,
38 except that the use of appropriations from the State
39 Road Fund transferred to the Office of the Secretary of
40 the Department of Transportation is not a use other
41 than the purpose for which the funds were dedicated
42 and is permitted: *Provided further*, That if the
43 Legislature by subsequent enactment consolidates
44 agencies, boards or functions, the appropriate secretary
45 may transfer the funds formerly appropriated to the
46 agency, board or function in order to implement
47 consolidation. The authority to transfer funds under
48 this section shall expire on the thirtieth day of June, two
49 thousand five;

50 (8) Enter into contracts or agreements requiring the
51 expenditure of public funds, and authorize the
52 expenditure or obligation of public funds as authorized
53 by law: *Provided*, That the powers granted to the
54 secretary to enter into contracts or agreements and to
55 make expenditures or obligations of public funds under
56 this provision shall not exceed or be interpreted as
57 authority to exceed the powers granted by the
58 Legislature to the various commissioners, directors or
59 board members of the various departments, agencies or
60 boards that comprise and are incorporated into each
61 secretary's department under this chapter;

62 (9) Acquire by lease or purchase property of whatever

63 kind or character and convey or dispose of any property
64 of whatever kind or character as authorized by law:
65 *Provided*, That the powers granted to the secretary to
66 lease, purchase, convey or dispose of such property shall
67 be exercised in accordance with the provisions of
68 articles three, ten and eleven, chapter five-a of this
69 code: *Provided however*, That the powers granted to the
70 secretary to lease, purchase, convey or dispose of such
71 property shall not exceed or be interpreted as authority
72 to exceed the powers granted by the Legislature to the
73 various commissioners, directors or board members of
74 the various departments, agencies or boards that
75 comprise and are incorporated into each secretary's
76 department under this chapter;

77 (10) Conduct internal audits;

78 (11) Supervise internal management;

79 (12) Promulgate rules, as defined in section two,
80 article one, chapter twenty-nine-a of this code, to
81 implement and make effective the powers, authority and
82 duties granted and imposed by the provisions of this
83 chapter in accordance with the provisions of chapter
84 twenty-nine-a of this code;

85 (13) Grant or withhold written consent to the proposal
86 of any rule, as defined in section two, article one,
87 chapter twenty-nine-a of this code, by any
88 administrator, agency or board within the department.
89 Without written consent, no proposal for a rule shall
90 have any force or effect;

91 (14) Delegate to administrators the duties of the
92 secretary as the secretary may deem appropriate from
93 time to time to facilitate execution of the powers,
94 authority and duties delegated to the secretary; and

95 (15) Take any other action involving or relating to
96 internal management not otherwise prohibited by law.

97 (b) The secretaries of the departments hereby created
98 shall engage in a comprehensive review of the practices,
99 policies and operations of the agencies and boards

100 within their departments to determine the feasibility of
101 cost reductions and increased efficiency which may be
102 achieved therein, including, but not limited to, the
103 following:

104 (1) The elimination, reduction and restriction of the
105 state's vehicle or other transportation fleet;

106 (2) The elimination, reduction and restriction of state
107 government publications, including annual reports,
108 informational materials and promotional materials;

109 (3) The termination or rectification of terms contained
110 in lease agreements between the state and private sector
111 for offices, equipment and services;

112 (4) The adoption of appropriate systems for
113 accounting, including consideration of an accrual basis
114 financial accounting and reporting system;

115 (5) The adoption of revised procurement practices to
116 facilitate cost-effective purchasing procedures,
117 including consideration of means by which domestic
118 businesses may be assisted to compete for state
119 government purchases; and

120 (6) The computerization of the functions of the state
121 agencies and boards.

122 (c) Notwithstanding the provisions of subsections (a)
123 and (b) of this section, none of the powers granted to the
124 secretaries herein shall be exercised by the secretary if
125 to do so would violate or be inconsistent with the
126 provisions of any federal law or regulation, any federal-
127 state program or federally delegated program or
128 jeopardize the approval, existence or funding of any
129 program.

130 (d) The layoff and recall rights of employees within
131 the classified service of the state as provided in
132 subsections five and six, section ten, article six, chapter
133 twenty-nine of this code shall be limited to the
134 organizational unit within the agency or board and
135 within the occupational group established by the

136 classification and compensation plan for the classified
137 service of the agency or board in which the employee
138 was employed prior to the agency or board's transfer or
139 incorporation into the department: *Provided*, That the
140 employee shall possess the qualifications established for
141 the job class. The duration of recall rights provided in
142 this subsection shall be limited to two years or the
143 length of tenure, whichever is less. Except as provided
144 in this subsection, nothing contained in this section
145 shall be construed to abridge the rights of employees
146 within the classified service of the state as provided in
147 sections ten and ten-a, article six, chapter twenty-nine
148 of this code.

149 (e) Notwithstanding any other provision of this code
150 to the contrary, the secretary of each department with
151 authority over programs which are payors for
152 prescription drugs, including but not limited to, the
153 Public Employees Insurance Agency, the Children's
154 Health Insurance Program, the Division of Corrections,
155 the Division of Juvenile Services, the Regional Jail and
156 Correctional Facility Authority, the Workers'
157 Compensation Fund, state colleges and universities,
158 public hospitals, state or local institutions including
159 nursing homes and veteran's homes, the Division of
160 Rehabilitation, public health departments, the Bureau
161 for Medical Services and other programs that are payors
162 for prescription drugs, shall cooperate with the Office of
163 the Pharmaceutical Advocate established pursuant to
164 section four, article sixteen-d, chapter five of this code
165 for the purpose of purchasing prescription drugs for any
166 program over which they have authority.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and
2 responsibilities granted and assigned to the director in
3 this chapter and elsewhere by law, the director is hereby
4 authorized and empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which
9 best effectuates the purpose of this chapter and which
10 makes adequate provisions for the natural resources
11 laws of the state;

12 (2) Sign and execute in the name of the state by the
13 Division of Natural Resources any contract or
14 agreement with the federal government or its
15 departments or agencies, subdivisions of the state,
16 corporations, associations, partnerships or individuals;

17 (3) Conduct research in improved conservation
18 methods and disseminate information matters to the
19 residents of the state;

20 (4) Conduct a continuous study and investigation of
21 the habits of wildlife and, for purposes of control and
22 protection, to classify by regulation the various species
23 into such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this
27 chapter;

28 (6) Hold at least six meetings each year at such time
29 and at such points within the state, as in the discretion
30 of the Natural Resources Commission may appear to be
31 necessary and proper for the purpose of giving
32 interested persons in the various sections of the state an
33 opportunity to be heard concerning open season for
34 their respective areas, and report the results of the
35 meetings to the Natural Resources Commission before
36 such season and bag limits are fixed by it;

37 (7) Suspend open hunting season upon any or all
38 wildlife in any or all counties of the state with the prior
39 approval of the Governor in case of an emergency such
40 as a drought, forest fire hazard or epizootic disease
41 among wildlife. The suspension shall continue during
42 the existence of the emergency and until rescinded by

43 the director. Suspension, or reopening after such
44 suspension, of open seasons may be made upon twenty-
45 four hours' notice by delivery of a copy of the order of
46 suspension or reopening to the wire press agencies at
47 the state capitol;

48 (8) Supervise the fiscal affairs and responsibilities of
49 the division;

50 (9) Designate such localities as he or she shall
51 determine to be necessary and desirable for the
52 perpetuation of any species of wildlife;

53 (10) Enter private lands to make surveys or
54 inspections for conservation purposes, to investigate for
55 violations of provisions of this chapter, to serve and
56 execute warrants and processes, to make arrests and to
57 otherwise effectively enforce the provisions of this
58 chapter;

59 (11) Acquire for the state in the name of the Division
60 of Natural Resources by purchase, condemnation, lease
61 or agreement, or accept or reject for the state, in the
62 name of the Division of Natural Resources, gifts,
63 donations, contributions, bequests or devises of money,
64 security or property, both real and personal, and any
65 interest in such property, including lands and waters,
66 which he or she deems suitable for the following
67 purposes:

68 (a) For state forests for the purpose of growing timber,
69 demonstrating forestry, furnishing or protecting
70 watersheds or providing public recreation;

71 (b) For state parks or recreation areas for the purpose
72 of preserving scenic, aesthetic, scientific, cultural,
73 archaeological or historical values or natural wonders,
74 or providing public recreation;

75 (c) For public hunting, trapping or fishing grounds or
76 waters for the purpose of providing areas in which the
77 public may hunt, trap or fish, as permitted by the
78 provisions of this chapter and the rules issued
79 hereunder;

80 (d) For fish hatcheries, game farms, wildlife research
81 areas and feeding stations;

82 (e) For the extension and consolidation of lands or
83 waters suitable for the above purposes by exchange of
84 other lands or waters under his or her supervision;

85 (f) For such other purposes as may be necessary to
86 carry out the provisions of this chapter;

87 (12) Capture, propagate, transport, sell or exchange
88 any species of wildlife as may be necessary to carry out
89 the provisions of this chapter;

90 (13) Sell timber for not less than the value thereof, as
91 appraised by a qualified appraiser appointed by the
92 director, from all lands under the jurisdiction and
93 control of the director, except those lands that are
94 designated as state parks and those in the Kanawha
95 State Forest. The appraisal shall be made within a
96 reasonable time prior to any sale, reduced to writing,
97 filed in the office of the director and shall be available
98 for public inspection. The director must obtain the
99 written permission of the Governor to sell timber when
100 the appraised value is more than five thousand dollars.
101 The director shall receive sealed bids therefor, after
102 notice by publication as a Class II legal advertisement
103 in compliance with the provisions of article three,
104 chapter fifty-nine of this code and the publication area
105 for such publication shall be each county in which the
106 timber is located. The timber so advertised shall be sold
107 at not less than the appraised value to the highest
108 responsible bidder, who shall give bond for the proper
109 performance of the sales contract as the director shall
110 designate; but the director shall have the right to reject
111 any and all bids and to readvertise for bids. If the
112 foregoing provisions of this section have been complied
113 with and no bid equal to or in excess of the appraised
114 value of the timber is received, the director may, at any
115 time, during a period of six months after the opening of
116 the bids, sell the timber in such manner as he or she
117 deems appropriate, but the sale price shall not be less
118 than the appraised value of the timber advertised. No
119 contract for sale of timber made pursuant to this section

120 shall extend for a period of more than ten years. And
121 all contracts heretofore entered into by the state for the
122 sale of timber shall not be validated by this section if
123 the same be otherwise invalid. The proceeds arising
124 from the sale of the timber so sold shall be paid to the
125 Treasurer of the State of West Virginia and shall be
126 credited to the division and used exclusively for the
127 purposes of this chapter: *Provided*, That nothing
128 contained herein shall prohibit the sale of timber which
129 otherwise would be removed from rights-of-way
130 necessary for and strictly incidental to the extraction of
131 minerals;

132 (14) Sell or lease, with the approval in writing of the
133 Governor, coal, oil, gas, sand, gravel and any other
134 minerals that may be found in the lands under the
135 jurisdiction and control of the director, except those
136 lands that are designated as state parks. The director,
137 before making sale or lease thereof, shall receive sealed
138 bids therefor, after notice by publication as a Class II
139 legal advertisement in compliance with the provisions
140 of article three, chapter fifty-nine of this code, and the
141 publication area for such publication shall be each
142 county in which such lands are located. The minerals so
143 advertised shall be sold or leased to the highest
144 responsible bidder, who shall give bond for the proper
145 performance of the sales contract or lease as the director
146 shall designate; but the director shall have the right to
147 reject any and all bids and to readvertise for bids. The
148 proceeds arising from any such sale or lease shall be
149 paid to the Treasurer of the State of West Virginia and
150 shall be credited to the division and used exclusively for
151 the purposes of this chapter;

152 (15) Exercise the powers granted by this chapter for
153 the protection of forests and regulate fires and smoking
154 in the woods or in their proximity at such times and in
155 such localities as may be necessary to reduce the danger
156 of forest fires;

157 (16) Cooperate with departments and agencies of
158 state, local and federal governments in the conservation
159 of natural resources and the beautification of the state;

160 (17) Report to the Governor each year all information
161 relative to the operation and functions of the division
162 and the director shall make such other reports and
163 recommendations as may be required by the Governor,
164 including an annual financial report covering all
165 receipts and disbursements of the division for each
166 fiscal year, and he or she shall deliver such report to the
167 Governor on or before the first day of December next
168 after the end of the fiscal year so covered. A copy of
169 such report shall be delivered to each house of the
170 Legislature when convened in January next following;

171 (18) Keep a complete and accurate record of all
172 proceedings, record and file all bonds and contracts
173 taken or entered into and assume responsibility for the
174 custody and preservation of all papers and documents
175 pertaining to his or her office, except as otherwise
176 provided by law;

177 (19) Offer and pay, in his or her discretion, rewards for
178 information respecting the violation, or for the
179 apprehension and conviction of any violators, of any of
180 the provisions of this chapter;

181 (20) Require such reports as he or she may deem to be
182 necessary from any person issued a license or permit
183 under the provisions of this chapter, but no person shall
184 be required to disclose secret processes or confidential
185 data of competitive significance;

186 (21) Purchase as provided by law all equipment
187 necessary for the conduct of the division;

188 (22) Conduct and encourage research designed to
189 further new and more extensive uses of the natural
190 resources of this state and to publicize the findings of
191 such research;

192 (23) Encourage and cooperate with other public and
193 private organizations or groups in their efforts to
194 publicize the attractions of the state;

195 (24) Accept and expend, without the necessity of
196 appropriation by the Legislature, any gift or grant of

197 money made to the division for any and all purposes
198 specified in this chapter and he or she shall account for
199 and report on all such receipts and expenditures to the
200 Governor;

201 (25) Cooperate with the state historian and other
202 appropriate state agencies in conducting research with
203 reference to the establishment of state parks and
204 monuments of historic, scenic and recreational value
205 and to take such steps as may be necessary in
206 establishing such monuments or parks as he or she
207 deems advisable;

208 (26) Maintain in his or her office at all times, properly
209 indexed by subject matter and also in chronological
210 sequence, all rules made or issued under the authority
211 of this chapter. Such records shall be available for
212 public inspection on all business days during the
213 business hours of working days;

214 (27) Delegate the powers and duties of his or her
215 office, except the power to execute contracts not related
216 to land and stream management, to appointees and
217 employees of the division, who shall act under the
218 direction and supervision of the director and for whose
219 acts he or she shall be responsible;

220 (28) Conduct schools, institutions and other
221 educational programs, apart from or in cooperation
222 with other governmental agencies, for instruction and
223 training in all phases of the natural resources programs
224 of the state;

225 (29) Authorize the payment of all or any part of the
226 reasonable expenses incurred by an employee of the
227 division in moving his or her household furniture and
228 effects as a result of a reassignment of the employee:
229 *Provided*, That no part of the moving expenses of any
230 one such employee shall be paid more frequently than
231 once in twelve months; and

232 (30) Promulgate rules, in accordance with the
233 provisions of chapter twenty-nine-a of this code, to
234 implement and make effective the powers and duties

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235 vested in him or her by the provisions of this chapter
236 and take such other steps as may be necessary in his or
237 her discretion for the proper and effective enforcement
238 of the provisions of this chapter.

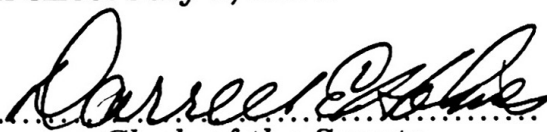
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

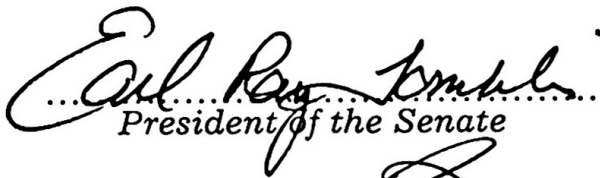

.....
Chairman House Committee

Originated in the Senate.

In effect July 1, 2007.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:30 pm