

SB 238

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2010**

WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 238**

(SENATORS WHITE, GREEN, LAIRD,  
YOST, DEEM, STOLLINGS, CHAFIN AND  
D. FACEMIRE, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

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[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §5A-11-3 and §5A-11-6 of the Code of West Virginia, 1931, as amended, all relating to management of state lands; authorizing the use of mineral rights to benefit state agencies, institutions or departments; providing that the royalties and payments from land sales and exchanges made by the Adjutant General's Department be retained in the fund managed by the Adjutant General; and providing an exemption for providing a performance bond when an agency is entering into a mineral lease.

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

That §5A-11-3 and §5A-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 11. PUBLIC LAND CORPORATION.**

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

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

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

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

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

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

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

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

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

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

34 acquisition and development of lands as may be autho-  
35 rized by law to be acquired for public use;

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

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

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

45 (C) Obtain grants or matching moneys available from the  
46 government of the United States or any of its instrumen-  
47 talities for prehistoric, historic, archaeological, recre-  
48 ational, architectural and cultural purposes.

49 (7) Designate lands, to which it has title, for develop-  
50 ment and administration for the public use including  
51 recreation, wildlife stock grazing, agricultural rehabilita-  
52 tion and homesteading or other conservation activities;

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

61 (9) Convey, assign or allot lands to the title or custody of  
62 proper departments or other agencies of state government  
63 for administration and control within the functions of  
64 departments or other agencies as provided by law;

65 (10) Make proper lands available for the purpose of  
66 cooperating with the government of the United States in

67 the relief of unemployment and hardship or for any other  
68 public purpose.

69 (b) There is hereby continued in the state Treasury a  
70 special Public Land Corporation Fund into which shall be  
71 paid all proceeds from public land sales and exchanges  
72 and rents, royalties and other payments from mineral  
73 leases: *Provided*, That all royalties and payments derived  
74 from rivers, streams or public lands acquired or managed  
75 by the Division of Natural Resources pursuant to section  
76 seven, article one, chapter twenty of this code and section  
77 two, article five, chapter twenty of this code shall be  
78 retained by the Division of Natural Resources: *Provided*,  
79 *however*, That all proceeds, rents, royalties and other  
80 payments from land sales, exchanges and mineral rights  
81 leasing for public lands owned, managed or controlled by  
82 the Adjutant General's Department will be retained in a  
83 fund managed by the Adjutant General in accordance with  
84 article six, chapter fifteen of the code: *Provided, further*,  
85 That all free gas, sand, gravel or other natural resources  
86 derived from a lease or contract made pursuant to this  
87 article will be used to benefit the state agencies, institu-  
88 tions, or departments located on the affected public lands,  
89 or for which the corporation was acting or to benefit any  
90 state agencies, institutions, or departments having adja-  
91 cent property. The corporation may acquire public lands  
92 from use of the payments made to the fund, along with any  
93 interest accruing to the fund. The corporation shall report  
94 annually, just prior to the beginning of the regular session  
95 of the Legislature, to the finance committees of the  
96 Legislature on the financial condition of the special fund.  
97 The corporation shall report annually to the Legislature on  
98 its public land holdings and all its leases, its financial  
99 condition and its operations and shall make such recom-  
100 mendations to the Legislature concerning the acquisition,  
101 leasing, development, disposition and use of public lands.

102 (c) All state agencies, institutions, divisions and depart-  
103 ments shall make an inventory of the public lands of the  
104 state as may be by law specifically allocated to and used  
105 by each and provide to the corporation a list of such public  
106 lands and minerals, including their current use, intended  
107 use or best use to which lands and minerals may be put:  
108 *Provided*, That the Division of Highways need not provide  
109 the inventory of public lands allocated to and used by it,  
110 and the Division of Natural Resources need not provide  
111 the inventory of rivers, streams and public lands acquired  
112 or managed by it. The inventory shall identify those  
113 parcels of land which have no present or foreseeable useful  
114 purpose to the State of West Virginia. The inventory shall  
115 be submitted annually to the corporation by August 1.  
116 The corporation shall compile the inventory of all public  
117 lands and minerals and report annually to the Legislature  
118 by no later than January 1, on its public lands and miner-  
119 als and the lands and minerals of the other agencies,  
120 institutions, divisions or departments of this state which  
121 are required to report their holdings to the corporation as  
122 set forth in this subsection, and its financial condition and  
123 its operations.

124 (d) Except as otherwise provided by law, when the  
125 corporation exercises its powers, the corporation will  
126 coordinate with other state agencies, institutions, and  
127 departments in order to develop and execute plans to  
128 utilize mineral rights which benefit their operations or the  
129 operations of any other state agencies, institutions, or  
130 departments.

**§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 for  
2 the development of minerals, including, but not limited to,  
3 coal, gas, oil, sand or gravel on or under lands in which the

4 corporation holds any right, title or interest: *Provided,*  
5 That no lease or contract may be entered into for the  
6 extraction and removal of minerals by surface mining or  
7 auger mining of coal: *Provided, however,* That the corpo-  
8 ration or the state agencies, institutions or departments for  
9 which it is acting will not be required to post any type of  
10 surety or performance bond with the West Virginia  
11 Department of Environmental Protection or any other  
12 state agency when executing a lease for the development  
13 of minerals.

14 (b) With the exception of deep mining operations which  
15 are already in progress and permitted as of July 5, 1989,  
16 the extraction of coal by deep mining methods under state  
17 forests or wildlife refuges may be permitted only if the  
18 lease or contract provides that no entries, portals, air  
19 shafts or other incursions upon and into the land incident  
20 to the mining operations may be placed or constructed  
21 upon the lands or within three thousand feet of its bound-  
22 ary.

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

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

33 (e) The corporation may enter into a lease or contract for  
34 the development of minerals where the lease or contract is  
35 not prohibited by any other provisions of this code, only  
36 after receiving sealed bids therefor, after notice by publi-  
37 cation as a Class II legal advertisement in compliance with  
38 the provisions of article three, chapter fifty-nine of this

39 code. The area for publication shall be each county in  
40 which the minerals are located.

41 (f) The minerals so advertised may be leased or con-  
42 tracted for development at not less than the fair market  
43 value, as determined by an appraisal made by an inde-  
44 pendent person or firm chosen by the corporation, to the  
45 highest responsible bidder, who shall give bond for the  
46 proper performance of the contract or lease as the corpo-  
47 ration designates: *Provided*, That the corporation may  
48 reject any and all bids and to readvertise for bids.

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

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

60 (i) The corporation will consult with the office of the  
61 Attorney General to assist the corporation in carrying out  
62 the provisions of this section.

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

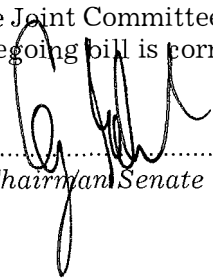
69 (k) Once the lessee commences the production of miner-  
70 als and royalties become due and are paid to the Public  
71 Land Corporation, the Public Land Corporation shall hire



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72 an independent auditing firm to periodically review the  
73 lessee's books and accounts for compliance of payment of  
74 appropriate royalties due the Public Land Corporation for  
75 its minerals as produced under the lease agreement.

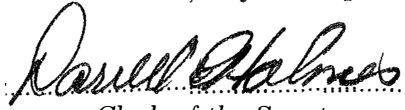
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

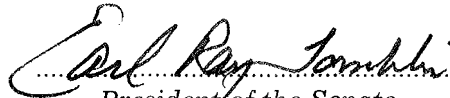
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *2nd* .....  
Day of *April* ..... 2010.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 01 2010

Time

11:25 am