

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 268

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Agriculture and
Rural Development; reported on January 26, 2018]

1 A BILL to amend and reenact §19-12A-1a, §19-12A-5, and §19-12A-6 of the Code of West
2 Virginia, 1931, as amended, all relating to eliminating the requirement that the Division of
3 Corrections and the Bureau for Public Health purchase commodities produced on
4 institutional farms from the Department of Agriculture.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12A. LAND DIVISION.

**§19-12A-1a. Farm Management Commission abolished; property transferred; powers and
duties of Commissioner of Agriculture.**

1 (a) The Farm Management Commission previously established by this article is hereby
2 abolished. The real and personal property held by the commission, including all institutional farms
3 and all easements, mineral rights, appurtenances, farm equipment, agricultural products,
4 inventories, and farm facilities, operating revenue funds for those operations, and all employees
5 of the ~~farm management commission~~ Farm Management Commission, are hereby transferred to
6 the Department of Agriculture. The Commissioner of the Department of Agriculture shall have all
7 those powers, duties, and responsibilities previously vested in the Farm Management
8 Commission and the ~~farm management director~~ Farm Management Director pursuant to this
9 article.

10 (b) Not later than January 1, 1995, the Commissioner of the Department of Agriculture
11 shall report to the Legislature on the optimum use or disposition of each institutional farm
12 transferred pursuant to this section. The commissioner shall set forth the objectives of the agency
13 with respect to the land, the criteria by which the agency has determined the optimum use or
14 disposition of the property, and determinations as to whether the land shall be used in the
15 production of food products, the production or development of natural resources, held for
16 recreational or other specified uses, or sold, or leased in whole or in part. With respect to each
17 institutional farm, the commissioner shall report on which properties are subject to reversionary
18 clauses or other restrictions in deeds of conveyance which may affect permitted uses, or proposed

19 sales or leases. With respect to each institutional farm, the commissioner shall report on projected
20 revenues and expenses from operations. Planned activities and uses with respect to the land
21 shall be detailed for at least five years specifically and at least 10 years generally and shall include
22 a cost benefit analysis of options or alternatives for action. In the case of land managed for
23 production of timber, the commissioner shall report on projections for timber harvesting on a
24 sustained-yield basis, income estimates, and the years in which income will be generated. The
25 report shall detail planned actions to protect the land from erosion, fire, plant and animal pests,
26 noxious insects, noxious weeds, and plant and animal diseases. In the case of land subject to
27 rights granted by existing contracts, leases, licenses, or easements, the report shall include a
28 determination as to whether the interest granted should be continued or withdrawn. In the case
29 of land managed under land management plans adopted prior to the effective date of this section,
30 land management plans shall be reviewed and amended as may be necessary. When
31 appropriate, the commissioner shall consult with the secretaries of the various departments of
32 state government and shall request from the secretaries suggestions for land use and resource
33 development on the land. In the case of land recommended for sale, lease, or transfer, the report
34 shall include the review and approval of the Director of the West Virginia Development Office of
35 the proposed use and alternate suggestions for use of any institutional farm which may be in the
36 public interest. Notwithstanding any other provision of this subsection to the contrary, title to the
37 Weston State Hospital Institutional Farm, located at Weston, Lewis County, is hereby transferred
38 from the Department of Agriculture to the Department of Health and Human Resources, including
39 all buildings thereon: *Provided*, That the Department of Agriculture shall retain all oil, gas, and
40 mineral rights, interests and title underlying the surface of the real property being transferred to
41 the Department of Health and Human Resources under this subsection.

42 The Secretary of the Department of Health and Human Resources is authorized to sell,
43 lease, donate, or otherwise transfer the Weston State Hospital Institutional Farm, as well as the
44 grounds of the former Weston State Hospital including the improvements and appurtenances

45 belonging thereto: *Provided*, That notice of the sale of the real estate at auction shall include the
46 right of the state to reject any and all bids: *Provided, however*, That the deed conveying title to
47 the real estate shall contain a reservation in it providing that the communications tower, located
48 on the real estate and owned and maintained by the ~~county commission~~ County Commission of
49 Lewis County, shall remain the property of the Lewis ~~county commission~~ County Commission and
50 shall remain on the real estate free of any cost or rent and the ~~county commission~~ County
51 Commission of Lewis County shall have an easement for ingress and egress and for the
52 maintenance of the tower in perpetuity unless agreed otherwise in writing by the ~~county~~
53 ~~commission~~ County Commission of Lewis County.

54 (c) Nothing in this section shall be construed to limit the ~~duties imposed on~~ authority of the
55 Department of Health and Human Resources and the Division of Corrections to purchase food
56 products pursuant to §19-12A-5 of this code and to make interdepartmental transfers pursuant to
57 §19-12A-6 of this code: *Provided*, That purchases shall be made from and transfers made to the
58 Department of Agriculture.

59 (d) Nothing in this section shall be construed to invalidate any action or contractual
60 obligation of the Farm Management Commission prior to the effective date of this section.

61 (e) Notwithstanding the provisions of §19-12A-1a(b) of this code, in any case where the
62 Farm Management Commission has determined by motion adopted prior to the effective date of
63 this article that an institutional farm or part thereof should be transferred or disposed of, or
64 authorized any formal agreement for this purpose, whether or not any documents related to the
65 agreement have been reduced to writing or executed, the commissioner shall execute all
66 documents and take all necessary actions to implement the transfer or disposition of the property.

67 (f) For any land transferred to the public land corporation for sale, exchange, or transfer
68 pursuant to §19-12A-5 of this code, the farm property shall be offered for sale in both small parcels
69 of land and as whole farms and shall be sold in the form which brings the highest price for the
70 total property. For purposes of this subsection, "small parcels" means parcels of no more than

71 five acres.

§19-12A-5. Powers, duties, and responsibilities of commission.

1 (a) On or before July 1, 1990, the commission shall meet and confer with respect to the
2 development of a management plan to determine the optimum use or disposition of all institutional
3 farms, at which time the Farm Management Director shall provide the commission with a complete
4 inventory of all institutional farms, and such information relating to easements, mineral rights,
5 appurtenances, farm equipment, agricultural products, livestock, inventories, and farm facilities
6 as may be necessary to develop such management plan. The commission shall complete and
7 provide to the Governor a management plan, which plan shall set forth the objectives of the
8 commission with respect to institutional farms, the criteria by which the commission shall
9 determine the optimum use or disposition of such property, and determinations as to whether
10 each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the
11 adoption of any plan, the commission shall consult with the secretaries of the various departments
12 of state government and shall request from such secretaries suggestions for land use and
13 resource development on farm commission lands. On or before December 1, 1990, such
14 management plan shall be presented to the Legislature, by providing a copy to the President of
15 the Senate and the Speaker of the House of Delegates. The commission may confer with any
16 other agency or individual in implementing and adjusting its management plan. The management
17 plan established pursuant to this subsection may be amended, from time to time, as may be
18 necessary.

19 (b) The commission shall manage its institutional farms, equipment, and other property in
20 order to most efficiently ~~produce food products for state institutions~~ operate and shall implement
21 the intent of the Legislature as set forth by this article. ~~From the total amount of food, milk and~~
22 ~~other commodities produced on institutional farms, the commission shall sell, at prevailing~~
23 ~~wholesale prices, and each of the institutions under the control of the bureau of public health and~~
24 ~~the Division of Corrections shall purchase, a proportionate amount of these products based on~~

25 ~~the dietary needs of each institution~~ The Department of Agriculture may enter into agreements
26 with state agencies to sell commodities that are produced on institutional farms for prevailing
27 wholesale prices. The institutions under the control of the Bureau for Public Health and the
28 Division of Corrections may purchase commodities produced on institutional farms directly from
29 the Department of Agriculture.

30 (c) If requested by the Commissioner of Corrections, the commission may authorize the
31 Division of Corrections to operate a farm or other enterprise using inmates as labor on such lands.
32 The Commissioner of Corrections is responsible for the selection, direction, and supervision of
33 the inmates and shall assign the work to be performed by inmates.

34 (d) The commission is hereby authorized and empowered to:

35 (1) Lease to public or private parties, for purposes including agricultural production or
36 experimentation, public necessity, or other purposes permitted by the management plan, any
37 land, easements, equipment, or other property, except that property may not be leased for any
38 use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous
39 materials as identified by the Commissioner of Agriculture be used or stored upon such property
40 unless all applicable state and federal permits necessary are obtained. Any lease for an annual
41 consideration of \$1,000 or more shall be by sealed bid auction and the commission shall give
42 notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance
43 with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication is
44 the county in which the property to be leased is located;

45 (2) Transfer to the public land corporation land designated in its management plan as land
46 to be disposed of, which land shall be sold, exchanged or otherwise transferred pursuant to §20-
47 1A-4 and §20-1A-5 of this code: *Provided*, That the net proceeds of the sale of farm commission
48 lands shall be deposited in the General Revenue Fund of the state: *Provided, however*, That no
49 sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties
50 located at institutions closed on or before the effective date of this section, March 10, 1990; or (B)

51 properties conveyed to or from the farm management commission to or from any other entity in
52 order to facilitate the construction of a regional jail or correctional facility by the regional jail and
53 correctional facilities authority or the State Building Commission, with the decision to execute any
54 such conveyance being solely within the discretion of, and at the direction of, the regional jail and
55 correctional facilities authority;

56 (3) Develop lands to which it has title for the public use including forestation, recreation,
57 wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities
58 and may contract or lease for the proper development of timber, oil, gas, or mineral resources,
59 including coal by underground mining or by surface mining where reclamation as required by
60 specifications of the Division of Environmental Protection will increase the beneficial use of such
61 property. Any such contract or lease shall be by sealed bid auction as provided for in §19-12A-
62 5(d)(1) of this code;

63 (4) Exercise all other powers and duties necessary to effectuate the purposes of this
64 article.

65 (e) Notwithstanding the provisions of §19-12A-5(d) of this code, no timberland may be
66 leased, sold, exchanged, or otherwise disposed of unless the Division of Forestry of the
67 Department of Commerce, Labor, and Environmental Resources certifies that there is no
68 commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber
69 is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid
70 auction procedure provided above in §19-12A-5(d)(1) or §19-12A-5(d)(2) of this code, as
71 applicable.

72 (f) The commission shall promulgate, pursuant to chapter 29A of this code, rules and
73 regulations relating to the powers and duties of the commission as enumerated in this section.

§19-12A-6. Appointment of Farm Management Director; qualifications; powers and duties.

1 The commission shall appoint a Farm Management Director who, in addition to
2 qualifications established by the commission, shall have owned, operated, or managed a farm for

3 at least five years within 10 years immediately prior to being appointed. The Farm Management
4 Director is the chief executive officer of the commission and is responsible for conducting the
5 operations of the farms. The director shall prepare an annual report of the farming operations,
6 including a listing of all receipts and expenditures and shall present it to the commission and the
7 Legislature at the end of each fiscal year.

8 As authorized or directed by the commission, the director shall also:

9 (1) Prepare the annual budget request for the operation of the institutional farms and
10 submit it to the commission for approval and submission to the Secretary of the Department of
11 Administration.

12 (2) Receive and approve all requisitions for farm supplies and equipment.

13 (3) Supervise the operation of all canneries and determine what foods are to be canned.

14 (4) Recruit and approve assistant farm managers to supervise each institutional farm.

15 (5) Implement all orders of the commission.

16 (6) Supervise all other employees of the commission.

17 (7) Transfer farm supplies, farm equipment, farm facilities, food stuffs, and produce from
18 one institutional farm to another to promote efficiency and improve farm management.

19 With the approval of the commission, the Farm Management Director may rent or lease
20 additional land for farm use.

21 ~~By September 30, each year, each institution under the control of the division of health~~
22 ~~and the Division of Corrections shall present to the farm management director a purchase order~~
23 ~~for its food requirements during the next fiscal year as determined by the institution. If, during the~~
24 ~~year, an institution finds that it needs other or additional food, milk, or commodities not included~~
25 ~~in its purchase order for the year, the institutional superintendent may forward a supplemental~~
26 ~~request to the farm management director, which order may be filled depending on availability. If~~
27 ~~institutional farms produce more food, milk and other commodities than can be sold to the~~
28 ~~institutions, the farm management director may sell the surplus to other state agencies willing to~~

29 ~~purchase. If any surplus remains after sales to other state agencies, the director may sell the~~
30 ~~surplus on the open market, or at the discretion of the director, turn over any surplus food products~~
31 ~~to appropriate public, nonprofit agencies upon application.~~

32 ~~On July 1, 1990, the division of health and the Division of Corrections shall each transfer,~~
33 ~~by interdepartmental transfer, the sum of \$200,000 to the farm management commission to be~~
34 ~~credited toward their purchase of food products from the commission. Such credits shall be~~
35 ~~treated as advance payments for food products purchased by these divisions pursuant to this~~
36 ~~section and such divisions shall not be required to make actual payments for food products until~~
37 ~~such credits have been completely expended~~

NOTE: The purpose of this bill is to eliminate the requirement that the Department of Agriculture sell, and the Department of Health and Human Resources and Division of Corrections purchase, commodities produced on institutional farms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.