

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 344**

SENATORS CARMICHAEL (MR. PRESIDENT), PREZIOSO,

AND CLINE, *original sponsors*

[Originating in the Committee on Agriculture and  
Rural Development; Reported on February 15, 2019]

1 A BILL to repeal §19-12A-3, §19-12A-7, and §19-12A-8 of the Code of West Virginia, 1931, as  
2 amended; and to amend and reenact §19-12A-1, §19-12A-2, §19-12A-5, and §19-12A-6  
3 of said code, all relating to the operation of state-owned farms; clarifying that state-owned  
4 farms are managed by the Commissioner of the Department of Agriculture; removing  
5 reference to Farm Management Commission; defining terms; removing language  
6 regarding organization and duties of Farm Management Commission; expanding  
7 permissive uses and purposes of institutional farms; replacing outdated language  
8 referencing to the Department of Health and Human Resources and Division of  
9 Corrections and Rehabilitation; authorizing Commissioner of Agriculture to request inmate  
10 labor on institutional farms; providing that state institutions may purchase items from  
11 vendors that state-owned farms cannot provide; removing references to Farm  
12 Management Director and replacing with commissioner; and removing outdated language.

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

**ARTICLE 12A. LAND DIVISION.**

**§19-12A-1. Legislative findings and declarations.**

1 The Legislature hereby finds and declares that in order to ensure economic and efficient  
2 land use, increase and improve agricultural production, and provide food for residents of state  
3 operated institutions, state-owned farms should ~~be transferred to the state farm management~~  
4 ~~commission as is provided by this article~~ operate under the control of the Commissioner of  
5 Agriculture. The Legislature also finds and declares that the operation of all institutional farms  
6 under one management system with a single integrated farm plan is the most efficient method of  
7 providing the food needs of residents of state-operated institutions and will promote the health  
8 and welfare of all citizens of this state.

**§19-12A-2. Definitions.**

1 For the purpose of this article:

2 “Agricultural products” means livestock and livestock products, poultry and poultry

3 products, fruits and fruit products, vegetables and vegetable products, grains and hays and the  
4 products derived therefrom, tobacco, syrups, honey, and other products derived from the  
5 business of farming; including such other products as may be manufactured, derived, or prepared  
6 from agricultural products, raw or processed, which are used as food for man or animals.

7 “Commission” means the Farm Management Commission as established by this article.

8 “Commissioner” means the Commissioner of Agriculture, or his or her designee.

9 “Department” means the Department of Agriculture.

10 “Farm equipment” means any equipment used for agricultural production ~~owned by an~~  
11 ~~institution and transferred to the commission as provided in this article.~~

12 “Farm facility” means any processing plant, milking parlor, farm equipment storage  
13 building, barn, silo, grain storage building, swinery, or any other building owned by an institution  
14 used in its farming operations ~~and transferred to the commission as provided in this article.~~

15 “Institution” means any facility operated by the ~~department of mental health or the state~~  
16 ~~commissioner of public institutions for care, treatment, confinement or rehabilitation of residents~~  
17 Department of Health and Human Resources or the Division of Corrections and Rehabilitation.

18 “Institutional farm” means any land ~~owned by the department of mental health or the state~~  
19 ~~commissioner of public institutions~~ which was formerly operated as a farm, is now being operated  
20 as a farm, or could be converted to agricultural production ~~and is transferred to the commission~~  
21 ~~as provided in this article.~~

**§19-12A-3. Farm management commission continued; composition; chairman; quorum;  
meetings; vacancies.**

1 [Repealed.]

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

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) (a) ~~The commission~~ commissioner shall manage its all institutional farms, equipment,  
20 and other property in order to most efficiently produce food products for state institutions, support  
21 the department and its activities, advance the agricultural interests of the state, as identified by  
22 the commissioner, and ~~shall~~ otherwise implement the intent of the Legislature as set forth by this  
23 article. From the total amount of food, milk, and other commodities produced on institutional  
24 farms, the ~~commission~~ commissioner shall sell, at prevailing wholesale prices, and each of the  
25 institutions under the control of the ~~Bureau of Public Health~~ Department of Health and Human  
26 Resources and Division of Corrections and Rehabilitation shall purchase, a ~~proportionate amount~~  
27 ~~of~~ these products based on the dietary needs of each institution: Provided, That if the  
28 commissioner cannot sell sufficient food products to each institution to meet the demand created,  
29 each institution may purchase such food products from vendors who can supply those food

30 products at the greatest savings to the taxpayers of the state.

31 ~~(e)~~ (b) If requested by the Commissioner of the Division of Corrections and Rehabilitation,  
32 the ~~commission~~ commissioner may authorize the Division of Corrections and Rehabilitation to  
33 operate a farm or other enterprise using inmates as labor on those lands. The Commissioner of  
34 the Division of Corrections and Rehabilitation is responsible for the selection, direction, and  
35 supervision of the inmates and shall, in consultation with the Commissioner of Agriculture, assign  
36 the work to be performed by inmates. The Commissioner of Agriculture may also request inmate  
37 labor to perform work on the institutional farms, and if requested, the Commissioner of the Division  
38 of Corrections and Rehabilitation shall provide inmate labor, if available.

39 ~~(d)~~ (c) The ~~commission~~ commissioner is hereby authorized and empowered to:

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

50 (2) Transfer to the public land corporation land designated in its management plan as land  
51 to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-  
52 11-4 and §5A-11-5 of this code: ~~Provided, That the net proceeds of the sale of farm commission~~  
53 ~~lands shall be deposited in the General Revenue Fund of the state: Provided, however, That no~~  
54 ~~sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties~~  
55 ~~located at institutions closed on or before the effective date of this section, March 10, 1990; or (B)~~

56 ~~properties conveyed to or from the farm management commission to or from any other entity in~~  
57 ~~order to facilitate the construction of a regional jail or correctional facility by the Regional Jail and~~  
58 ~~Correctional Facilities Authority or the State Building Commission, with the decision to execute~~  
59 ~~any such conveyance being solely within the discretion of, and at the direction of, the Regional~~  
60 ~~Jail and Correctional Facilities Authority;~~

61 (3) Develop lands to which it has title for the public use including forestation, recreation,  
62 wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities  
63 and may contract or lease for the proper development of timber, oil, gas, or mineral resources,  
64 including coal by underground mining or by surface mining where reclamation as required by  
65 specifications of the Department of Environmental Protection will increase the beneficial use of  
66 such property. Any such contract or lease shall be by sealed bid auction as provided for in  
67 subdivision (1) of this subsection; and

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

70 ~~(e)~~ (d) Notwithstanding the provisions of subsection ~~(d)~~ (c) of this section, no timberland  
71 may be leased, sold, exchanged, or otherwise disposed of unless ~~the Division of Forestry of the~~  
72 ~~Department of Commerce, Labor and Environmental Resources certifies that~~ there is no  
73 commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber  
74 is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid  
75 auction procedure provided above in subdivision (1) or (2), subsection (c) of this section as  
76 applicable.

77 ~~(f)~~ (e) The ~~commission~~ commissioner shall may promulgate, pursuant to §29-1-1 *et seq.*  
78 of this code, rules and regulations relating to the powers and duties of the ~~commission~~  
79 ~~commissioner~~ as enumerated in this section.

**§19-12A-6. ~~Appointment of farm management director; qualifications; Commissioner's~~  
Commissioner's  
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 ten years immediately prior to being appointed. The farm management~~  
4 ~~director is the chief executive officer of the commission and commissioner or his or her designee~~  
5 ~~is responsible for conducting the operations of the farms and shall:~~

6           ~~The director shall (1) Prepare an annual report of the farming operations, including a listing~~  
7 ~~of all receipts and expenditures and shall present it to the ~~commission and the~~ Legislature at the~~  
8 ~~end of each fiscal year.~~

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

10           ~~(4) (2) Prepare the annual budget request for the operation of the institutional farms and~~  
11 ~~submit it to the commission for approval and submission to the secretary of the Department of~~  
12 ~~Administration.~~

13           ~~(2) (3) Receive and approve all requisitions for farm supplies and equipment.~~

14           ~~(3) (4) Supervise the operation of all canneries and determine what foods are to be~~  
15 ~~canned.~~

16           ~~(4) (5) Recruit and approve assistant farm managers to supervise each institutional farm.~~

17           ~~(5) Implement all orders of the commission.~~

18           ~~(6) Supervise all other employees of the commission.~~

19           ~~(7) (6) Transfer farm supplies, farm equipment, farm facilities, food stuffs, and produce~~  
20 ~~from one institutional farm to another to promote efficiency and improve farm management.~~

21           ~~(7) With the approval of the commission, the farm management director may rent Rent or~~  
22 ~~lease additional land for farm use.~~

23           By September 30 each year, each institution under the control of the ~~division of health~~  
24 ~~Department of Health and Human Resources and the Division of Corrections and Rehabilitation~~  
25 ~~shall present to the farm management director commissioner a purchase order for its food~~  
26 ~~requirements during the next fiscal year as determined by the institution. If, during the year, an~~

27 institution finds that it needs other or additional food, milk, or commodities not included in its  
28 purchase order for the year, the institutional superintendent may forward a supplemental request  
29 to the ~~farm management director~~ commissioner, which order may be filled depending on  
30 availability. If institutional farms produce more food, milk, and other commodities than can be sold  
31 to the institutions, the ~~farm management director~~ commissioner may sell the surplus to other state  
32 agencies willing to purchase. If any surplus remains after sales to other state agencies, the  
33 ~~director~~ commissioner may sell the surplus on the open market, ~~or at the discretion of the director,~~  
34 turn over any surplus food products to appropriate public, nonprofit agencies ~~upon application.~~

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

**§19-12A-7. Farm division lines to be established; appeal to commission; remedy.**

1 [Repealed.]

**§19-12A-8. Effect of management plan on employees.**

1 [Repealed.]

NOTE: This bill relates to the operation of state-owned farms; clarifies that state-owned farms are managed by the commissioner of the Department of Agriculture; expands permissive uses and purposes of institutional farms; authorizes the commissioner of agriculture to request inmate labor on institutional farms; and provides that state institutions may purchase items from vendors that state owned farms cannot provide.

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