

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2560

FISCAL  
NOTE

BY DELEGATES HANSHAW (MR. SPEAKER), AND MILEY

[Introduced January 21, 2019; Referred  
to the Committee on Agriculture and Natural  
Resources then Government Organization.]

1 A BILL to repeal §19-12A-3, §19-12A-4, and §19-12A-7 of the Code of West Virginia, 1931, as  
 2 amended; and to amend and reenact §19-12A-1, §19-12A-2, §19-12A-5, §19-12A-6, §19-  
 3 12A-6a, and §19-12A-8, all relating to the operation of state-owned farms; clarifying that  
 4 state-owned farms are managed by the commissioner of the Department of Agriculture;  
 5 removing reference to farm management commission; defining the term “commissioner”;  
 6 removing language regarding organization and duties of farm management commission;  
 7 removing language regarding prior transfer of institutional land to the farm management  
 8 commission; replace outdated language referencing to the Department of Health and  
 9 Human Resources and Division of Corrections and Rehabilitation; providing that state  
 10 institutions may purchase items from vendors that state owned farms cannot directly  
 11 produce; and removing references to farm management director and replacing with  
 12 commissioner.

*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 the  
 5 Department of Agriculture. The Legislature also finds and declares that the operation of all  
 6 institutional farms under one management system with a single integrated farm plan is the most  
 7 efficient method of providing the food needs of residents of state operated institutions and will  
 8 promote the health 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 the Department of Agriculture.

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

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

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

17 “Institutional farm” means any land owned by the ~~department of mental health or the state~~  
 18 ~~commissioner of public institutions~~ Department of Health and Human Resources and the Division  
 19 of Corrections and Rehabilitation 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-4. Transfer of institutional farms, farm equipment, farm facilities, inventories and  
 agricultural products to commission; utility continuance; provisions for  
 uninterrupted operation; transfer of funds.**

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 institutional farms, equipment, and  
20           other property in order to most efficiently produce food products for state institutions and shall  
21           implement the intent of the Legislature as set forth by this article. From the total amount of food,  
22           milk and other commodities produced on institutional farms, the ~~commission~~ commissioner shall  
23           sell, at prevailing wholesale prices, and each of the institutions under the control of the ~~Bureau of~~  
24           ~~Public Health~~ Department of Health and Human Resources and Division of Corrections and  
25           Rehabilitation shall purchase, a proportionate amount of these products based on the dietary

26 needs of each institution. Provided, That if the commissioner cannot directly sell food products to  
27 each institution to meet the demand created, each institution may purchase such food products  
28 from vendors who can directly supply those food products at the greatest savings to the taxpayers  
29 of the state.

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

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

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

46 (2) Transfer to the public land corporation land designated in its management plan as land  
47 to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-  
48 11-4 and §5A-11-5 of this code: Provided, That the net proceeds of the sale of farm commission  
49 lands shall be deposited in the General Revenue Fund of the state: Provided, however, That no  
50 sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties  
51 located at institutions closed on or before the effective date of this section, March 10, 1990; or (B)

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

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

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

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

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

**~~§19-12A-6. Appointment of farm management director; qualifications; 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 ~~(1)~~ (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 or lease  
22 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-6a. Special revenue account.**

1 (a) All funds collected by the ~~commission~~ commissioner pursuant to this article, whether  
 2 from the sale of food, the disposition of assets other than land, the lease of land or minerals or  
 3 any other source, shall be paid into a special revenue account to be used for the purposes of this  
 4 article: *Provided*, That when the aggregate of said funds so collected and deposited in the special  
 5 revenue account in any fiscal year total \$2,000,000, the ~~commission~~ commissioner shall deposit  
 6 half of any excess funds collected into the special revenue account, and half into the General  
 7 Revenue Fund of the state.

**§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 Nothing contained in section five of this article shall be construed to abridge the rights of  
 2 farm employees ~~of the commission~~ within the classified service of the state to the procedures and



- 3 protections of §29-6-10 and §29-6-10a of this code, subject to the limitations set forth in §5F-2-
- 4 2(d) of this code.

NOTE: The purpose of this bill is to clarify that state-owned farms are managed by the commissioner of the Department of Agriculture; remove reference to farm management commission; define the term "commissioner"; remove language regarding organization and duties of farm management commission; remove language regarding prior transfer of institutional land to the farm management commission; replace outdated language referencing the Department of Health and Human Resources and Division of Corrections and Rehabilitation; provide that state institutions may purchase items from vendors that state owned farms cannot directly produce; and remove references to farm management director and replace with commissioner.

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