WEST VIRGINIA CODE: §31-21-5

PART II. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

§31-21-5. Creation of the West Virginia Land Stewardship Corporation; powers and limitations.

(a) The corporation shall be organized as a nonprofit, nonstock corporation under the West Virginia Nonprofit Corporation Act, article two, chapter thirty-one-e of this code. The property thereof is deemed to be held for an area economic development purpose under subdivision fourteen, subsection (a), section nine, article three, chapter eleven of this code.

(b) The corporation shall apply for recognition of nonprofit exempt status by the United States Internal Revenue Service under one or more charitable purposes within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended.

(c) The corporate name for the corporation shall be the "West Virginia Land Stewardship Corporation".

(d) The corporation shall have all of the powers of a nonprofit corporation as set forth in chapter thirty-one-e of this code.

(e) Except as otherwise provided in chapter thirty-one-e of this code or in this article, the corporation may do all things necessary or convenient to implement the purposes, objectives and provisions of this article and the purposes, objectives and powers delegated to the board of directors of a nonprofit corporation by other laws or executive orders, including, but not limited to, all of the following:

(1) Adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business;

(2) Establish the service offerings and related fees for such services under each of the voluntary programs described herein;

(3) Sue and be sued in its own name and plead and be impleaded, including, but not limited to, defending the corporation in an action arising or resulting from the services, programs and responsibilities arising under this article;

(4) Solicit and accept gifts, grants, labor, loans, services and other aid from any person, or the federal government, this state or a political subdivision of this state or any agency of the federal government or a state institution of higher education or nonprofit affiliates or an intergovernmental entity created under the laws of this state, or participate in any other way in a program of the federal government;

(5) Procure insurance against risk and loss in connection with the programs, property, assets

WV Legislature

or activities of the corporation;

(6) Invest money of the corporation, at the discretion of the board of directors, in instruments, obligations, securities or property determined proper by the board of directors of the corporation and name and use depositories for its money;

(7) Employ legal and technical experts, contractors, consultants, agents or employees, permanent or temporary, paid from the funds of the corporation. The corporation shall determine the qualifications, duties and compensation of those it employs;

(8) Contract for goods and services and engage personnel as necessary, contract with Regional Brownfield Assistance Centers as set out in section seven, article eleven, chapter eighteen-b of this code, and engage the services of private consultants, managers, legal counsel, engineers, accountants and auditors for rendering professional environmental, legal and financial assistance and advice payable from funds of the corporation;

(9) Create limited liability companies or other sole purpose entities or devices to accept and hold real property as part of administering its programs;

(10) Study, develop and prepare the reports or plans the corporation considers necessary to assist it in the exercise of its powers under this article and to monitor and evaluate progress under this article; and

(11) Enter into contracts for the management of, the collection of rent from, or the sale of real property held by the corporation.

(f) The enumeration of a power in this article may not be construed as a limitation upon the general powers of the corporation. The powers granted under this article are in addition to those powers granted by any other statute or as provided in articles of incorporation filed with the Secretary of State.

(g) The property of the corporation and its income and operations are exempt from all taxation by this state or any of its political subdivisions. Property owned and leased by the corporation as lessor to a commercial lessee or an industrial lessee is hereby declared to be tax exempt and held by the corporation for a public purpose. A payment in lieu of taxes, payable by the lessee, shall be established for any property so leased, in an amount not less than the property tax otherwise payable on the property. The lessee's leasehold interest therein is hereby declared to be a tax exempt leasehold interest held for a public purpose so long as the payment in lieu of taxes is timely paid. Payments made to any county commission, county school board or municipality in lieu of tax pursuant to such agreement shall be distributed as if the payments resulted from ad valorem property taxation.

(h) The corporation may not issue tax-exempt financing or issue bonds.

(i) The corporation does not have the power of eminent domain or the ability to condemn property.

WV Legislature

(j) The exercise by the corporation of powers and duties under this article and its activities under the programs described herein shall be considered a necessary public purpose and for the benefit of the public.

(k) The corporation is not liable under the environmental acts or common law equivalents to the state or to any other person by virtue of the fact that the corporation is fulfilling the purposes of this article including, but not limited to, providing land stewardship services or accepting title to property under any program established under this article unless:

(1) The corporation, its employees or agents directly cause an immediate release or directly exacerbate a release of regulated substances on or from a property that is an enrolled site or accepted into the land bank program; or

(2) The corporation, its employees or agents knowingly and willfully do an action which causes an immediate release of regulated substances or violates an environmental act. Liability pursuant to this article is limited to the cost for a response action which may be directly attributable to the corporation's activities, and only if these activities are the proximate and efficient cause of the release or violation. Ownership or control of the property after accepting title in the land bank program does not by itself trigger liability.

(l) The corporation shall adopt a code of ethics for its directors, officers and employees.

(m) The corporation shall establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest. The board of directors of the corporation shall require that any member of the board with a direct or indirect interest in any matter before the corporation disclose the member's interest to the governing body before the board takes any action on the matter.

(n) The programs that are established under this article and administered by the corporation are voluntary programs. Parties can participate in the land stewardship program, certified sites program and land bank program at their option.

(o) In the event of a conveyance of property to the corporation, at the discretion of the corporation, the prior owner may be required to post a bond or other type of financial assurance for any potential future remediation, in order to ensure the original owner's liability is maintained.

(p) The state may contract with the corporation for services for properties for which the state is responsible and may enter into long-term contracts for services that are funded under a trust agreement or provided in an escrow account.

WV Legislature