WEST VIRGINIA CODE CHAPTER 31 ARTICLE 21

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PART I. SHORT TITLE, DECLARATION OF POLICY, PURPOSE OF ARTICLE AND DEFINITIONS.

§31-21-1. Short title.

This article shall be known and may be cited as The West Virginia Land Stewardship Corporation Act.

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§31-21-2. Definitions.

The following words used in this article, unless the context clearly indicates a different meaning, are defined as follows:

(1) "Agreement" means any agreement being entered into between the nonprofit corporation and a business, corporation, private party or local or state government.

(2) "All appropriate inquiries" or "AAI" means the process of evaluating a property's environmental conditions and assessing the likelihood of any contamination. Every Phase I environmental assessment must be conducted in compliance with the All Appropriate Inquiries Final Rule at 40 CFR Part 312.

(3) "Board of directors" or "board" means the board of directors of the corporation to be appointed under the provisions of section six of this article.

(4) "Certified sites" means those sites that are developable properties that have been prequalified as having proper land use designation, utilities, transportation improvements, availability, and pricing. Criteria for prequalification include, but are not limited to, established pricing terms and conditions so that property acquisition can be negotiated quickly and without time-consuming delays.

(5) "Charitable purposes" means the 501(c)(3) subclasses of "lessening the burden of the government" where the government identifies a need for the nonprofit entity to assist with a governmental service and the nonprofit collaborates with the government entity, and "environmental protection for the benefit of the public" where the services of the corporation benefit the general public by protecting public health and the environment as well as assisting with state and local economic development initiatives.

(6) "Contaminants" has the same meaning as defined in the environmental acts referenced in subdivision (13) of this section.

(7) "Corporation" means the West Virginia Land Stewardship Corporation, a nonstock, nonprofit corporation to be established under the West Virginia Nonprofit Corporation Act, article two, chapter thirty-one-e of this code, and with nonprofit status under one or more charitable purposes under 501(c) of the Internal Revenue Code of 1986, as amended.

(8) "Corporate directors" means the members of the board of directors of the corporation.

(9) "Department of Environmental Protection" or the "DEP" means the West Virginia Department of Environmental Protection or any successor agency.

(10) "Enforcement tools" means any order, permit, consent decree or environmental covenant or similar mechanisms which restrict or control certain land uses implemented at IEC Sites.

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(11) "Engineering controls" or "ECs" means physical controls or measures designed to eliminate the potential for human exposure to contamination by limiting direct contact with contaminated areas, or controlling contaminants from migrating through environmental media into soil, groundwater or off-site.

(12) "Enrolled sites" means properties enrolled and accepted for participation in the voluntary Land Stewardship Program.

(13) "Environmental acts" means the Surface Coal Mining and Reclamation Act set forth in article three, chapter twenty-two of this code; the Air Pollution Control Act set forth in article five, chapter twenty-two of this code; the Water Pollution Control Act set forth in article eleven, chapter twenty-two of this code; the Groundwater Protection Act set forth in article twelve, chapter twenty-two of this code; the Solid Waste Management Act set forth in article fifteen, chapter twenty-two of this code; the Solid Waste Landfill Closure Assistance Program set forth in article sixteen, chapter twenty-two of this code; the Underground Storage Tank Act set forth in article seventeen, chapter twenty-two of this code; the Hazardous Waste Management Act set forth in article eighteen, chapter twenty-two of this code; section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U. S. C. §9603(a)); section 304 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U. S. C. §§11001 to 11050); the Occupational Safety and Health Act set forth in 29 U. S. C. §§651 to 678; the Hazardous and Solid Waste Amendments of 1984, as amended, set forth in 42 U. S. C. §§6901, et seq.; and the Toxic Substances Control Act set forth in 15 U. S. C. §§2601, et seq.; and any applicable regulations promulgated under the foregoing environmental statutes.

(14) "Governmental controls" means any state laws, ordinances, orders, permits, consent decrees and similar mechanisms which restrict or control certain land uses implemented at IEC Sites in this state.

(15) "Institutional and Engineering Control Sites" or "IEC Sites" means sites in this state that have been remediated or closed under a federal or state environmental program, including, but not limited to, brownfields, underground storage tanks, closed landfills, open dumps, hazardous waste sites, and former mining sites with ongoing water treatment as part of mine reclamation efforts.

(16) "Informational devices" means deed notices or other written documents that describe the remediation that was conducted on an IEC Site, the constituents of concern, and the remediation standards that were achieved. Informational devices shall be filed with property records in the office of the county clerk of the county in which the property is located as an advisory to provide environmental information to future buyers or users of the IEC Site.

(17) "Institutional Controls" or "ICs" means administrative and legal controls that do not involve construction or physically changing the site and are generally divided into four categories: 1) Government controls, 2) Proprietary controls, 3) Enforcement tools, and 4) Informational devices. ICs are nonengineering measures that help minimize the potential for

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human exposure to contamination and/or protect the integrity of the remedy by limiting land or resource use.

(18) "Nonprofit corporation" means a corporation established under the West Virginia Nonprofit Corporation Act, article two, chapter thirty-one-e of this code, to fulfill the purposes of this article.

(19) "Pollutants" has the same meaning as defined in the environmental acts referenced in subdivision (13) of this section.

(20) "Proprietary controls" mean legal property interests created under real property laws that rely on legal documents recorded in the chain of title for the site, and "run with the land" to bind future landowners. Examples of proprietary controls include, but are not limited to, environmental covenants, deed land use restrictions, water withdrawal prohibitions and continuing right-of-entry easements for former owners or regulators to inspect, monitor and maintain the IECs.

(21) "Regulated substances" has the same meaning as defined in the environmental acts referenced in subdivision (13) of this section.

(22) "Releases" has the same meaning as defined in the environmental acts referenced in subdivision (13) of this section.

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§31-21-3. Declaration of policy.

(a) The Legislature finds and declares that developable land is one of West Virginia's most valuable resources in terms of net contributions to the state's economy and tax base.

(b) The Legislature further finds that:

(1) Due to topography, the state has somewhat limited amounts of developable land and that promoting the productive reuse of idled and underutilized commercial, industrial and mining properties will maximize this valuable resource and foster reuse of sites with existing public infrastructure;

(2) An entity that specializes in promoting the productive reuse of idled or underutilized commercial, industrial and mining properties will help the state and its citizenry to plan more wisely for sustainable property reuse and economic development efforts;

(3) An entity created to address and reduce regulatory and economic uncertainty by being a repository of site history and remediation information about formerly used properties can be a benefit to attracting new employers or encouraging businesses to relocate, remain or expand within the state;

(4) An entity that assists the Department of Environmental Protection with a voluntary land stewardship program for the long-term safeguarding of remediated sites using institutional controls and engineering controls can ensure that the remedy remains protective of human health and the environment;

(5) An entity that also assists in identifying formerly used properties that are ready for redevelopment and construction within twelve months or less from acquisition and certifies these properties as "project-ready" for specific industry profiles can increase economic development efforts within the state;

(6) An entity that also acts as a land bank to accept title to formerly used properties as an intermediary step to help seek a purchaser, and ready the properties for reuse through environmental assessment, remediation, building demolition or other efforts, can be a useful ally to the state, local governments, real estate developers and businesses for transacting property conveyances, redevelopment and creating or retaining jobs; and

(7) The promotion of private investment in our developable land and West Virginia businesses will reduce unemployment by creating new or maintaining existing opportunities for the citizens of this state.

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§31-21-4. Purpose of article.

The purpose of this article is to provide for the creation of a special purpose nonprofit corporation with a comprehensive mission to:

(1) Assist the DEP in utilizing a voluntary land stewardship program for the long-term safeguarding of IEC Sites to ensure that the remedy remains protective of human health and the environment and to facilitate further economic development and reuse opportunities;

(2) Provide the DEP and other parties with a reliable source of oversight, monitoring and information about IEC Sites under the voluntary land stewardship program;

(3) Establish a land bank as a legal and financial mechanism to accept title to properties and assist in transforming idled and underutilized properties back to productive reuse;

(4) Facilitate reuse and redevelopment by authorizing the conveyance of certain properties to a land bank under a voluntary land bank program and assist the state and local governments with the assembly and clearance of title to property in a coordinated manner;

(5) Promote economic growth by implementing a state certified sites program to identify sites that are ready for construction within twelve months or less and that are certified "project-ready" for specific industry profiles as well as other categories of sites identified for economic development opportunities;

(6) Provide voluntary programs on a fee or subscription basis with the nonprofit corporation to protect human health and the environment as well as assist with a variety of economic development efforts throughout the state; and

(7) Prescribe the powers and duties of the nonprofit corporation; provide for the creation and appointment of a board to govern the nonprofit corporation and to prescribe its powers and duties; and to extend protections against certain environmental liabilities to the nonprofit corporation in order to protect it from liabilities created by third parties.

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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 or activities of the corporation;

(6) Invest money of the corporation, at the discretion of the board of directors, in

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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.

(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

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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.

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§31-21-6. Board of directors.

(a) The purposes, powers and duties of the corporation shall be exercised by its board of directors. Board meetings shall be chaired by the Governor or his or her designee. The corporation's board shall also consist of the following thirteen members:

(1) The Governor shall appoint three residents of this state;

(2) The West Virginia Chamber of Commerce shall nominate three residents of this state for the Governor's consideration, one of whom the Governor shall appoint;

(3) The West Virginia Manufacturers' Association shall nominate three residents of this state for the Governor's consideration, one of whom the Governor shall appoint;

(4) The West Virginia Coal Association shall nominate three residents of this state for the Governor's consideration, one of whom the Governor shall appoint;

(5) The United Mine Workers Association shall nominate three residents of this state for the Governor's consideration, one of whom the Governor shall appoint;

(6) The West Virginia Environmental Council shall nominate three residents of this state for the Governor's consideration, one of whom the Governor shall appoint;

(7) The AFL-CIO shall nominate three residents of this state for the Governor's consideration, one of whom the Governor shall appoint;

(8) The Secretary of the DEP or his or her designee;

(9) The Secretary of the Department of Commerce or his or her designee;

(10) One member of the Senate appointed by the Senate President who shall serve as an ex officio nonvoting member; and

(11) One member of the House of Delegates appointed by the Speaker who shall serve as an ex officio nonvoting member.

(b) The members appointed by the Governor shall serve terms of four years: Provided, That for the initial appointments the Governor shall designate five to serve for four years each, three to serve for three years each and one to serve for two years. When an appointee resigns, dies or is removed during that person's term, his or her successor shall be appointed for the remaining portion of the unexpired term. Once appointed, a person may be reappointed to successive four-year terms.

(c) Corporate directors shall serve without compensation, but shall be reimbursed for actual and necessary expenses in accordance with the regulations of the board.

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(d) The corporate directors shall appoint a person to serve as the executive director of the corporation and at the will and pleasure of the board. A member of the board is not eligible to hold the position of executive director.

(e) Subject to the approval of the board, the executive director shall supervise, and be responsible for, the performance of the functions and programs of the corporation under this article. The executive director shall attend the meetings of the board and shall provide the board of directors with a regular report describing the activities and financial condition of the corporation. The executive director shall furnish the board of directors with information or reports governing the operation of the corporation as the board requires.

(f) The board may do all other things necessary or convenient to achieve the objectives and purposes of the corporation or other laws that relate to the purposes and responsibilities of the corporation.

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PART III. VOLUNTARY LAND STEWARDSHIP PROGRAM.

§31-21-7. Voluntary land stewardship program.

(a) When the voluntary land stewardship program is implemented, remediation parties and site owners of IEC Sites will have the option, for a fee, to participate in this program. The fee shall be established by the corporation for services provided for an enrolled site as that term is defined in section four of this article. The fees once established may be revised from time to time in the discretion of the board.

(b) The universe of sites or properties covered under this section of this article includes, but is not limited to, those IEC Sites remediated or closed under a federal or state environmental program, including brownfields, underground storage tanks, closed landfills, open dumps, hazardous waste sites, and former mining sites with ongoing water treatment as part of mine reclamation efforts.

(c) The corporation is further authorized to provide at a minimum the following voluntary land stewardship services for enrolled sites:

(1) Establish or maintain any ICs by filing the appropriate documents or updating such documents when the site is leased, conveyed, subdivided or when remediation occurs: Provided, That the corporation's responsibilities for those activities are expressly identified in agreements for the IEC Site that will be negotiated when a site is enrolled in the voluntary land stewardship program;

(2) Conduct physical inspections of the enrolled sites, including inspecting or monitoring any ECs (e.g., media treatment systems, fences, caps and other mechanisms used as part of the remedy at the IEC Site) and site activities to assure that the enrolled sites continue to comply with the IECs, such as maintenance of ECs and inspecting for compliance with restrictions of specific land uses;

(3) Monitor and operate any required media treatment systems and/or conduct routine surface water, groundwater and or gas monitoring and prepare any monitoring or inspection reports that may be part of the corporation's responsibilities under site enrollment agreements;

(4) Conduct periodic reviews of the county land records to monitor transfers or deed filings to assure that the records are consistent with the required IECs for the enrolled sites, and provide notices to the clerk of the county commission about the results of monitoring or tracking of such records;

(5) Develop administrative records concerning the remediation at enrolled sites in an electronic database, respond to inquiries and coordinate the sharing of such data among various stakeholders, including the DEP, current owners, the remediating parties if not the owners, other state or local agencies (such as county and regional economic development

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authorities), assessors, potential purchasers, landowners and tenants;

(6) Develop and maintain records and information about enrolled sites for posting on the DEP environmental registry, or any other registry that is used for tracking IECs for IEC Sites in West Virginia and provide for public access to such information; and

(7) Coordinate and share data with West Virginia Miss Utility, the "One-Call" System, including verifying the location of ECs on enrolled sites, providing information about remediation, and sharing any health and safety plans or soil management plans that may be associated with an enrolled site in order to assist any planned excavation at the enrolled site.

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§31-21-8. Underwriting.

The enrollment and acceptance process to participate in the land stewardship program shall be developed to include an underwriting review that focuses on: (1) The nature and extent of contamination; (2) the selected remedy; (3) the type of services selected and duration thereof; and (4) the financial costs and risks associated with fulfilling the services.

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PART IV. STATE CERTIFIED SITES PROGRAM.

§31-21-9. State certified sites program.

(a) This article hereby authorizes the establishment of a statewide certified sites program. The program shall consist of the development and preparation of certain site specific decision ready documentation or reports that will enable the expedited property transaction for sites that participate in the certified sites program.

(b) The objectives of the certified sites program include, but are not limited to:

(1) Establishing an inventory of identified sites that are ready for development or redevelopment and construction within twelve months or less from the date of acquisition and certify these properties as "project-ready" for specific industry profiles and other categories of developable properties available that can increase economic development efforts within the state;

(2) Improving the state's competitive edge by giving more certainty in time, steps and costs to businesses expanding or locating within the state;

(3) Developing standard criteria that most real estate developers or businesses need when selecting a site for development;

(4) Developing a central source of certified sites and assisting local governments in identifying potential redevelopment properties; and

(5) Demonstrating that the state is committed to promoting and expediting economic development projects for the benefit of its citizenry.

(c) The corporation shall issue a site certification if it determines that the decision ready document has been prepared and completed in accordance with the requirements set forth by the corporation. The corporation may require some or all of the following information set forth in section ten of this article based on the site specific circumstances of the property to be certified.

(d) The issuance of a site certification shall be based on the review and approval of the information submitted to the corporation in an application for the site certification.

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§31-21-10. Minimum standards for certified sites.

(a) The corporation shall establish minimum standards that a site must meet to be considered for certification. Minimum standards include, but are not limited to:

(1) Letter of support from a mayor, county commissioner, or county, regional, or municipal economic development official;

(2) Site ownership/control:

(A) Preliminary fifty-year title report and description of liens and encumbrances, unless the corporation determines a shorter period is adequate, or a longer period is necessary, to protect the corporation and a subsequent purchaser of the site;

(B) Letter from the property owner/option holder stating that the site is for sale/lease. If possible, proposed pricing or transactional requirements with a description of any on-site improvements, the current level of investment, and whether the property can be parceled;

(C) Acreage; and

(D) Full legal property description.

(3) Maps:

(A) ALTA map;

(B) Site map showing lot layout, transportation access, roads and likely access points;

(C) USGS topographical map; and

(D) Aerial map.

(4) Phase I environmental site assessment performed by a certified professional within the prior six months, and, if appropriate, any additional environmental site assessments performed by a certified professional within the prior six months. For any properties being remediated, documentation shall be provided about the status and cleanup objectives. For remediated sites, documentation shall be provided about liability protection.

(5) Wetland delineation demonstrating that impacts to waters of the state will be avoided or a mitigation plan approved by the DEP.

(6) Water and wastewater infrastructure to the property line with capacity clearly defined, or a demonstration of the ability to construct and pay for the infrastructure up to the property line.

(7) Transportation infrastructure to the property line, including, but not limited to, the type of roads near the site and whether the roads are local, state or U. S. roads.

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(8) Electric infrastructure to the property line with its capacity clearly identified.

(9) Natural gas infrastructure to the property line with its capacity clearly identified.

(10) Water infrastructure to the property line with its capacity clearly identified.

(11) Sewer infrastructure to the property line with its capacity clearly identified.

(12) Telecommunications and/or high speed communications infrastructure to the property line with its capacity clearly identified.

(b) The complete list of certified sites criteria shall be developed into a program application along with appropriate fees for participation as the certified sites program is implemented, and may be revised from time to time as warranted.

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§31-21-11. Land bank program.

(a) This article hereby authorizes the establishment of a voluntary state land bank program. Under this program, the corporation is authorized to acquire properties, hold title and prepare them for future use. Prior to acquiring any properties, the corporation shall conduct site appropriate assessments to determine the environmental conditions or issues associated with a particular property. The corporation shall not acquire title to any property unless all pending liens have been satisfied and released. Liabilities, including, but not limited to, environmental liabilities, shall not pass to the corporation by its acquisition of title. Participation in the land bank program under this article shall not relieve an entity of any of its liabilities.

(b) The objective of the land bank program is to assist state and local government efforts for economic development by accepting formerly used or developable properties and preparing the properties so they can be conveyed to other parties to locate or expand businesses and create or retain jobs in this state.

(c) The corporation may acquire by gift, devise, transfer, exchange, foreclosure, purchase or otherwise on terms and conditions and in a manner the corporation considers proper, real or personal property or rights or interests in real or personal property. The corporation may not accept by any conveyance or other action any liability for prior pollution or contamination liabilities that occurred on the property prior to its conveyance to the corporation.

(d) Real property acquired by the corporation may be by purchase and sale agreement, lease purchase agreement, installment sales contract, land contract or otherwise as may be negotiated or structured. The corporation may acquire real property or rights or interests in real property for any purpose the corporation considers necessary to carry out the purposes of this article including, but not limited to, one or more of the following purposes:

(1) Use or development of property the corporation has otherwise acquired;

(2) To facilitate the assembly of property for sale or lease to any other public or private person, including, but not limited to, a nonprofit or for-profit corporation;

(3) To conduct environmental remediation and monitoring activities.

(e) The corporation may also acquire by purchase, on terms and conditions and in a manner the corporation considers proper, property or rights or interests in property.

(f) The corporation may hold and own in its name any property acquired by it or conveyed to it by this state, a foreclosing governmental unit, a local unit of government, an intergovernmental entity created under the laws of this state, or any other public or private person.

(g) All deeds, mortgages, contracts, leases, purchases, or other agreements regarding

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property of the corporation, including agreements to acquire or dispose of real property, shall be approved by the board of directors and executed in the name of the corporation or any single purpose entity created by the board for the transaction.

(h) All property held by the corporation or a single purpose entity created by the board for a transaction shall be inventoried and classified by the corporation according to title status and suitability for use.

(i) A document including, but not limited to, a deed evidencing the transfer under this article of one or more parcels of property to the corporation by this state or a political subdivision of this state may be recorded within the office of the county clerk of the county in which the property is located without the payment of a fee.

(j) The corporation shall notify the county commission and county assessor in the affected county or counties upon receipt of an application for participation in the land bank program.

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§31-21-12. Preserve property value.

(a) The corporation may, without the approval of a local unit of government in which property held by the corporation is located, control, hold, manage, maintain, operate, repair, lease as lessor, secure, prevent the waste or deterioration of, demolish and take all other actions necessary to preserve the value of the property held or owned directly by the corporation or by a single purpose entity created by the board for that purpose.

(b) The corporation may take or perform the following with respect to property held or owned by the corporation or by any special purpose entity created by the board:

(1) Grant or acquire a license, easement, or option with respect to property as the corporation determines is reasonably necessary to achieve the purposes of this article;

(2) Fix, charge, and collect rents, fees and charges for use of property under the direct or indirect control of the corporation or for services provided by the corporation;

(3) Take any action, provide any notice or institute any proceeding required to clear or quiet title to property held by the corporation in order to establish ownership by and vest title to property in the corporation or a special purpose entity created by the board; and

(4) Remediate environmental contamination on any property held by the corporation.

(c) Except as the corporation otherwise agrees by agreement or otherwise, on terms and conditions, and in a manner and for an amount of consideration the corporation considers proper, fair and valuable, including for no monetary consideration, the corporation may convey, sell, transfer, exchange, lease as lessor or otherwise dispose of property or rights or interests in property in which the corporation directly or indirectly holds a legal interest to any public or private person for value determined by the corporation.

(d) The corporation shall be made a party to and shall defend any action or proceeding concerning title claims against property held directly or indirectly by the corporation.

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§31-21-13. Contaminated property.

(a) If the DEP determines that conditions on a property transferred to the corporation under this article present an immediate threat to public health, safety and welfare, or to the environment, the corporation may not convey, sell, transfer, exchange, lease or otherwise dispose of the property until after a determination by the DEP that the threat has been remediated and/or eliminated and that conveyance, sale, transfer, exchange, lease or other disposal of the property by the corporation will not interfere with any of the DEP's response activities and will coordinate with the DEP regarding the corporation's activities at the property.

(b) If the corporation has reason to believe that property held by the corporation may be the site of environmental contamination, the corporation shall provide the DEP with any information in the possession of the corporation that suggests that the property may be the site of environmental contamination.

(c) If property held directly or indirectly by the corporation is a site impacted by contamination, pollution, hazardous substances, hazardous or other wastes as defined in the environmental acts described in section four of this article, prior to the sale or transfer of the property under this section, the property is subject to all of the following:

(1) Upon reasonable written notice from the DEP, the corporation shall provide access to the DEP, its employees, its contractors and any other person expressly authorized by the DEP to conduct an investigation and/or response activities at the property. Reasonable written notice may include, but is not limited to, notice by electronic mail or facsimile, in advance of access as the DEP and corporation may agree.

(2) If the DEP determines it is necessary to protect public health, safety and welfare or the environment, the corporation shall place and record deed restrictions on the property as authorized under state environmental statutes.

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§31-21-14. Liberal construction.

This article shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authorization for the performance of every act and thing authorized by this article. All powers granted shall be broadly interpreted to effectuate the intent and purposes of this article and not as a limitation thereof. The corporation has complete control as if it is a private property owner.

WV Legislature

§31-21-15. Exemption from taxation.

The property of the corporation shall be exempt from ad valorem property taxation. 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. The corporation shall be exempt from the taxes imposed by chapter eleven of this code, except that the corporation shall comply with the employer withholding of tax requirements in sections seventy-one through seventy-six, article twenty-one of said chapter eleven. The corporation shall be exempt from sales and use taxes, business and occupation taxes and all other taxes imposed by a county commission, a municipal corporation or other unit of local government, whether now or hereinafter in effect.

WV Legislature

§31-21-16. Audits and reports.

(a) As soon as possible after the close of each year, the corporation shall cause an annual audit to be made by an independent certified public accountant of its books, records, accounts and operations. The person performing this audit shall furnish copies of the audit report to the Governor, the secretary of the DEP and the Joint Committee on Government and Finance of the Legislature.

(b) The corporation shall report biannually to the Joint Committee on Government and Finance of the Legislature on the activities of the corporation. The first report shall be filed on or before the second Wednesday in January, 2016.

WV Legislature

§31-21-17. Completed purpose.

If the corporation has completed the purposes for which the corporation was organized, the board of directors, by vote of at least a majority of a quorum of the directors and with the written consent of the Governor, may provide for the dissolution of the corporation and may provide for the transfer of any property held by the corporation as required by agreement or, if there are no related agreements, then to the DEP or another state agency or to another nonprofit corporation as directed by the DEP.

WV Legislature

§31-21-18. Conflicts of interest.

Notwithstanding any other provision of this article to the contrary, officers and employees of the corporation and its board of directors may hold appointments to offices of any other corporations or businesses and be corporate directors or officers or employees of other entities but are prohibited to be a party or otherwise participate in the transfer of real property and funds from the corporation to the corporations or businesses for which they serve.

WV Legislature

§31-21-19. No waiver of sovereign immunity.

Nothing contained in this article may be determined or construed to waive or abrogate in any way the sovereign immunity of the state or to deprive the nonprofit corporation created pursuant to this article, its board of directors, or any officer or employee thereof of sovereign immunity.

WV Legislature

§31-21-20. No obligation of the state.

Obligations of the corporation are not debts or obligations of the DEP or the state.

WV Legislature