WEST VIRGINIA CODE CHAPTER 5b ARTICLE 2G

WV Legislature

§5B-2G-1. Short title.

This article shall be known as the Voluntary Rural and Outdoor Heritage Conservation Act.

WV Legislature

§5B-2G-2. Legislative findings and purpose.

Legislative findings and purpose:

(a) The Legislature hereby finds and declares that:

(1) The State of West Virginia's rural character, natural wonders, scenic beauty and recreational opportunities combine to create an exceptional quality of life for its citizens;

(2) West Virginia's landscapes serve as an economic engine supporting vibrant forest products, agricultural, hunting and fishing and tourism industries;

(3) West Virginia's unique and important lands are key to attracting new businesses and knowledge workers who are mobile and capable of doing business anywhere and critical to diversifying the economy of the State of West Virginia;

(4) West Virginia's unique and important lands provide all West Virginians hunting, fishing, rafting, hiking and other recreational opportunities important to their health and well-being;

(5) West Virginia's unique and important lands are critical to the continued health of the state's wildlife habitats and West Virginia's Wildlife Conservation Action Plan, mandated by the United States Congress, recognizes that habitat loss is a key issue confronting conservation of the state's valuable fish and wildlife resources;

(6) The conversion of rural land to developed land in West Virginia doubled between 1982 and 1997;

(7) There is a critical need to invest in the conservation of unique and important wildlife habitat, natural areas, forest lands, farmland and lands for hunting, fishing and recreation; and

(8) It is critical to encourage cooperation and innovative public partnerships among landowners, state agencies, nonprofit organizations and others which must work together in order to conserve West Virginia's most important unique and rural lands.

(b) It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily conserve land.

(c) Further, it is the intent of the Legislature to establish a West Virginia Outdoor Heritage Conservation Fund, hereinafter "fund", to establish an ongoing funding source to conserve unique and important wildlife habitat, natural areas, forests, working lands, lands for hunting, fishing and recreation and other lands important to West Virginians.

(d) The Legislature finds that an ongoing funding source to conserve unique and important lands will help to ensure that present and future generations of West Virginians are able to enjoy the economic, quality of life, health, recreational, scenic and other benefits of

WV Legislature

conserved lands.

WV Legislature

§5B-2G-3. West Virginia Outdoor Heritage Conservation Fund - Established.

The West Virginia Outdoor Heritage Conservation Fund is established within the Department of Commerce. The fund has the powers and duties provided in this article.

WV Legislature

§5B-2G-4. West Virginia Outdoor Heritage Conservation Fund - Board of trustees.

(a) Composition; chairman; quorum; qualifications. -- The fund shall be governed and administered by a board of trustees composed of the Director of the Division of Natural Resources and the Director of the Division of Forestry, who shall serve as voting ex officio members, and nine voting members to be appointed by the Governor, by and with the advice and consent of the Senate. The ex officio members may appoint designees to serve on the board of trustees. One of the appointed members shall be a representative of the West Virginia Agricultural Land Protection Authority; one of the appointed members shall be a registered forester; three of the appointed members shall be representatives of independent IRC 501(c)(3) land trusts; two of the appointed members shall be recognized professional experts in biology or ecology nominated by the West Virginia Academy of Sciences; one of the appointed members shall have demonstrated expertise in public health or public recreation; and one of the appointed members shall be a representative of sportsmen and sportswomen. A concerted effort shall be made to appoint members who represent a cross-section of the state.

The board shall elect the chair and other officers as necessary from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

If any of the entities to be represented on the board under this section ceases to exist, the Governor shall appoint a representative with similar expertise from an entity with a similar mission.

(b) Terms. --

(1) The Governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. --

Appointed members shall take the oath of office as prescribed by law.

(d) Recusal. --

WV Legislature

A board member shall recuse himself or herself from any vote in which he or she has a conflict of interest. The provisions of this subsection is in addition to any other provisions of law or applicable rules relating to the ethics of public officers or employees.

(e) Compensation and expenses. --

Members shall not receive compensation. Each member of the board shall receive expense reimbursement from the fund for actual reasonable and necessary expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid for similar reimbursement to members of the Legislature.

WV Legislature

§5B-2G-5. West Virginia Outdoor Heritage Conservation Fund - Powers.

The board has the following general powers on behalf of the fund:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name.

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes.

(c) Power to conserve land. -- To acquire interests in real property for conservation purposes.

(d) Power to transfer. -- To transfer interests in real property for conservation purposes.

(e) Power to disburse grants. -- To act as a granting authority to award grants to eligible grant recipients in accordance with section nine of this article.

(f) Power to seek funding. -- To apply for and receive funding from any and all state, federal and private sources to be used as provided in this chapter.

(g) Power to authorize bond issuance. -- To direct the Economic Development Authority to issue revenue bonds payable from the portion of the recording fee imposed in section ten, article one, chapter fifty-nine of this code to be allocated to the fund and any other special revenue made against to the fund for this purpose in accordance with section eight of this article or other provisions of this code.

WV Legislature

§5B-2G-6. West Virginia Outdoor Heritage Conservation Fund - Duties.

The board shall, on behalf of the fund:

(a) Disseminate information regarding land conservation and promote the conservation of land.

(b) Develop and implement additional guidelines and procedures, consistent with the purposes of this chapter, as necessary to implement this chapter.

(c) Seek and apply for funds from federal, state and private sources to carry out its purpose as provided in this chapter.

(d) From moneys received from the recording fee in accordance with section ten, article one, chapter fifty-nine of this code, to:

(1) Make available to the West Virginia Division of Natural Resources fifty percent of the moneys so received by the fund, for the division to acquire interests in real property for conservation purposes in perpetuity in keeping with the West Virginia Wildlife Conservation Action Plan or other conservation plans developed by the division, provided that the board approves any acquisitions. The division may agree to permit the fund to retain any or all of this fifty percent to remain in the fund to be used as payment of debt service and other costs associated with revenue bonds on the fund's behalf by the Economic Development Authority in accordance with the provisions of this article;

(2) Ensure that the remaining fifty percent of the moneys so received by the fund are used for competitive grants in accordance with this article or used as payment of debt service and other costs associated with revenue bonds on the fund's behalf by the Economic Development Authority in accordance with the provisions of this article, the proceeds of which shall also be used for competitive grants.

(e) Prepare and file electronically with the Governor's office and with the Legislature by the thirty-first day of August of each year a report that accounts for fund receipts and disbursals and sets forth a list and description of all grants approved and all acquisitions of interests in real property obtained with moneys from the fund during the current year, including the recipients of the grants, the amounts and the public benefits of the interests in real property acquired.

(f) Propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out its purposes and programs, to include specifically the qualifications and procedures relating to its awarding of grants.

WVLegislature

§5B-2G-7. Definitions.

For purposes of this article, the following terms have the meanings set forth in this section.

(a) “Board” means the board of trustees established in section three of this article.

(b) “Conservation easement” means a nonpossessory interest in real property as defined in section three, article twelve, chapter twenty of this code, except that a conservation easement acquired pursuant to this article shall be held in perpetuity.

(c) “Conservation purposes” means the conservation of land for outdoor recreation by the public, for conservation of natural plant and wildlife habitat or similar ecosystem, for conservation of forestland and other open spaces, for conservation of land of historical or cultural significance or as further defined under conservation criteria developed in this article.

(d) “Eligible grant recipient” means:

(1) The following state agencies:

(A) Division of Natural Resources;

(B) Division of Forestry; or

(2) A charitable corporation, charitable association or charitable trust registered with the Secretary of State and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 [Public Law 99-514, 26 U.S.C. §501(c)(3)] or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property, as defined in section three, article twelve, chapter twenty of this code, and that has a primary part of its mission to acquire interests in real property for conservation purposes.

(e) “Fund” means the West Virginia Outdoor Heritage Conservation Fund established in this article.

(f) “Land conservation” means acquisition of interests in real property from willing sellers for conservation purposes.

(g) “Stewardship” means the necessary monitoring, maintenance and enforcement of interests in real property for conservation purposes.

WV Legislature

§5B-2G-8. Funding of land conservation; issuance of revenue bonds.

(a) Fund. --

(1) Created. -- The West Virginia Outdoor Heritage Conservation Fund is created for the purposes specified in this article.

(2) Sources. -- The West Virginia Outdoor Heritage Conservation Fund is comprised of:

(A) Any money made available to the fund by general or special fund appropriations;

(B) Any money made available to the fund by grants or transfers from governmental or private sources;

(C) Any money realized by investments, interest, dividends or distributions; and

(D) Any money received from the issuance of revenue bonds in accordance with the provisions of this article; and

(3) Disbursements. -- The Treasurer may not disburse any money from the fund other than:

(A) For costs associated with the staffing, administration and technical and legal duties of the fund;

(B) For reasonable and necessary expenses incurred by the members of the board of trustees of the fund in the performance of official duties;

(C) For costs associated with the acquisition of interests in real property for conservation purposes and for costs associated with stewardship authorized by this article;

(D) For grants to be awarded in accordance with section nine of this article;

(E) For payment of debt service and other costs associated with revenue bonds issued on the fund's behalf by the Economic Development Authority; and

(F) Of revenue received, directly or indirectly, from the recording fee under section ten, article one, chapter fifty-nine of this code and not used for the payment of revenue bonds and expenses associated therewith, for purposes consistent with the duties of the fund set forth in this article.

(4) Money remaining at end of fiscal year. -- Any money remaining in the fund at the end of a fiscal year shall not revert to the General Revenue Fund of the state, but shall remain in the fund to be used for the purposes specified in this article.

(5) Budget. -- The estimated budget of the fund for the next fiscal year shall be included with the budget of the West Virginia Department of Commerce.

WV Legislature

(6) Audit. -- The fund shall be audited annually.

(b) Bonds. --

The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for land conservation as provided in this article.

(1) The West Virginia Economic Development Authority created and provided in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code and upon direction of the board of the Outdoor Heritage Conservation Fund, issue revenue bonds of the Economic Development Authority to pay for all or a portion of the cost of the acquisition of interests in real property for conservation purposes authorized under this article or to refund the bonds at the discretion of the fund. The revenue bonds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable from the moneys deposited in the fund pursuant to section ten, article one, chapter fifty-nine of this code or from other sources identified by the board of the fund.

(2) There is established in the state Treasury a special revenue fund named the Outdoor Heritage Conservation Fund into which shall be deposited on and after July 1, 2008, the amounts to be deposited in the fund as specified in this article. The Outdoor Heritage Conservation Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund pursuant to section ten, article one, chapter fifty-nine of this code shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Outdoor Heritage Conservation Fund pursuant to section ten, article one, chapter fifty-nine of this code as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.

(3) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders' remedies are limited in all respects to the special revenue fund established in this subsection for the liquidation of the bonds.

(4) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for projects as certified by the board of the fund under the provisions of this article as serving a public purpose and meeting the criteria established by this article.

(5) If any proceeds from sale of bonds remain after paying costs and making grants as provided in this subsection, the surplus may be used as elsewhere provided in this article.

WV Legislature

§5B-2G-9. Grants for land conservation; application; criteria.

(a) An eligible grant recipient may apply for a grant from the fund to acquire interests in real property for conservation purposes or for stewardship. An application may not be submitted to the fund without the written consent of the owner of the interest in real property identified in the application.

(b) Before applying for a grant, the eligible grant recipient shall notify the owner that is the subject of the grant of the following in writing:

(1) That interests in real property acquired with a grant from the fund result in a permanent conveyance of such interests in real property from the owner to the eligible grant recipient or its assigns; and

(2) That it may be in the owner's interest to retain independent legal counsel, appraisals and other professional advice.

The application shall contain an affirmation that the notice requirement of this subsection has been met.

(c) Grants from the fund shall be awarded based upon the conservation criteria and financial criteria contained in this section. In each application, the eligible grant recipient shall provide information regarding how the proposal meets one or more of these criteria and advances the purposes of this article.

(d) For purposes of this article, conservation criteria include:

(1) Unique or important wildlife habitat as specified in the state Wildlife Conservation Action Plan;

(2) Habitat for rare, threatened or endangered species;

(3) A relatively undisturbed or outstanding example of an ecosystem or natural community indigenous to West Virginia;

(4) An important area for public hunting, fishing or other outdoor recreational uses;

(5) Important recreation lands or important habitats identified in county comprehensive plans;

(6) Riparian habitats, wetlands, water quality, watersheds of significant ecological value or critical aquifer recharge areas;

(7) Forest land or working land that has strategic economic significance;

(8) A larger area containing conserved lands or as a connection between conserved lands;

WV Legislature

(9) Land of unique cultural, historical or archaeological significance;

(10) Degree of threat to land; and

(11) The number of acres of land to be conserved.

(e) For purposes of this article, financial criteria include:

(1) The degree to which the proposal leverages grants from the fund by including funding or in-kind assets or services from other governmental sources; and

(2) The degree to which the proposal leverages grants from the fund by including funding or in-kind assets or services from private or nonprofit sources or charitable donations, including bargain sales of interests in real property for conservation purposes;

(f) The board of the fund shall evaluate each proposal according to the conservation criteria and financial criteria set forth in this section, and shall award grants on the basis of how well proposals meet these two criteria.

(g) If an eligible grant recipient entity is dissolved or ceases to exist as an entity, or if any interests in real property obtained with a grant from the fund are not being utilized strictly for conservation purposes, the real property interest shall vest in the fund upon recording of a notice signed by the chair of the fund and filed with the clerk of the appropriate county and the fund may transfer the interest to an appropriate eligible grant recipient.

WV Legislature