

Veto-180

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

—•—

ENROLLED

SENATE BILL NO. 180

(By Senators Cook and Yarnes)

—•—

PASSED March 8, 1986

In Effect 90 Days from Passage



ENROLLED
Senate Bill No. 180
(BY SENATORS COOK AND YANERO)

[Passed March 8, 1986; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections twenty-one and twenty-two, all relating to the public land corporation of West Virginia; altering membership; definition of public land; establishing powers and duties; criteria for public land disposal; creating a special public land corporation fund and uses of fund moneys; license and permit issuance authority of corporation; authority of secretary to conduct inspections and terminate operations of persons licensed or unlicensed; providing for review of decisions to terminate operations being same as contested case provisions of the administrative procedures act; money penalties for operation without license or for certain other violations of provisions of the act; requiring state agencies, with exception of department of highways, to prepare and submit inventories of all public land held or under control of such agencies; public bidding procedures and land appraisal requirements; and requiring public hearings by the corporation for the sale, exchange or transfer of public land.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections twenty-one and twenty-two, all to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-15. Public land corporation; provisions for penalties.

1 The public land corporation of West Virginia, hereto-
2 fore created and established, shall be continued as an
3 activity of the department of natural resources. The
4 corporation may sue and be sued, contract and be con-
5 tracted with, plead and be impleaded, and have and use
6 a common seal. It shall be a public benefit corporation
7 composed of nine members, seven of whom shall serve
8 ex officio and two of whom shall be appointed as herein
9 provided. The ex officio members shall be the governor as
10 chairman, the director of the department of natural re-
11 sources as secretary, the commissioner of agriculture, the
12 attorney general, the dean of the college of engineering
13 at West Virginia University, the commissioner of culture
14 and history and the commissioner of commerce.

15 The governor shall appoint the remaining two members
16 with the advice and consent of the Senate. The members
17 of the corporation appointed by the governor shall be
18 citizens with demonstrated interest and knowledge in
19 recreational land, state parks and the usage and value of
20 public lands. The members of the corporation appointed
21 by the governor shall serve terms for four years.

22 The members of the corporation shall receive no com-
23 pensation for their services but shall be entitled to their
24 reasonable and necessary expenses actually incurred in
25 the performance of their duties.

26 For the purpose of this section, "public land" is defined
27 as all land, including the beds of all navigable streams,
28 rivers and other water courses, and all the minerals
29 thereon or thereunder, the title to which runs with such
30 land, and the beds of all such navigable streams, rivers
31 and other water courses, which are either devised, be-
32 queathed, donated or otherwise becomes vested in the

33 State by action of law, or which becomes vested in the
34 state by any means hereinafter provided.

35 The corporation shall be vested with the title of the
36 state in public land, the title to which now is or may
37 hereafter become absolutely vested in the state of West
38 Virginia by reason of any law governing the title of lands
39 within the state, except such public lands of the state as
40 may be by law specifically allocated to and used by other
41 state agencies, institutions and departments.

42 No action of the corporation, in respect of the sale or
43 exchange of public lands or mineral rights thereof shall
44 be valid unless such action is approved by an affirmative
45 vote of five or more members of the corporation. No
46 action may be taken except at a scheduled meeting of the
47 corporation held in compliance with the provisions of
48 article nine-a, chapter six of this code.

49 The powers and duties of the corporation are nondele-
50 gable, except that the secretary may negotiate and enter
51 into preliminary agreements on behalf of the corporation,
52 and shall, upon authorization of the board, be entitled
53 to engage in valid actions of the corporation in respect of
54 day-to-day administrative activities, licensing, permit
55 issuance and the like. An agreement entered into by the
56 secretary on behalf of the corporation is not valid until
57 such agreement is approved by an affirmative vote of five
58 or more members of the corporation.

59 The corporation is hereby authorized and empowered
60 to:

61 (1) Acquire from any persons or the state commissioner
62 of forfeited lands, by purchase, lease or other agreement,
63 any lands necessary and required for public use;

64 (2) Acquire by purchase, condemnation, lease or
65 agreement, receive by gifts and devises, or exchange,
66 rights-of-way, easements, waters and minerals suitable
67 for public use;

68 (3) Sell or exchange public lands where it is deter-
69 mined that the sale or exchange of such tract meets any
70 or all of the following disposal criteria:

71 (a) Such tract was acquired for a specific purpose and
72 the tract is no longer required for that or any other state
73 purpose; or

74 (b) Disposal of such tract serves important public
75 objectives including, but not limited to, expansion of
76 communities and economic development which cannot
77 be achieved prudently or feasibly on lands other than
78 public lands and which outweigh other public objectives
79 and values including, but not limited to, recreation and
80 scenic values which would be served by maintaining
81 such tract in state ownership; or

82 (c) Such tract, because of its location or other charac-
83 teristics is difficult and uneconomic to manage as part of
84 the public lands and is not suitable for management by
85 another state department or agency.

86 There is hereby created in the state treasury a special
87 public land corporation fund into which shall be paid all
88 proceeds from public land sales and exchanges. The
89 corporation may acquire public lands from use of the
90 payments made to the fund. The corporation shall report
91 annually, just prior to the beginning of the regular ses-
92 sion of the Legislature, to the finance committees of the
93 Legislature on the financial condition of the special fund.
94 The Legislature may cause moneys from the special fund
95 to expire into the general revenue fund of the state.

96 (4) Sell, purchase or exchange lands or stumpage for
97 the purpose of consolidating lands under state or federal
98 government administration subject to the disposal criteria
99 specified in subdivision three of this section;

100 (5) Negotiate and effect loans or grants from the
101 government of the United States or any agency there-
102 of for acquisition and development of such lands as
103 may be authorized by law to be acquired for public
104 use;

105 (6) Expend the income from the use and development
106 of public lands for the following purposes:

107 (a) Liquidate obligations incurred in the acquisition,
108 development and administration of such lands, until all
109 such obligations have been fully discharged;

110 (b) Purchase, develop, restore and preserve for public
111 use, sites, structures, objects and documents of prehistoric,
112 historical, archaeological, recreational, architectural and
113 cultural significance to the state of West Virginia;

114 (c) Obtain grants or matching moneys available from
115 the government of the United States or any of its instru-
116 mentalities for prehistoric, historic, archaeological, rec-
117 reational, architectural and cultural purposes; and

118 (d) Thereafter, pay such income into the state fund
119 for general revenue purposes and uses.

120 (7) The corporation shall have the authority to issue
121 licenses for the purpose of dredging or otherwise recover-
122 ing rock, sand, gravel or derelict coal from the beds of
123 any navigable river, stream or other water course to
124 which it has title; or for the extraction, cutting, harvest-
125 ing or removal of other natural resources on or under the
126 public lands to which it has title, except where otherwise
127 prohibited; to provide for easements or rights-of-way;
128 and any other day-to-day license or permit issuance
129 purpose; and to charge a fee therefor. Such fees shall be
130 set by the corporation and shall be collected by the secre-
131 tary and expended for the purposes and in the manner
132 heretofore provided;

133 (8) The corporation shall have the authority to promul-
134 gate regulations, in accordance with chapter twenty-nine-
135 a of this code, for the overall purpose of its administration,
136 including regulating the operation of those persons
137 granted licenses, issuing permits and its other day-to-day
138 operations; and

139 (9) The director of the department of natural resources,
140 in his capacity as secretary of the corporation, may make
141 periodic inspections of the activities and operations of
142 those persons licensed as provided for in subsection (9)
143 of this section, and may order the immediate cessation
144 of any operation where (1) any of the requirements of
145 this section or the rules and regulations promulgated
146 pursuant thereto have not been complied with or (2)
147 the public welfare or safety calls for the immediate
148 cessation of the operation. Such cessation of operation

149 shall continue until corrective steps have been started by
150 the licensee to the satisfaction of the director. Any
151 licensee who believes he is aggrieved by the actions of
152 the director may immediately appeal to the corporation,
153 setting forth reasons why the activity should not be
154 halted. In the instance of persons not licensed, the director
155 may cause such cessation of operations in respect of mat-
156 ters under the control and authority of the corporation,
157 until proper license has been obtained, or the corporation
158 has determined the operation may continue.

159 Whenever a party whose operations have been halted
160 by action of the director hereinbefore seeks to obtain
161 review thereof by the corporation, the corporation shall
162 provide for hearing, determination, and appeal thereof,
163 where proper, as if the same were a contested case under
164 the provisions of chapter twenty-nine-a of this code.

165 Upon application by the director, any court of compe-
166 tent jurisdiction may by injunction compel compliance
167 with and enjoin violations of the provisions of this sec-
168 tion and the rules and regulations promulgated here-
169 under. The Court or the judge thereof in vacation may
170 issue a preliminary injunction in any case pending a
171 decision on the merits of any application filed.

172 Any person who, without a license, engages in any of
173 the activities required to be licensed under the provisions
174 of this section shall be guilty of a misdemeanor, and, upon
175 conviction thereof, shall be punished by a fine of not less
176 than one hundred dollars nor more than one thousand
177 dollars.

178 Any person who violates the rules and regulations
179 promulgated under this section shall be guilty of a mis-
180 demeanor, and, upon conviction thereof, shall be punished
181 by a fine of not less than one hundred dollars nor more
182 than one thousand dollars.

183 The corporation shall have the authority to designate
184 lands to which it has title for development and adminis-
185 tration for the public use including forestation, recreation,
186 wildlife, stock grazing, agricultural rehabilitation and
187 homesteading or other conservation activities and may

188 contract, lease or license for the proper development of
189 oil, gas or minerals, except that no such contract, lease
190 or license may be entered into for the extraction and
191 removal by stripping or auger mining of coal, and water
192 rights within or upon the lands or property under its
193 control. The corporation shall reserve title and owner-
194 ship to the mineral rights in all cases, except in cases in
195 which minerals are exchanged, pursuant to the provisions
196 of this article, for other minerals held by public agencies.
197 It shall convey, assign, or allot lands to the title or custody
198 of proper departments or other agencies of state govern-
199 ment for administration and control within the functions
200 of such departments or other agencies as provided by law.
201 The corporation shall make proper lands available for
202 the purpose of cooperating with the government of the
203 United States in the relief of unemployment and hard-
204 ship or for any other public purpose. All state agencies,
205 institutions and departments shall make an inventory of
206 the public lands of the state as may be by law specifically
207 allocated to and used by each and provide to the corpora-
208 tion a list of such public lands, including their current
209 use, intended use or best use to which such land may be
210 put: *Provided*, That the state department of highways
211 need not provide such inventory of public lands allocated
212 to and used by it. The inventory shall identify those par-
213 cels of land which have no present or foreseeable useful
214 purpose to the state of West Virginia. The inventory shall
215 be submitted to the corporation by the first day of August,
216 one thousand nine hundred eighty-six. The corporation
217 shall compile such inventory of all public lands and
218 report to the Legislature by no later than the first day of
219 November, one thousand nine hundred eighty-six on its
220 public land holdings and the land holdings of the other
221 agencies or departments of this state which are required ~~to~~
222 report their holdings to the corporation as set forth
223 hereinabove, its financial condition and its operations and
224 shall make such recommendations to the Legislature as
225 deemed proper concerning the acquisition, development,
226 disposition and use of public lands.

227 During the continuance of the Blennerhassett historical

228 park commission, the public land corporation and its
229 members shall consult with and keep the said Blenner-
230 hassett historical park commission fully informed as to
231 any official action to be taken or proposed to be taken
232 pursuant to this act regarding or affecting Blennerhassett
233 Island and its prehistoric, historic, archaeological, archi-
234 tectural, cultural and recreational significance or develop-
235 ment of any of the powers and duties of the Blenner-
236 hassett historical park commission.

**§20-1-21. Public land corporation to conduct sales of public
lands by competitive bidding, modified competi-
tive bidding or direct sale.**

1 (a) Sales, exchanges or transfers of public lands under
2 this article shall be conducted under competitive bidding
3 procedures. However, where the secretary determines it
4 necessary and proper in order to assure equitable distri-
5 bution among purchasers of lands or to recognize equi-
6 table considerations or public policies including, but not
7 limited to, a preference to users, lands may be sold by
8 modified competitive bidding or without competitive
9 bidding. In recognizing public policies, the secretary shall
10 give consideration to the following potential purchasers:

11 (1) The local government entities which are in the
12 vicinity of the lands;

13 (2) Adjoining land owners; and

14 (3) Any other person.

15 (b) The policy for selecting the method of sale is as
16 follows:

17 (1) Competitive sale is the general procedure for sales
18 of public lands and may be used where a number of
19 interested parties are bidding for the lands, and:

20 (i) Wherever in the judgment of the secretary the
21 lands are accessible and usable regardless of adjoining
22 land ownership; or

23 (ii) Wherever the lands are within a developing or
24 urbanizing area and land values are increasing due to the
25 location of the land and interest on the competitive mar-
26 ket.

27 (2) Modified competitive sales may be used to permit
28 the adjoining landowner to meet the high bid at the
29 public sale. Lands offered under this procedure would
30 normally be public lands not located near urban expan-
31 sion areas, or with rapidly increasing land values, and
32 where existing use of adjacent lands would be jeopar-
33 dized by sale under competitive bidding procedures.

34 (3) Direct sale may be used when the lands offered
35 for sale are completely surrounded by lands in one owner-
36 ship with no public access, or where the lands are needed
37 by local governments, or where necessary to protect
38 existing equities in the lands or resolve inadvertent
39 unauthorized use or occupancy of the lands.

40 (c) When lands have been offered for sale by one
41 method of sale and the lands remain unsold, then the
42 lands may be reoffered by another method of sale.

43 (d) In no case may lands be sold or exchanged for less
44 than fair market value. Fair market value shall be deter-
45 mined by an appraisal made by an independent person
46 or firm chosen by the public land corporation. The ap-
47 praisal shall be performed using the principles contained
48 in the "Uniform Appraisal Standards for Federal Land
49 Acquisitions" published under the auspices of the Inter-
50 agency Land Acquisition Conference, United States Gov-
51 ernment Printing Office, 1972.

52 (e) The corporation may reject all bids when such
53 bids do not represent the corporation's considered value
54 of the property exclusive of the fair market value.

55 (f) The board shall promulgate rules, in accordance
56 with the provisions of chapter twenty-nine-a of this code,
57 regarding procedures for conducting public land sales by
58 competitive bidding, modified competitive bidding and
59 direct sales.

**§20-1-22. Public land corporation to hold public hearing before
sale, exchange or transfer of land.**

1 (a) Prior to any final decision of any state agency to
2 sell, exchange or transfer land, the public land corporation
3 shall:

4 (1) Prepare and reduce to writing the reasons and
5 supporting data regarding such sale or exchange. The
6 written reasons required under this section shall be avail-
7 able for public inspection at the office of the county clerk
8 at the county courthouse of each county in which the
9 affected land is located during the two successive weeks
10 before the date of the public hearing required by this
11 section;

12 (2) Provide for a public hearing to be held at a rea-
13 sonable time and place within each county in which the
14 affected land is located to allow interested members of
15 the public to attend the hearing without undue hardship.
16 Members of the public may be present, submit state-
17 ments and testimony and question the board's representa-
18 tive appointed pursuant to this section;

19 (3) Not less than forty-five days prior to such public
20 hearing, provide notice to all members of the Legislature,
21 to the head of the governing body of any political sub-
22 division having zoning or other land use regulatory
23 responsibility in the geographic area within which the
24 public lands are located and to the head of any political
25 subdivision having administrative or public services
26 responsibility in the geographic area within which the
27 lands are located;

28 (4) Cause to be published a notice of the required public
29 hearing. The notice shall be published as a Class II legal
30 advertisement in compliance with the provisions of article
31 three, chapter fifty-nine of this code and the publication
32 area shall be each county in which the affected land is
33 located. The public hearing shall be held no earlier than
34 the fourteenth successive day and no later than the
35 twenty-first successive day following the first publication
36 of the notice. The notice shall contain the time and place
37 of the public hearing along with a brief description of the
38 affected land;

39 (5) Cause a copy of the required notice to be posted in
40 a conspicuous place at the affected land for members of
41 the public to observe. Such notice shall remain posted for
42 two successive weeks prior to the date of the public hear-
43 ing;

44 (6) Appoint a representative of the board who shall
45 conduct the required public hearing. The board's repre-
46 sentative shall have full knowledge of all the facts and
47 circumstances surrounding the proposed sale, exchange
48 or transfer. The representative of the board shall make a
49 report of the public hearing available for inspection by
50 the public within fifteen days following the public hear-
51 ing; and

52 (7) If the evidence at the public hearing establishes
53 by a preponderance that the appraisal provided for in
54 subsection (d), section twenty-one of this article does
55 not reflect the true, fair market value, the public land
56 corporation shall cause another appraisal to be made.

57 The representative of the board conducting the public
58 hearing shall make the results of the hearing available
59 to the board for its consideration prior to the board
60 making decisions regarding the affected lands.

61 (b) No sale, exchange or transfer of land subject to
62 the provisions of this section may be made before the
63 thirtieth successive day following the public hearing
64 required by this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Miller
Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

Sam Taylor
President of the Senate

Joseph P. Allright
Speaker House of Delegates

The within disapproved this the 26th
March
day of _____, 1986.

Archie P. Moore Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/21/86

Time 4:30 p.m.

RECEIVED

1936 MAR 23 12:11:00

RECEIVED
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 8/26/86