WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED

SENATE BILL NO. 130

(By Senators ...)

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.


1 The public land corporation of West Virginia, heretofore created and established, shall be continued as an activity of the department of natural resources. The corporation may sue and be sued, contract and be contracted with, plead and be impleaded, and have and use a common seal. It shall be a public benefit corporation composed of nine members, seven of whom shall serve ex officio and two of whom shall be appointed as herein provided. The ex officio members shall be the governor as chairman, the director of the department of natural resources as secretary, the commissioner of agriculture, the attorney general, the dean of the college of engineering at West Virginia University, the commissioner of culture and history and the commissioner of commerce.

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

3 The members of the corporation shall receive no compensation for their services but shall be entitled to their reasonable and necessary expenses actually incurred in the performance of their duties.

4 For the purpose of this section, “public land” is defined as all land, including the beds of all navigable streams, rivers and other water courses, and all the minerals thereon or thereunder, the title to which runs with such land, and the beds of all such navigable streams, rivers and other water courses, which are either devised, bequeathed, donated or otherwise becomes vested in the
The corporation shall be vested with the title of the state in public land, the title to which now is or may hereafter become absolutely vested in the state of West Virginia by reason of any law governing the title of lands within the state, except such public lands of the state as may be by law specifically allocated to and used by other state agencies, institutions and departments.

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

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

The corporation is hereby authorized and empowered to:

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

2. Acquire by purchase, condemnation, lease or agreement, receive by gifts and devises, or exchange, rights-of-way, easements, waters and minerals suitable for public use;

3. Sell or exchange public lands where it is determined that the sale or exchange of such tract meets any or all of the following disposal criteria:
(a) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose; or

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

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

There is hereby created in the state treasury a special public land corporation fund into which shall be paid all proceeds from public land sales and exchanges. The corporation may acquire public lands from use of the payments made to the fund. The corporation shall report annually, just prior to the beginning of the regular session of the Legislature, to the finance committees of the Legislature on the financial condition of the special fund. The Legislature may cause moneys from the special fund to expire into the general revenue fund of the state.

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

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

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

(a) Liquidate obligations incurred in the acquisition, development and administration of such lands, until all such obligations have been fully discharged;
(b) Purchase, develop, restore and preserve for public use, sites, structures, objects and documents of prehistoric, historical, archaeological, recreational, architectural and cultural significance to the state of West Virginia;

(c) Obtain grants or matching moneys available from the government of the United States or any of its instrumentalities for prehistoric, historic, archaeological, recreational, architectural and cultural purposes; and

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

(7) The corporation shall have the authority to issue licenses for the purpose of dredging or otherwise recovering rock, sand, gravel or derelict coal from the beds of any navigable river, stream or other water course to which it has title; or for the extraction, cutting, harvesting or removal of other natural resources on or under the public lands to which it has title, except where otherwise prohibited; to provide for easements or rights-of-way; and any other day-to-day license or permit issuance purpose; and to charge a fee therefor. Such fees shall be set by the corporation and shall be collected by the secretary and expended for the purposes and in the manner heretofore provided;

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

(9) The director of the department of natural resources, in his capacity as secretary of the corporation, may make periodic inspections of the activities and operations of those persons licensed as provided for in subsection (9) of this section, and may order the immediate cessation of any operation where (1) any of the requirements of this section or the rules and regulations promulgated pursuant thereto have not been complied with or (2) the public welfare or safety calls for the immediate cessation of the operation. Such cessation of operation
shall continue until corrective steps have been started by
the licensee to the satisfaction of the director. Any
licensee who believes he is aggrieved by the actions of
the director may immediately appeal to the corporation,
setting forth reasons why the activity should not be
halted. In the instance of persons not licensed, the director
may cause such cessation of operations in respect of mat-
ters under the control and authority of the corporation,
until proper license has been obtained, or the corporation
has determined the operation may continue.

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

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

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

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

The corporation shall have the authority to designate
lands to which it has title for development and adminis-
tration for the public use including forestation, recreation,
wildlife, stock grazing, agricultural rehabilitation and
homesteading or other conservation activities and may
contract, lease or license for the proper development of oil, gas or minerals, except that no such contract, lease or license may be entered into for the extraction and removal by stripping or auger mining of coal, and water rights within or upon the lands or property under its control. The corporation shall reserve title and ownership to the mineral rights in all cases, except in cases in which minerals are exchanged, pursuant to the provisions of this article, for other minerals held by public agencies. It shall convey, assign, or allot lands to the title or custody of proper departments or other agencies of state government for administration and control within the functions of such departments or other agencies as provided by law. The corporation shall make proper lands available for the purpose of cooperating with the government of the United States in the relief of unemployment and hardship or for any other public purpose. All state agencies, institutions and departments shall make an inventory of the public lands of the state as may be by law specifically allocated to and used by each and provide to the corporation a list of such public lands, including their current use, intended use or best use to which such land may be put: Provided, That the state department of highways need not provide such inventory of public lands allocated to and used by it. The inventory shall identify those parcels of land which have no present or foreseeable useful purpose to the state of West Virginia. The inventory shall be submitted to the corporation by the first day of August, one thousand nine hundred eighty-six. The corporation shall compile such inventory of all public lands and report to the Legislature by no later than the first day of November, one thousand nine hundred eighty-six on its public land holdings and the land holdings of the other agencies or departments of this state which are required to report their holdings to the corporation as set forth hereinabove, its financial condition and its operations and shall make such recommendations to the Legislature as deemed proper concerning the acquisition, development, disposition and use of public lands.

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

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

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

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

(2) Adjoining land owners; and

(3) Any other person.

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

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

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

(ii) Wherever the lands are within a developing or
urbanizing area and land values are increasing due to the
location of the land and interest on the competitive mar-
et.
(2) Modified competitive sales may be used to permit
the adjoining landowner to meet the high bid at the
public sale. Lands offered under this procedure would
normally be public lands not located near urban expan-
sion areas, or with rapidly increasing land values, and
where existing use of adjacent lands would be jeopar-
dized by sale under competitive bidding procedures.

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

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

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

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

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

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

(a) Prior to any final decision of any state agency to
sell, exchange or transfer land, the public land corporation
shall:
(1) Prepare and reduce to writing the reasons and supporting data regarding such sale or exchange. The written reasons required under this section shall be available for public inspection at the office of the county clerk at the county courthouse of each county in which the affected land is located during the two successive weeks before the date of the public hearing required by this section;

(2) Provide for a public hearing to be held at a reasonable time and place within each county in which the affected land is located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the board's representative appointed pursuant to this section;

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

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

(5) Cause a copy of the required notice to be posted in a conspicuous place at the affected land for members of the public to observe. Such notice shall remain posted for two successive weeks prior to the date of the public hearing;
(6) Appoint a representative of the board who shall conduct the required public hearing. The board's representative shall have full knowledge of all the facts and circumstances surrounding the proposed sale, exchange or transfer. The representative of the board shall make a report of the public hearing available for inspection by the public within fifteen days following the public hearing; and

(7) If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (d), section twenty-one of this article does not reflect the true, fair market value, the public land corporation shall cause another appraisal to be made. The representative of the board conducting the public hearing shall make the results of the hearing available to the board for its consideration prior to the board making decisions regarding the affected lands.

(b) No sale, exchange or transfer of land subject to the provisions of this section may be made before the thirtieth successive day following the public hearing required by this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ..........................this the 26th

day of.................................., 1986.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/21/86
Time 4:30 p.m.