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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2241

(By ~~Mr.~~ Del. S. Cook)

— ● —

Passed April 6, 1989

In Effect Ninety Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2241
(By DELEGATE S. COOK)

[Passed April 6, 1989; in effect ninety days from passage.]

AN ACT to repeal section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said chapter by adding thereto a new article, designated article one-a, all relating to the public land corporation of West Virginia; altering membership, 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; 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fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said chapter be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PRO-
CEDURES.

§20-1A-1. Public land corporation.

1 (a) The public land corporation, heretofore created
2 and established as an activity of the department of
3 natural resources, is hereby continued and established
4 within and as a unit of the department of natural
5 resources. The personal property and employees of the
6 public land corporation are hereby transferred to the
7 department of natural resources: *Provided*, That the
8 employees so transferred shall continue to have merit
9 system status or are hereby vested with such merit
10 system status if not previously included therein.

11 (b) The corporation shall be a public benefit corpora-
12 tion and an instrumentality of the state and may sue or
13 be sued, contract and be contracted with, plead and be
14 impleaded, have and use a common seal.

15 (c) The corporation shall be vested with the title of the
16 state of West Virginia in public lands, the title to which
17 now is or may hereafter become vested in the state of
18 West Virginia by reason of any law governing the title
19 of lands of the state: *Provided*, That those lands for
20 which title is specifically vested by law in other state
21 agencies, institutions and departments shall continue to
22 be vested in such state agencies, institutions and
23 departments.

§20-1A-2. Corporation boards of directors, members,
expenses, appointment, terms, qualifica-
tions; director as board chairman; meetings,
quorum; executive secretary, secretary to
board; professional and support staff; exe-
cution of legal documents, permits and
licenses.

1 (a) The public land corporation shall be governed by
2 a board of directors comprised of five members of which
3 three shall be ex officio and two shall be appointed by
4 the governor. The members of the board shall receive
5 no compensation for their service thereon. The board
6 members who are not ex officio shall be reimbursed by
7 the director for their actual and necessary expenses

8 incurred pursuant to their duties under this article from
9 funds authorized for such purposes.

10 (b) The director of the department of natural resour-
11 ces shall be an ex officio member and chairman of the
12 board of directors. The commissioner of the department
13 of culture and history and the commissioner of the
14 department of commerce, or their designees who shall
15 be employees of their respective departments, shall be
16 ex officio members of the board of directors.

17 (c) The governor shall appoint two members of the
18 board of directors, with the advice and consent of the
19 Senate, which members shall serve a term of four years:
20 *Provided*, That the initial appointments shall be to terms
21 of two and four years, respectively, which terms shall
22 commence on the first day of July, one thousand nine
23 hundred eighty-nine. The members of the board of
24 directors appointed by the governor shall be persons
25 with a demonstrated interest and knowledge in the
26 conservation and protection of the aesthetic, biological,
27 geological, historical, archeological, cultural or recrea-
28 tional values of the public lands of the state.

29 (d) A majority of the board of directors shall consti-
30 tute a quorum for the transaction of business. The board
31 shall meet at such times and places as it may determine
32 and shall meet on call of the chairman. It shall be the
33 duty of the chairman to call a meeting of the board on
34 the written request of any three members thereof.

35 (e) The director shall appoint and supervise an
36 executive secretary of the public land corporation, and
37 may employ other necessary professional and support
38 staff for the purposes of this article, who shall be
39 employees of the department with merit system status.

40 An affirmative vote of a majority of the members of
41 the corporation is required for any action of the
42 corporation with respect to the sale or exchange of
43 public lands or for the issuance of a lease or contract
44 for the development of minerals, oil or gas. All actions
45 must be taken at a scheduled meeting of the corporation
46 held in compliance with the provisions of article nine-
47 a, chapter six of this code.

48 The powers and duties of the corporation are nonde-
49 legable, except that the executive secretary may
50 negotiate and enter into preliminary agreements on
51 behalf of the corporation, and shall, upon authorization
52 of the corporation, be entitled to engage in valid actions
53 of the corporation in respect of day-to-day administra-
54 tive activities. An agreement entered into by the
55 executive secretary on behalf of the corporation is not
56 valid until such agreement is approved by an affirma-
57 tive vote of a majority of the corporation.

§20-1A-3. Public land corporation, powers and duties.

1 The corporation is hereby authorized and empowered
2 to:

3 (1) Acquire from any persons or the state auditor or
4 any local, state or federal agency, by purchase, lease or
5 other agreement, any lands necessary and required for
6 public use;

7 (2) Acquire by purchase, condemnation, lease or
8 agreement, receive by gifts and devises, or exchange,
9 rights-of-way, easements, waters and minerals suitable
10 for public use;

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

14 (A) Such tract was acquired for a specific purpose
15 and the tract is no longer required for that or any other
16 state purpose; or

17 (B) Disposal of such tract serves important public
18 objectives including, but not limited to, expansion of
19 communities and economic development which cannot
20 be achieved on lands other than public lands and which
21 clearly outweigh other public objectives and values
22 including, but not limited to, recreation and scenic
23 values which would be served by maintaining such tract
24 in state ownership; or

25 (C) Such tract, because of its location or other
26 characteristics, is difficult and uneconomic to manage
27 as part of the public lands and is not suitable for

28 management by another state department or agency.

29 There is hereby created in the state treasury a special
 30 public land corporation fund into which shall be paid
 31 all proceeds from public land sales and exchanges. The
 32 corporation may acquire public lands from use of the
 33 payments made to the fund, along with any interest
 34 accruing to said fund. The corporation shall report
 35 annually, just prior to the beginning of the regular
 36 session of the Legislature, to the finance committees of
 37 the Legislature on the financial condition of the special
 38 fund.

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

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

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

49 (A) Liquidate obligations incurred in the acquisition,
 50 development and administration of such lands, until all
 51 such obligations have been fully discharged;

52 (B) Purchase, develop, restore and preserve for public
 53 use, sites, structures, objects and documents of prehis-
 54 toric, historical, archaeological, recreational, architectu-
 55 ral and cultural significance to the state of West
 56 Virginia; and

57 (C) Obtain grants or matching moneys available from
 58 the government of the United States or any of its
 59 instrumentalities for prehistoric, historic, archaeologi-
 60 cal, recreational, architectural and cultural purposes;

61 The corporation shall have the authority to designate
 62 lands to which it has title for development and admin-
 63 istration for the public use including recreation, wildlife
 64 stock grazing, agricultural rehabilitation and home-
 65 steading or other conservation activities. The corpora-

66 tion shall have authority to enter into leases for the
67 development and extraction of minerals, including sand
68 and gravel, except as otherwise circumscribed herein.
69 The corporation shall reserve title and ownership to the
70 mineral rights in all cases. It shall convey, assign, or
71 allot lands to the title or custody of proper departments
72 or other agencies of state government for administration
73 and control within the functions of such departments or
74 other agencies as provided by law. The corporation shall
75 make proper lands available for the purpose of cooper-
76 ating with the government of the United States in the
77 relief of unemployment and hardship or for any other
78 public purpose. The corporation shall report annually to
79 the legislature on its public land holdings, its financial
80 condition and its operations and shall make such
81 recommendations to the legislature as deemed proper
82 concerning the acquisition, development, disposition and
83 use of public lands. All state agencies, institutions and
84 departments shall make an inventory of the public lands
85 of the state as may be by law specifically allocated to
86 and used by each and provide to the corporation a list
87 of such public lands, including their current use,
88 intended use or best use to which such land may be put:
89 *Provided*, That the state department of highways need
90 not provide such inventory of public lands allocated to
91 and used by it. The inventory shall identify those parcels
92 of land which have no present or foreseeable useful
93 purpose to the state of West Virginia. The inventory
94 shall be submitted to the corporation by the first day
95 of August, one thousand nine hundred eighty-nine. The
96 corporation shall compile such inventory of all public
97 lands and report to the Legislature by no later than the
98 first day of January, one thousand nine hundred ninety,
99 on its public land holdings and the land holdings of the
100 other agencies or departments of this state which are
101 required to report their holdings to the corporation as
102 set forth hereinabove, its financial condition and its
103 operations.

104 During the continuance of the Blennerhassett histor-
105 ical park commission, the public land corporation and
106 its members shall consult with and keep the said
107 Blennerhassett historical park commission fully in-

108 formed as to any official action to be taken or proposed
 109 to be taken pursuant to this act regarding or affecting
 110 Blennerhassett Island and its prehistoric, historic,
 111 archaeological, architectural, cultural and recreational
 112 significance or development or any of the powers and
 113 duties of the Blennerhassett historical park commission.

**§20-1A-4. Public land corporation to conduct sales of
 public lands by competitive bidding, modified
 competitive bidding or direct sale.**

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

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

12 (2) Adjoining land owners.

13 (b) The policy for selecting the methods of sale is as
 14 follows:

15 (1) Competitive sale is the general procedure for sales
 16 of public lands and shall be used in the following
 17 circumstances:

18 (A) Wherever in the judgment of the secretary the
 19 lands are accessible and usable regardless of adjoining
 20 land ownership; or

21 (B) Wherever the lands are within a developing or
 22 urbanizing area and land values are increasing due to
 23 the location of the land and interest on the competitive
 24 market.

25 (2) Modified competitive sales may be used to permit
 26 the adjoining landowner or local governmental entity to
 27 meet the high bid at the public sale. Lands otherwise
 28 offered under this procedure would normally be public
 29 lands not located near urban expansion areas, or not

30 located near areas with rapidly increasing land values,
31 and where existing use of adjacent lands would be
32 jeopardized by sale under competitive bidding
33 procedures.

34 (3) Direct sale may be used when the lands offered for
35 sale are completely surrounded by lands in one owner-
36 ship with no public access, or where the lands are
37 needed by local governments.

38 (4) In no event shall lands be offered for sale by
39 "modified competitive sales" or "direct sale" unless and
40 until the corporation makes a written finding of
41 justification for use of an alternative bidding procedure.

42 (5) Subject to the bidding procedures set forth herein,
43 the corporation is authorized, at its discretion, to sell
44 public lands subject to rights of way, restrictive
45 covenants or easements retained by the corporation,
46 limiting the use of such lands to purposes consistent
47 with the use of adjoining or nearby lands owned by the
48 corporation.

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

52 (d) In no case may lands be sold or exchanged for less
53 than fair market value. Fair market value shall be
54 determined by an appraisal made by an independent
55 person or firm chosen by the public land corporation.
56 The appraisal shall be performed using the principles
57 contained in the "Uniform Appraisal Standards for
58 Federal Land Acquisitions" published under the auspi-
59 ces of the Interagency Land Acquisition Conference,
60 United States Government Printing Office, 1972.

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

64 (f) The corporation shall promulgate rules, in accor-
65 dance with the provisions of chapter twenty-nine-a of
66 this code, regarding procedures for conducting public
67 land sales by competitive bidding, modified competitive
68 bidding and direct sales.

**§20-1A-5. 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 corpo-
3 ration 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
7 available for public inspection at the office of the county
8 clerk at the county courthouse of each county in which
9 the affected land is located during the two successive
10 weeks before the date of the public hearing required by
11 this section;

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

19 (3) Not less than thirty days prior to such public
20 hearing, provide notice to all members of the Legisla-
21 ture, to the head of the governing body of any political
22 subdivision 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
29 public hearing. The notice shall be published as a Class
30 II legal advertisement in compliance with the provisions
31 of article three, chapter fifty-nine of this code and the
32 publication area shall be each county in which the
33 affected land is located. The public hearing shall be held
34 no earlier than the fourteenth successive day and no
35 later than the twenty-first successive day following the
36 first publication of the notice. The notice shall contain
37 the time and place of the public hearing along with a
38 brief description of the affected land;

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

44 (6) Appoint a representative of the corporation who
45 shall conduct the required public hearing. The corpora-
46 tion's representative shall have full knowledge of all the
47 facts and circumstances surrounding the proposed sale,
48 exchange or transfer. The representative of the corpo-
49 ration shall make a report of the public hearing
50 available for inspection by the public or, upon written
51 request of any interested person, provide a written copy
52 thereof and to all individuals previously receiving
53 written notice of the hearing within thirty days
54 following the public hearing; and

55 (7) If the evidence at the public hearing establishes by
56 a preponderance that the appraisal provided for in
57 subsection (c), section four of this article does not reflect
58 the true, fair market value, the public land corporation
59 shall cause another appraisal to be made. If the evidence
60 at the public hearing establishes by a preponderance
61 that the sale or exchange of land does not meet the
62 criteria set forth in subdivision three, section three of
63 this article, the public land corporation shall not proceed
64 with the sale or exchange of said land without judicial
65 approval.

66 The representative of the corporation conducting the
67 public hearing shall make the results of the hearing
68 available to the corporation for its consideration prior
69 to the board making decisions regarding the affected
70 lands.

71 (b) No sale, exchange or transfer of land subject to the
72 provisions of this section may be made before the
73 thirtieth successive day following the public hearing
74 required by this section, but in no event shall the sale,
75 exchange or transfer of such lands be made prior to
76 fifteen days after the report of the public hearings are
77 made available to the public in general.

**§20-1A-6. Competitive bidding and notice requirements
before the development of natural resources
on certain lands.**

1 The corporation may enter into a lease or contract for
2 the development of minerals, gas or oil on or under lands
3 in which the corporation holds any right, title or
4 interest: *Provided*, that no lease or contract may be
5 entered into for the extraction and removal of minerals
6 by surface mining or auger mining of coal. With the
7 exception of deep mining operations which are already
8 in progress and permitted as of the effective date of this
9 article, extraction of coal by deep mining methods under
10 state forests or wildlife refuges may be permitted only
11 if such lease or contract provides that no entries, portals,
12 air shafts or other incursions upon and into said land
13 incident to said mining operations may be placed or
14 constructed upon said lands or within three thousand
15 feet of the boundary thereof. Any lease or contract
16 entered into shall reserve to the state all rights to
17 subjacent surface support which the state is seized or
18 possessed of at the time of such lease or contract.
19 Notwithstanding any other provisions of the code to the
20 contrary, nothing herein shall be construed to permit
21 extraction of minerals, oil or gas by any method from
22 on or under any state park or state recreation area, nor
23 the extraction of minerals by strip or auger mining upon
24 any state forest or wildlife refuge. The corporation may
25 enter into a lease or contract for the development of
26 minerals, oil or gas, where such lease or contract is not
27 prohibited by any other provisions of this code, only
28 after receiving sealed bids therefor, after notice by
29 publication as a Class II legal advertisement in com-
30 pliance with the provisions of article three, chapter fifty-
31 nine of this code. The area for such publication shall be
32 each county in which such lands are located. The
33 minerals, oil or gas so advertised may be leased or
34 contracted for development at not less than the fair
35 market value, as determined by an appraisal made by
36 an independent person or firm chosen by the corpora-
37 tion, to the highest responsible bidder, who shall give
38 bond for the proper performance of the contract or lease
39 as the corporation shall designate; but the corporation

40 shall have the right to reject any and all bids and to
41 readvertise for bids. If the foregoing provisions of this
42 section have been complied with, and no bid equal to or
43 in excess of the fair market value of such natural
44 resources is received, the corporation may, at any time
45 during a period of six months after the opening of the
46 bids, lease or contract for the development of such
47 natural resources in such manner as it is deemed
48 appropriate, but the lease or contract price shall not be
49 less than the fair market value of such natural resources
50 advertised.

§20-1A-7. Adopt a state park or forest program.

1 The commissioner of the department of commerce
2 shall establish an "adopt a state park or forest program"
3 to encourage and coordinate the efforts of volunteers to
4 help maintain and improve state parks, forests, or other
5 public lands within the state.

6 The commissioner shall establish a matching grant
7 program to assist such volunteer efforts by legislative
8 rule pursuant to chapter twenty-nine-a of this code.

13 [Enr. Com. Sub. for H. B. 2241

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Paul C. Mills
Clerk of the Senate

Donald L. Hoopp
Clerk of the House of Delegates

Lawrence Turner
President of the Senate

Robert C. Bell
Speaker of the House of Delegates

The within *is approved* this the *24th*
day of *April*, 1989.

Easton Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 4/14/89

Time 5:01