WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED
Com. Sub. for
HOUSE BILL No. 2241

(By Mr. Del. A. Cook)

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Passed April 6, 1989
In Effect Ninety Days From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2241

(By Delegate S. Cook)

[Passed April 11, 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fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said chapter be amended by adding thereto a new article, designated article one-a, to read as follows:
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ARTICLE IA. REAL ESTATE MANAGEMENT AND PROCEDURES.

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

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

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

§20-1A-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.
(a) The public land corporation shall be governed by a board of directors comprised of five members of which three shall be ex officio and two shall be appointed by the governor. The members of the board shall receive no compensation for their service thereon. The board members who are not ex officio shall be reimbursed by the director for their actual and necessary expenses
incurred pursuant to their duties under this article from funds authorized for such purposes.

(b) The director of the department of natural resources shall be an ex officio member and chairman of the board of directors. The commissioner of the department of culture and history and the commissioner of the department of commerce, or their designees who shall be employees of their respective departments, shall be ex officio members of the board of directors.

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

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

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

An affirmative vote of a majority of the members of the corporation is required for any action of the corporation with respect to the sale or exchange of public lands or for the issuance of a lease or contract for the development of minerals, oil or gas. All actions must be taken 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 executive secretary may negotiate and enter into preliminary agreements on behalf of the corporation, and shall, upon authorization of the corporation, be entitled to engage in valid actions of the corporation in respect of day-to-day administrative activities. An agreement entered into by the executive secretary on behalf of the corporation is not valid until such agreement is approved by an affirmative vote of a majority of the corporation.


The corporation is hereby authorized and empowered to:

1. Acquire from any persons or the state auditor or any local, state or federal agency, 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 on lands other than public lands and which clearly 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
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, along with any interest accruing to said 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.

(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; and

(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;

The corporation shall have the authority to designate lands to which it has title for development and administration for the public use including recreation, wildlife stock grazing, agricultural rehabilitation and homesteading or other conservation activities. The corpora-
The corporation shall reserve title and ownership to the mineral rights in all cases. 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. The corporation shall report annually to the legislature on its public land holdings, 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. 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-nine. The corporation shall compile such inventory of all public lands and report to the Legislature by no later than the first day of January, one thousand nine hundred ninety, 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.

During the continuance of the Blennerhassett historical park commission, the public land corporation and its members shall consult with and keep the said Blennerhassett historical park commission fully in-
formed 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, architectural, cultural and recreational significance or development or any of the powers and 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.

(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 the following 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.

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

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

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

(B) 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 market.

(2) Modified competitive sales may be used to permit the adjoining landowner or local governmental entity to meet the high bid at the public sale. Lands otherwise offered under this procedure would normally be public lands not located near urban expansion areas, or not...
located near areas with rapidly increasing land values, and where existing use of adjacent lands would be jeopardized 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 ownership with no public access, or where the lands are needed by local governments.

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

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

(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 determined by an appraisal made by an independent person or firm chosen by the public land corporation. The appraisal shall be performed using the principles contained in the “Uniform Appraisal Standards for Federal Land Acquisitions” published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(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 corporation 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.
§20-1A-5. 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 corporation's representative appointed pursuant to this section;

(3) Not less than thirty 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 corporation who shall conduct the required public hearing. The corporation's representative shall have full knowledge of all the facts and circumstances surrounding the proposed sale, exchange or transfer. The representative of the corporation shall make a report of the public hearing available for inspection by the public or, upon written request of any interested person, provide a written copy thereof and to all individuals previously receiving written notice of the hearing within thirty 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 (c), section four of this article does not reflect the true, fair market value, the public land corporation shall cause another appraisal to be made. If the evidence at the public hearing establishes by a preponderance that the sale or exchange of land does not meet the criteria set forth in subdivision three, section three of this article, the public land corporation shall not proceed with the sale or exchange of said land without judicial approval.

The representative of the corporation conducting the public hearing shall make the results of the hearing available to the corporation 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, but in no event shall the sale, exchange or transfer of such lands be made prior to fifteen days after the report of the public hearings are made available to the public in general.
§20-1A-6. Competitive bidding and notice requirements before the development of natural resources on certain lands.

The corporation may enter into a lease or contract for the development of minerals, gas or oil on or under lands in which the corporation holds any right, title or interest; Provided, that no lease or contract may be entered into for the extraction and removal of minerals by surface mining or auger mining of coal. With the exception of deep mining operations which are already in progress and permitted as of the effective date of this article, extraction of coal by deep mining methods under state forests or wildlife refuges may be permitted only if such lease or contract provides that no entries, portals, air shafts or other incursions upon and into said land incident to said mining operations may be placed or constructed upon said lands or within three thousand feet of the boundary thereof. Any lease or contract entered into shall reserve to the state all rights to subjacent surface support which the state is seized or possessed of at the time of such lease or contract. Notwithstanding any other provisions of the code to the contrary, nothing herein shall be construed to permit extraction of minerals, oil or gas by any method from on or under any state park or state recreation area, nor the extraction of minerals by strip or auger mining upon any state forest or wildlife refuge. The corporation may enter into a lease or contract for the development of minerals, oil or gas, where such lease or contract is not prohibited by any other provisions of this code, only after receiving sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for such publication shall be each county in which such lands are located. The minerals, oil or gas so advertised may be leased or contracted for development at not less than the fair market value, as determined by an appraisal made by an independent person or firm chosen by the corporation, to the highest responsible bidder, who shall give bond for the proper performance of the contract or lease as the corporation shall designate; but the corporation
shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the fair market value of such natural resources is received, the corporation may, at any time during a period of six months after the opening of the bids, lease or contract for the development of such natural resources in such manner as it is deemed appropriate, but the lease or contract price shall not be less than the fair market value of such natural resources advertised.

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

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

The commissioner shall establish a matching grant program to assist such volunteer efforts by legislative rule pursuant to chapter twenty-nine-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor