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**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2512

(By Delegates R. Thompson and Perdue)



Passed March 7, 2003

In Effect Ninety Days from Passage

FILED

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FOR

H. B. 2512

(BY DELEGATES R. THOMPSON AND PERDUE)

[Passed March 7, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, five and six, article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishing a special public land corporation; requirements for leasing minerals; consultation the office of the attorney general; contracting for consulting services; and accounting for revenues.

Be it enacted by the Legislature of West Virginia:

That sections three, five and six, article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

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

1 (a) The corporation is hereby authorized and empowered to:

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

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

8 (3) Sell or exchange public lands where it is determined
9 that the sale or exchange of such tract meets any or all of the
10 following disposal criteria:

11 (A) The tract was acquired for a specific purpose and the
12 tract is no longer required for that or any other state purpose;

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

20 (C) The tract, because of its location or other characteris-
21 tics, is difficult and uneconomic to manage as part of the public
22 lands and is not suitable for management by another state
23 department or agency.

24 (4) Sell, purchase or exchange lands or stumpage for the
25 purpose of consolidating lands under state or federal govern-
26 ment administration subject to the disposal criteria specified in
27 subdivision three of this section;

28 (5) Negotiate and effect loans or grants from the govern-
29 ment of the United States or any agency thereof for acquisition

30 and development of lands as may be authorized by law to be
31 acquired for public use;

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

34 (A) Liquidate obligations incurred in the acquisition,
35 development and administration of lands, until all obligations
36 have been fully discharged;

37 (B) Purchase, develop, restore and preserve for public use,
38 sites, structures, objects and documents of prehistoric, histori-
39 cal, archaeological, recreational, architectural and cultural
40 significance to the state of West Virginia; and

41 (C) Obtain grants or matching moneys available from the
42 government of the United States or any of its instrumentalities
43 for prehistoric, historic, archaeological, recreational, architec-
44 tural and cultural purposes.

45 (7) Designate lands, to which it has title, for development
46 and administration for the public use including recreation,
47 wildlife stock grazing, agricultural rehabilitation and
48 homesteading or other conservation activities;

49 (8) Enter into leases as a lessor for the development and
50 extraction of minerals, including coal, oil, gas, sand or gravel,
51 except as otherwise circumscribed herein: *Provided*, That leases
52 for the development and extraction of minerals shall be made
53 in accordance with the provisions of sections five and six of this
54 article. The corporation shall reserve title and ownership to the
55 mineral rights in all cases.

56 (9) Convey, assign, or allot lands to the title or custody of
57 proper departments or other agencies of state government for
58 administration and control within the functions of departments
59 or other agencies as provided by law;

60 (10) Make proper lands available for the purpose of
61 cooperating with the government of the United States in the
62 relief of unemployment and hardship or for any other public
63 purpose.

64 (b) There is hereby created in the state treasury a special
65 public land corporation fund into which shall be paid all
66 proceeds from public land sales and exchanges and rents,
67 royalties and other payments from mineral leases. The corpora-
68 tion may acquire public lands from use of the payments made
69 to the fund, along with any interest accruing to the fund. The
70 corporation shall report annually, just prior to the beginning of
71 the regular session of the Legislature, to the finance committees
72 of the Legislature on the financial condition of the special fund.
73 The corporation shall report annually to the Legislature on its
74 public land holdings and all its leases, its financial condition
75 and its operations and shall make such recommendations to the
76 Legislature concerning the acquisition, leasing, development,
77 disposition and use of public lands.

78 (c) All state agencies, institutions, divisions and depart-
79 ments shall make an inventory of the public lands of the state
80 as may be by law specifically allocated to and used by each and
81 provide to the corporation a list of such public lands and
82 minerals, including their current use, intended use or best use
83 to which lands and minerals may be put: *Provided*, That the
84 division of highways need not provide the inventory of public
85 lands allocated to and used by it. The inventory shall identify
86 those parcels of land which have no present or foreseeable
87 useful purpose to the state of West Virginia. The inventory shall
88 be submitted annually to the corporation by the first day of
89 August. The corporation shall compile the inventory of all
90 public lands and minerals and report annually to the Legislature
91 by no later than the first day of January, on its public lands and
92 minerals and the lands and minerals of the other agencies,
93 institutions, divisions or departments of this state which are

94 required to report their holdings to the corporation as set forth
95 in this subsection, and its financial condition and its operations.

**§20-1A-5. Public land corporation to hold public hearing before
sale, lease, exchange or transfer of land or minerals.**

1 (a) Prior to any final decision of any state agency to sell,
2 lease as a lessor, exchange or transfer land or minerals title to
3 which is vested in the public land corporation pursuant to
4 section one of this article, the public land corporation shall:

5 (1) Prepare and reduce to writing the reasons and support-
6 ing data regarding the sale, lease, exchange or transfer of land
7 or minerals. The written reasons required under this section
8 shall be available for public inspection at the office of the
9 county clerk at the county courthouse of each county in which
10 the affected lands or minerals are located during the two
11 successive weeks before the date of the public hearing required
12 by this section;

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

20 (3) Not less than thirty days prior to the public hearing,
21 provide notice to all members of the Legislature, to the head of
22 the governing body of any political subdivision having zoning
23 or other land use regulatory responsibility in the geographic
24 area within which the public lands or minerals are located and
25 to the head of any political subdivision having administrative or
26 public services responsibility in the geographic area within
27 which the lands or minerals 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 area
32 shall be each county in which the affected lands or minerals are
33 located. The public hearing shall be held no earlier than the
34 fourteenth successive day and no later than the twenty-first
35 successive day following the first publication of the notice. The
36 notice shall contain the time and place of the public hearing
37 along with a brief description of the affected lands or minerals;

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

42 (6) Appoint a representative of the corporation who shall
43 conduct the required public hearing. The corporation's repre-
44 sentative shall have full knowledge of all the facts and circum-
45 stances surrounding the proposed sale, lease, exchange or
46 transfer. The representative of the corporation conducting the
47 public hearing shall make the results of the hearing available to
48 the corporation for its consideration prior to the board making
49 final decisions regarding the affected lands or minerals. The
50 representative of the corporation shall make a report of the
51 public hearing available for inspection by the public or, upon
52 written request of any interested person, provide a written copy
53 thereof and to all individuals previously receiving written
54 notice of the hearing within thirty days following the public
55 hearing; and

56 (7) If the evidence at the public hearing establishes by a
57 preponderance that the appraisal provided for in subsection (c),
58 section four of this article does not reflect the true, fair market
59 value, the public land corporation shall cause another appraisal
60 to be made.

61 (8) If the evidence at the public hearing establishes by a
62 preponderance that the sale or exchange of land does not meet
63 the criteria set forth in subdivision three, subsection (a), section
64 three of this article, the public land corporation may not
65 proceed with the sale or exchange of said land without judicial
66 approval.

67 (b) The corporation may not sell, lease as lessor, exchange
68 or transfer lands or minerals before the thirtieth successive day
69 following the public hearing required by this section, but in no
70 event may the sale, lease, exchange or transfer of lands or
71 minerals be made prior to fifteen days after the report of the
72 public hearings are made available to the public in general.

73 (c) If the corporation authorizes the staff to proceed with
74 consideration of the lease or sale under the terms of this article,
75 all requirements of this section shall be completed within one
76 year of date of the authorization by the corporation.

**§20-1A-6. Competitive bidding and notice requirements before
the development or extraction of minerals on
certain lands; related standards.**

1 (a) The corporation may enter into a lease or contract for
2 the development of minerals, including, but not limited to, coal,
3 gas, oil, sand or gravel on or under lands in which the corpora-
4 tion holds any right, title or interest: *Provided*, That no lease or
5 contract may be entered into for the extraction and removal of
6 minerals by surface mining or auger mining of coal.

7 (b) With the exception of deep mining operations which are
8 already in progress and permitted as of the fifth day of July, one
9 thousand nine hundred eighty-nine, the extraction of coal by
10 deep mining methods under state forests or wildlife refuges
11 may be permitted only if the lease or contract provides that no
12 entries, portals, air shafts or other incursions upon and into the
13 land incident to the mining operations may be placed or

14 constructed upon the lands or within three thousand feet of its
15 boundary.

16 (c) Any lease or contract entered into by the corporation for
17 the development of minerals shall reserve to the state all rights
18 to subjacent surface support with which the state is seized or
19 possessed at the time of such lease or contract.

20 (d) Notwithstanding any other provisions of the code to the
21 contrary, nothing herein may be construed to permit extraction
22 of minerals by any method from, on or under any state park or
23 state recreation area, nor the extraction of minerals by strip or
24 auger mining upon any state forest or wildlife refuge.

25 (e) The corporation may enter into a lease or contract for
26 the development of minerals where the lease or contract is not
27 prohibited by any other provisions of this code, only after
28 receiving sealed bids therefor, after notice by publication as a
29 Class II legal advertisement in compliance with the provisions
30 of article three, chapter fifty-nine of this code. The area for
31 publication shall be each county in which the minerals are
32 located.

33 (f) The minerals so advertised may be leased or contracted
34 for development at not less than the fair market value, as
35 determined by an appraisal made by an independent person or
36 firm chosen by the corporation, to the highest responsible
37 bidder, who shall give bond for the proper performance of the
38 contract or lease as the corporation designates: *Provided*, That
39 the corporation may reject any and all bids and to readvertise
40 for bids.

41 (g) If the provisions of this section have been complied
42 with, and no bid equal to or in excess of the fair market value
43 is received, the corporation may, at any time during a period of
44 six months after the opening of the bids, lease or contract for

45 the development of the minerals, but the lease or contract price
46 may not be less than the fair market value.

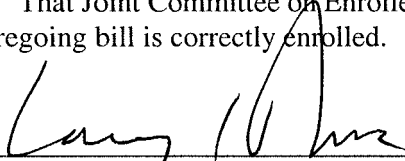
47 (h) Any lease or contract for the development of minerals
48 entered into after the effective date of this section shall be made
49 in accordance with the provisions of this section and section
50 five of this article.

51 (i) The corporation will consult with the office of the
52 attorney general to assist the corporation in carrying out the
53 provisions of this section.

54 (j) The corporation shall consult with an independent
55 mineral consultant and any other competent third parties with
56 experience and expertise in the leasing of minerals, to assist the
57 corporation in carrying out the provisions of this section,
58 including determining fair market value and negotiating terms
59 and conditions of mineral leases.

60 (k) Once the lessee commences the production of minerals
61 and royalties become due and are paid to the public land
62 corporation, the public land corporation shall hire an independ-
63 ent auditing firm to periodically review the lessee's books and
64 accounts for compliance of payment of appropriate royalties
65 due the public land corporation for its minerals as produced
66 under the lease agreement.

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



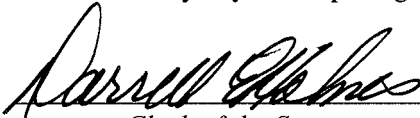
Chairman Senate Committee



Chairman House Committee

Originating in the House.

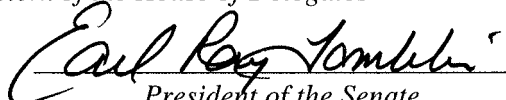
In effect ninety days from passage




Clerk of the Senate



Clerk of the House of Delegates

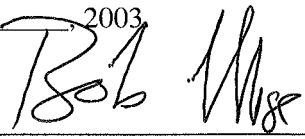


President of the Senate



Speaker of the House of Delegates

The within is approved this the 27th
day of March, 2003



Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/03

Time 9:35am