ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 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.

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

(B) Disposal of the 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 the tract in state ownership; or

(C) The 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.

(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 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 lands, until all 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.

(7) 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;

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

(9) 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 departments or other agencies as provided by law;
(10) 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.

(b) 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 and rents, royalties and other payments from mineral leases. The corporation may acquire public lands from use of the payments made to the fund, along with any interest accruing 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 corporation shall report annually to the Legislature on its public land holdings and all its leases, its financial condition and its operations and shall make such recommendations to the Legislature concerning the acquisition, leasing, development, disposition and use of public lands.

(c) All state agencies, institutions, divisions 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 and minerals, including their current use, intended use or best use to which lands and minerals may be put: Provided, That the division of highways need not provide the 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 annually to the corporation by the first day of August. The corporation shall compile the inventory of all public lands and minerals and report annually to the Legislature by no later than the first day of January, on its public lands and minerals and the lands and minerals of the other agencies, institutions, divisions or departments of this state which are
required to report their holdings to the corporation as set forth 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.

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

(1) Prepare and reduce to writing the reasons and supporting data regarding the sale, lease, exchange or transfer of land or minerals. 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 lands or minerals are 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 lands or minerals are 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 the 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 or minerals are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands or minerals 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 lands or minerals are 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 lands or minerals;

(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. The 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, lease, exchange or transfer. 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 final decisions regarding the affected lands or minerals. 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.
(8) 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, subsection (a), section three of this article, the public land corporation may not proceed with the sale or exchange of said land without judicial approval.

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

(c) If the corporation authorizes the staff to proceed with consideration of the lease or sale under the terms of this article, all requirements of this section shall be completed within one 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.

(a) The corporation may enter into a lease or contract for the development of minerals, including, but not limited to, coal, gas, oil, sand or gravel 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.

(b) With the exception of deep mining operations which are already in progress and permitted as of the fifth day of July, one thousand nine hundred eighty-nine, the extraction of coal by deep mining methods under state forests or wildlife refuges may be permitted only if the lease or contract provides that no entries, portals, air shafts or other incursions upon and into the land incident to the mining operations may be placed or
constructed upon the lands or within three thousand feet of its boundary.

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

(d) Notwithstanding any other provisions of the code to the contrary, nothing herein may be construed to permit extraction of minerals 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.

(e) The corporation may enter into a lease or contract for the development of minerals where the 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 publication shall be each county in which the minerals are located.

(f) The minerals 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 designates: Provided, That the corporation may reject any and all bids and to readvertise for bids.

(g) If the provisions of this section have been complied with, and no bid equal to or in excess of the fair market value 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 the minerals, but the lease or contract price may not be less than the fair market value.

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

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

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

(k) Once the lessee commences the production of minerals and royalties become due and are paid to the public land corporation, the public land corporation shall hire an independent auditing firm to periodically review the lessee’s books and accounts for compliance of payment of appropriate royalties due the public land corporation for its minerals as produced under the lease agreement.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butcher
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 3/25/63
Time 9:35 a.m.