WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 582

(By Senators Tomblin, Mr. President, and Caruth,
By Request of the Executive)

[Passed March 10, 2007; to take effect July 1, 2007.]
AN ACT to repeal §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended; to repeal §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; to amend said code by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; to amend and reenact §5F-2-1 and §5F-2-2 of said code; and to amend and reenact §20-1-7 of said code, all relating to the creation of the Real Estate Division in the Department
of Administration; providing the Real Estate Division approval of leases; exempting the acquisition and management of public lands and streams by the Division of Natural Resources; creating the position of Executive Director of the Real Estate Division; granting the division authority; requiring inspection of leased or rental property; requiring agencies to maintain and submit real estate inventory records to the Real Estate Division; requiring review of real property inventory; granting rule-making authority; transferring the Public Land Corporation to the Real Estate Division; continuing the Public Land Corporation's board of directors; continuing the Public Land Corporation powers and duties related to the acquisition, leasing, development, disposition and use of public lands; requiring sales of public land to be conducted by competitive bidding and exceptions; requiring public hearing before the sale, lease, exchange or transfer of land or minerals; requiring competitive bidding and notice before the development or extraction of minerals and related standards; and providing for the transfer and transition of the Public Land Corporation to the Real Estate Division.

Be it enacted by the Legislature of West Virginia:

That §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended, be repealed; that §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code be repealed; that said code be amended by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; that said code be amended by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; and that §20-1-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 10. REAL ESTATE DIVISION.
§5A-10-1. Division created; purpose; director.

(a) There is hereby created the Real Estate Division within the Department of Administration for the purpose of establishing a centralized office to provide leasing, appraisal and other real estate services to the Secretary of the Department of Administration.

(b) The division shall be under the supervision and control of an executive director, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

(c) Candidates for the position of executive director shall:

(1) Have at least a bachelor of arts or science degree from an accredited four-year college or university; and

(2) (A) Be a licensed real estate broker, pursuant to the provisions of article forty, chapter thirty of this code; or

(B) Be a licensed or certified real estate appraiser pursuant to the provisions of article thirty-eight, chapter thirty of this code; or

(3) (A) Be considered based on their demonstrated education, knowledge and a minimum of ten years’ experience in the areas of commercial real estate leasing, commercial real estate appraisal; or

(B) Any relevant experience of a minimum of ten years which demonstrates an ability to effectively accomplish the purposes of this article.

(d) The Real Estate Division is authorized to employ such employees, including, but not limited to, real estate appraisers licensed in accordance with the provisions of article thirty-eight, chapter thirty of this code, as may be necessary to discharge the duties of the division.

§5A-10-2. Leases for space to be made in accordance with article; exceptions.
Notwithstanding any other provision of this code, no department, agency or institution of state government may lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with the provisions of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

1. Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;
2. The Higher Education Policy Commission;
3. The West Virginia Council for Community and Technical College Education;
4. The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;
5. The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations;
6. The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations.

§5A-10-3. Powers and duties of Real Estate Division.
The Real Estate Division has the following powers and duties:

1. To provide leasing, appraisal and other real estate services to state spending units;

2. To ensure that the purchase of real estate and all contracts for lease are based on established real estate standards and fair market price;

3. To develop and implement minimum lease space standards for the lease of any grounds, buildings, office or other space required by any spending unit of state government;

4. To develop and implement minimum standards for the selection and acquisition, by contract or lease, of all grounds, buildings, office space or other space by a spending unit of state government except as otherwise provided in this article;

5. To establish and maintain a comprehensive database of all state real estate contracts and leases;

6. To develop policies and procedures for statewide real property management;

7. To maintain a statewide real property management system that has consolidated real property, building and lease information for all departments, agencies and institutions of state government;

8. To develop and maintain a centralized repository of comprehensive space needs for all state departments, agencies and institutions of state government, including up-to-date space and resource utilization, anticipated needs and recommended options;

9. To provide statewide policy leadership and coordinate master planning to guide and organize capital asset management; and

10. To provide assistance to all state departments,
§5A-10-4. Leasing of space by executive director; delegation of authority.

The executive director is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency or institution of state government: Provided, That the executive director may expressly delegate, in writing, the authority granted to him or her by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum specified by regulation in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.

§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

(a) The executive director has sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer or his designee of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state.

(b) The executive director shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.
(c) The executive director may enter into long-term agreements for buildings, land and space for periods longer than one fiscal year: Provided, That such long-term lease agreements are not for periods in excess of forty years, except that the secretary may, in the case of the Adjutant General's department, enter into lease agreements for a term of fifty years or a specific term of more than fifty years so as to comply with federal regulatory requirements and shall contain, in substance, all the following provisions:

(1) That the Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

(2) That the lease shall be considered canceled without further obligation on the part of the lessee if the state Legislature or the federal government should fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and

(3) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Department of Administration before the end of the then current fiscal year.


(a) Notwithstanding any provision of law to the contrary, the executive director has sole authority to negotiate and enter into long-term lease agreements for lease of public lands to be used for placement of wireless communication towers: Provided, That such long-term lease agreements may not be for periods in excess of thirty years: Provided, however, That for the governmental units named in subsection (d) of this section, any lease proposed by the executive director may only be entered into upon approval in writing of
11 the ranking administrator of the respective
12 governmental unit described in said subsection.
13
14 (b) All revenues derived from leases established upon
15 the enactment of this section shall be deposited into the
16 General Revenue Fund except as provided in
17 subsections (c) and (d) of this section.
18
19 (c) Revenues from leases initiated prior to the
20 enactment of this section or subsequently renewed shall
21 continue to be treated as they were prior to the
22 enactment of this section.
23
24 (d) Revenues derived from the lease of property under
25 the control of the Department of Transportation shall be
26 deposited into the State Road Fund. Revenues derived
27 from the lease of property under the control of the
28 Division of Natural Resources shall be retained by the
29 Division of Natural Resources and deposited into the
30 appropriate fund. Revenues derived from the lease of
31 property under the control of the Department of
32 Agriculture shall be deposited into the Agriculture Fees
33 Fund. Revenues derived from the lease of property
34 under the control of the Division of Forestry shall be
35 deposited into the Division of Forestry Fund. Revenues
36 derived from the lease of property under the control of
37 institutions of higher education shall be deposited into
38 the institution's education and general capital fees fund.
39 Revenues derived from the lease of property under the
40 control of Higher Education Policy Commission shall be
41 deposited into the commission's State Gifts Grants and
42 Contracts Fund. Revenues derived from the lease of
43 property under the control of the West Virginia Council
44 for Community and Technical College Education shall
45 be deposited into the council's Tuition and Required
46 Educational and General Fees Fund.
47
48 (e) Any long-term lease agreement entered into
49 pursuant to this section shall contain provisions
50 allowing for the nonexclusive use of the public lands
51 and allowance for use of the same public space for
52 additional towers by competing persons or corporations.
(f) The executive director is further authorized to enter into long-term lease agreements for additional wireless communication towers by other persons or corporations upon the same public lands in which there already exists a lease and tower provided for under this section.

(g) Any long-term lease agreement entered into pursuant to this section shall be recorded in the office of the county clerk where public land which is the subject of the lease agreement is located.

§5A-10-7. Leases and other instruments for space signed by executive director; approval as to form; filing.

Leases and other instruments for grounds, buildings, office or other space shall be signed by the Executive Director of the Real Estate Division in the name of the state. They shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

§5A-10-8. Inspection of leased property; requiring approval of executive director for permanent changes.

(a) The executive director of the real estate division shall inspect as necessary any property which may be under a lease or rental agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used and operated in accordance with the terms and conditions of the lease or rental agreement. The executive director is authorized to take such action necessary to correct any violation of the terms and conditions of the lease or rental agreement.

(b) A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with the provisions of this article may not order or make permanent changes of any type thereto, unless the executive director of the real estate division has first determined that the change is necessary for the
16 proper, efficient and economically sound operation of
17 the spending unit.

18 (c) For purposes of this section, a "permanent change"
19 means any addition, alteration, improvement,
20 remodeling, repair or other change involving the
21 expenditure of state funds for the installation of any
22 tangible effect which cannot be economically removed
23 from the grounds, buildings, office space or other space
24 when vacated by the spending unit.


1 (a) All real property owned or leased by the state shall
2 be accounted for by the state spending unit that owns,
3 leases or is in the possession of the real property.

4 (b) Each state spending unit shall establish and
5 maintain a record of each item of real property it owns
6 and/or leases and annually furnish its records to the
7 Real Estate Division.

8 (c) The accounting and reporting requirements of this
9 section, except as to office space, do not apply to:

10 (1) The Division of Highways of the Department of
11 Transportation;

12 (2) Public lands, rivers and streams acquired,
13 managed or which title is vested in or transferred to the
14 Division of Natural Resources of the Department of
15 Commerce, pursuant to section seven, article one,
16 chapter twenty of this code and section two, article five
17 of said chapter;

18 (3) The Higher Education Policy Commission;

19 (4) The West Virginia Council for Community and
20 Technical College Education; or

21 (5) The institutional boards of Governors in
22 accordance with the provisions of subsection (v), section
23 four, article five, chapter eighteen-b of this code.
(d) With regard to public lands that may be by law specifically allocated to and used by any state agency, institution, division, or department, such agency, institution, division, or department shall provide an inventory of such public land(s) to the public land corporation in accordance with the provisions of article eleven of this chapter.

(e) The records furnished to the Real Estate Division shall include the following information, if applicable:

(1) A description of each item of real property including:

   (A) A reference to a book, page and/or image number from the county records in a particular county; or

   (B) A legal description;

(2) The date of purchase and the purchase price of the real property;

(3) The date of lease and the rental costs of the real property;

(4) The name of the state spending unit holding title to the real property for the state;

(5) A description of the current uses of the real property and the projected future use of the real property; and

(6) A description of each building or other improvement located on the real property.

(f) If the description of real property required under this section is excessively voluminous, the Real Estate Division may direct the spending unit in possession of the real property to furnish the description only in summary form, as agreed to by the division and the spending unit.

§5A-10-10. Real property review.
(a) At least once every four years, the Real Estate Division shall review the inventory of real property for each state spending unit submitted pursuant to this article to verify the accuracy of the inventory records.

(b) Based on the review of the inventory of real property, the Real Estate Division shall:

(1) Identify any real property owned or leased by the state that is not being used or that is being substantially underused;

(2) Make recommendations to the Governor and the Secretary of the Department of Administration regarding the use of real property, which shall include:

(A) An analysis of the highest and best use to which the real property may legally be placed; and

(B) An analysis of alternative uses of the real property addressing the potential for any other transaction or use that the Real Estate Division determines to be in the best interest of the state; and

(3) Submit to the Governor and the Secretary of the Department of Administration any information pertinent to the evaluation of a potential transaction involving the real property, including:

(A) An evaluation of any proposals received from private parties that would be of significant benefit to the state; and

(B) The market value of such real property.


The executive director shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and enforce the provisions of this article.

ARTICLE 11. PUBLIC LAND CORPORATION.

(a) The Public Land Corporation, heretofore created and established as a unit of the Division of Natural Resources, is hereby continued and established as a unit of the Real Estate Division of the Department of Administration.

(b) The corporation is 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 is 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.

(d) The provisions of this article do not apply to:

(1) The State of West Virginia's interest in the rivers, streams, creeks or beds thereof and all other public lands managed or acquired by the Division of Natural Resources pursuant to the provisions of section seven, article one, chapter twenty of this code and section two, article five, chapter twenty of this code, the title to all of which shall collectively be transferred to and vested in the Division of Natural Resources for the use and enjoyment of the citizens of the state; or

(2) Public lands acquired by the Division of Forestry pursuant to article one-a, chapter nineteen of this code.

§5A-11-2. 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 is governed by a board of directors comprised of six members of which four 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 Secretary of the Department of Administration for their actual and necessary expenses incurred pursuant to their duties under this article from funds authorized for such purposes.

(b) The following serve as ex officio members of the board:

(1) The executive director of the Real Estate Division or a designee, who shall serve as chair;

(2) The director of the Division of Natural Resources or a designee;

(3) The commissioner of the Department of Culture and History or a designee; and

(4) The secretary of the Department of Administration, or a designee.

(c) The Governor shall appoint, by and with the advice and consent of the Senate, two members 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. The terms are for four years and no member may serve more than two consecutive terms. The members on the Board as of the first day of January, two thousand seven, shall continue to serve until their term has expired and may be reappointed.

(d) A majority of the board constitutes 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 chair. It shall be the duty of the chair to call a meeting of the board on the written request of any three members.
(e) The Executive Director of the Real Estate Division 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 of Administration with merit system status.

(f) 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.

(g) 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.


(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 (3) of this subsection;

(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 continued 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: Provided, That all royalties and payments derived from rivers, streams or public lands acquired or managed by the Division of Natural Resources pursuant to section seven, article one, chapter twenty of this code and section two, article five, chapter twenty of this code shall be retained by the Division of Natural Resources. 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, and the Division of
Natural Resources need not provide the inventory of
rivers, streams and public lands acquired or managed
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.

§5A-11-4. 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 or
executive director 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 or director shall give consideration to the following potential purchasers:

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

(2) Adjoining landowners.

(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) Except as provided in this article and section seven-a, article one, chapter twenty of this code, public lands may not be sold, exchanged or transferred by the corporation for less than fair market value. Fair market value shall be determined by an appraisal made by the Real Estate Division. The appraisal shall be performed using the principles contained in the current Uniform Appraisal Standards for Federal Land Acquisitions published under the auspices of the Interagency Land Acquisition Conference: Provided, That public lands not acquired or managed by the Division of Natural Resources pursuant to section seven, article one, chapter twenty of this code or section two, article five of said chapter may be sold, exchanged or transferred to any federal agency or to the state or any of its political subdivisions for less than fair market value if, upon a specific written finding of fact, the Executive Director of the Real Estate Division determines that such a transfer would be in the best interests of the corporation and state.

(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 propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, regarding procedures for conducting public land sales by
§5A-11-5. 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 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
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34 public hearing. The notice shall be published as a Class
35 II legal advertisement in compliance with the provisions
36 of article three, chapter fifty-nine of this code and the
37 publication area shall be each county in which the
38 affected lands or minerals are located. The public
39 hearing shall be held no earlier than the fourteenth
40 successive day and no later than the twenty-first
41 successive day following the first publication of the
42 notice. The notice shall contain the time and place of
43 the public hearing along with a brief description of the
44 affected lands or minerals;

45 (5) Cause a copy of the required notice to be posted in
46 a conspicuous place at the affected land for members of
47 the public to observe. The notice shall remain posted
48 for two successive weeks prior to the date of the public
49 hearing;

50 (6) Appoint a representative of the corporation who
51 shall conduct the required public hearing. The
52 corporation's representative shall have full knowledge
53 of all the facts and circumstances surrounding the
54 proposed sale, lease, exchange or transfer. The
55 representative of the corporation conducting the public
56 hearing shall make the results of the hearing available
57 to the executive director of the Real Estate Division and
58 the Secretary of the Department of Administration for
59 consideration prior to making final decisions regarding
60 the affected lands or minerals. The representative of the
61 corporation shall make a report of the public hearing
62 available for inspection by the public or, upon written
63 request of any interested person, provide a written copy
64 thereof and to all individuals previously receiving
65 written notice of the hearing within thirty days
66 following the public hearing; and

67 (7) If the evidence at the public hearing establishes by
68 a preponderance that the appraisal provided for in
69 subsection (d), section four of this article does not
70 reflect the true, fair market value, the Public Land
71 Corporation shall cause another appraisal to be made.

72 (8) If the evidence at the public hearing establishes by
73 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.

§5A-11-6. 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.


To effectuate the transfer of the public land corporation to real estate division of the Department of Administration upon the effective date of this section in the year two thousand seven:

(1) Subject to the provisions of section one-d of this article, the Secretary of the Department of Administration or a designee and the Secretary of the Department of Commerce or a designee shall determine which employees, records, responsibilities, obligations, assets and property, of whatever kind and character, of the Public Land Corporation will be transferred to the Real Estate Division of the Department of Administration beginning the effective date of this section in the year two thousand seven: Provided, That any title transferred to or vested in the Public Land Corporation, formerly existing under the provisions of article one-a, chapter twenty of this code, as of the first day of July, two thousand seven, or which may hereafter become vested in the Public Land Corporation in accordance with the provisions of this article, shall
continue to be vested in the Public Land Corporation.

(2) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective by the Governor, by any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the Real Estate Division of the Department of Administration and were in effect on the date the transfer occurred continue in effect, for the benefit of the department, according to their terms until modified, terminated, superseded, set aside or revoked in accordance with the law by the Governor, the secretary of the Department of Administration, or other authorized official, a court of competent jurisdiction or by operation of law.

(3) Any proceedings, including, but not limited to, notices of proposed rulemaking, in which the Public Land Corporation was an initiating or responding party are not affected by the transfer of the Public Land Corporation to the Real Estate Division of the Department of Administration. Orders issued in any proceedings continue in effect until modified, terminated, superseded or revoked by the Governor, the Secretary of Administration, by a court of competent jurisdiction or by operation of law. Nothing in this subdivision prohibits the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that a proceeding could have been discontinued or modified if the Public Land Corporation had not been transferred to the Real Estate Division of the Department of Administration. Transfer of the Public Land Corporation does not affect suits commenced prior to the effective date of the transfer and all such suits and proceedings shall be had, appeals taken and judgments rendered in the same manner and with like effect as if the transfer had not occurred, except that the Secretary of the Department of Administration or other officer may, in an appropriate case, be substituted or added as a party.

Pursuant to the provisions of article ten, chapter four of this code, the Public Land Corporation shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Building Commission provided in article six, chapter five of this code;

(2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;

(3) Governor's Mansion Advisory Committee provided for in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(5) West Virginia Public Employees Grievance Board provided for in article three, chapter six-c of this code;

(6) Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Public Defender Services provided in article
twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-
two-a of this code; and

(C) Mine Inspectors' Examining Board provided in
article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which
includes the Division of Tourism and the Tourism
Commission provided in article two, chapter five-b of
this code;

(4) Division of Natural Resources and Natural
Resources Commission provided in article one, chapter
twenty of this code;

(5) Division of Forestry provided in article one-a,
chapter nineteen of this code;

(6) Geological and Economic Survey provided in
article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter
twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis;
and

(8) Division of Energy provided in article two-f,
chapter five-b of this code.

(c) The Economic Development Authority provided in
article fifteen, chapter thirty-one of this code is
continued as an independent agency within the
executive branch.

(d) The Water Development Authority and Board
provided in article one, chapter twenty-two-c of this
code is continued as an independent agency within the
executive branch.
(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

1. Air Quality Board provided in article two, chapter twenty-two-b of this code;

2. Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

3. Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

4. Surface Mine Board provided in article four, chapter twenty-two-b of this code;

5. Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;

6. Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

7. Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

1. Library Commission provided in article one, chapter ten of this code;

2. Educational Broadcasting Authority provided in article five, chapter ten of this code;

3. Division of Culture and History provided in article one, chapter twenty-nine of this code;

4. Division of Rehabilitation Services provided in
section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;
(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;
(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter
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seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.

(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(l) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decisionmakers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(m) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate department.
division of the department.

(n) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of section seven of this article;

(5) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other
than administrators or board members;

(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by the Governor, and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the State Road Fund transferred to the Office of the Secretary of the Department of Transportation is not a use other than the purpose for which the funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the funds formerly appropriated to the agency, board or function in order to implement consolidation. The authority to transfer funds under this section shall expire on the thirtieth day of June, two thousand five;

(8) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligation of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(9) Acquire by lease or purchase property of whatever
kind or character and convey or dispose of any property
of whatever kind or character as authorized by law:

Provided, That the powers granted to the secretary to
lease, purchase, convey or dispose of such property shall
be exercised in accordance with the provisions of
articles three, ten and eleven, chapter five-a of this
code: Provided however, That the powers granted to the
secretary to lease, purchase, convey or dispose of such
property shall not exceed or be interpreted as authority
to exceed the powers granted by the Legislature to the
various commissioners, directors or board members of
the various departments, agencies or boards that
comprise and are incorporated into each secretary's
department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in section two,
article one, chapter twenty-nine-a of this code, to
implement and make effective the powers, authority and
duties granted and imposed by the provisions of this
chapter in accordance with the provisions of chapter
twenty-nine-a of this code;

(13) Grant or withhold written consent to the proposal
of any rule, as defined in section two, article one,
chapter twenty-nine-a of this code, by any
administrator, agency or board within the department.
Without written consent, no proposal for a rule shall
have any force or effect;

(14) Delegate to administrators the duties of the
secretary as the secretary may deem appropriate from
time to time to facilitate execution of the powers,
authority and duties delegated to the secretary; and

(15) Take any other action involving or relating to
internal management not otherwise prohibited by law.

(b) The secretaries of the departments hereby created
shall engage in a comprehensive review of the practices,
policies and operations of the agencies and boards
within their departments to determine the feasibility of

cost reductions and increased efficiency which may be

achieved therein, including, but not limited to, the

following:

(1) The elimination, reduction and restriction of the

state's vehicle or other transportation fleet;

(2) The elimination, reduction and restriction of state
government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained

in lease agreements between the state and private sector

for offices, equipment and services;

(4) The adoption of appropriate systems for

accounting, including consideration of an accrual basis

financial accounting and reporting system;

(5) The adoption of revised procurement practices to

facilitate cost-effective purchasing procedures,

including consideration of means by which domestic

businesses may be assisted to compete for state
government purchases; and

(6) The computerization of the functions of the state

agencies and boards.

(c) Notwithstanding the provisions of subsections (a)

and (b) of this section, none of the powers granted to the

secretaries herein shall be exercised by the secretary if

to do so would violate or be inconsistent with the

provisions of any federal law or regulation, any federal-

state program or federally delegated program or

jeopardize the approval, existence or funding of any

program.

(d) The layoff and recall rights of employees within

the classified service of the state as provided in

subsections five and six, section ten, article six, chapter

twenty-nine of this code shall be limited to the

organizational unit within the agency or board and

within the occupational group established by the
classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over programs which are payors for prescription drugs, including but not limited to, the Public Employees Insurance Agency, the Children's Health Insurance Program, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, the Workers' Compensation Fund, state colleges and universities, public hospitals, state or local institutions including nursing homes and veteran's homes, the Division of Rehabilitation, public health departments, the Bureau for Medical Services and other programs that are payors for prescription drugs, shall cooperate with the Office of the Pharmaceutical Advocate established pursuant to section four, article sixteen-d, chapter five of this code for the purpose of purchasing prescription drugs for any program over which they have authority.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:
(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the Division of Natural Resources any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the Natural Resources Commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the Natural Resources Commission before such season and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the Governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by
the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the division;

(9) Designate such localities as he or she shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the Division of Natural Resources by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Division of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he or she deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and the rules issued hereunder;
(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha State Forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. The director must obtain the written permission of the Governor to sell timber when the appraised value is more than five thousand dollars. The director shall receive 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 and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director 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 appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he or she deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section
shall extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber shall not be validated by this section if the same be otherwise invalid. The proceeds arising from the sale of the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter: Provided, That nothing contained herein shall prohibit the sale of timber which otherwise would be removed from rights-of-way necessary for and strictly incidental to the extraction of minerals;

(14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive 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, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performance of the sales contract or lease as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from any such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the protection of forests and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;
(17) Report to the Governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the Governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver such report to the Governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may deem to be necessary from any person issued a license or permit under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;

(21) Purchase as provided by law all equipment necessary for the conduct of the division;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of
money made to the division for any and all purposes specified in this chapter and he or she shall account for and report on all such receipts and expenditures to the Governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value and to take such steps as may be necessary in establishing such monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter and also in chronological sequence, all rules made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts not related to land and stream management, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months; and

(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties
vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.
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 July 1, 2007.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this

the Day of , 2007.

Governor