WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 238

(SENATORS WHITE, GREEN, LAIRD, YOST, DEEM, STOLLINGS, CHAFIN AND D. FACEMIRE, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 238

(SENATORS WHITE, GREEN, LAIRD, YOST, DEEM, STOLLINGS, CHAPIN AND D. FACEMIRE, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §5A-11-3 and §5A-11-6 of the Code of West Virginia, 1931, as amended, all relating to management of state lands; authorizing the use of mineral rights to benefit state agencies, institutions or departments; providing that the royalties and payments from land sales and exchanges made by the Adjutant General's Department be retained in the fund managed by the Adjutant General; and providing an exemption for providing a performance bond when an agency is entering into a mineral lease.

Be it enacted by the Legislature of West Virginia:

That §5A-11-3 and §5A-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. PUBLIC LAND 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: Provided, however, That all proceeds, rents, royalties and other payments from land sales, exchanges and mineral rights leasing for public lands owned, managed or controlled by the Adjutant General’s Department will be retained in a fund managed by the Adjutant General in accordance with article six, chapter fifteen of the code: Provided, further, That all free gas, sand, gravel or other natural resources derived from a lease or contract made pursuant to this article will be used to benefit the state agencies, institutions, or departments located on the affected public lands, or for which the corporation was acting or to benefit any state agencies, institutions, or departments having adjacent property. 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 August 1. The corporation shall compile the inventory of all public lands and minerals and report annually to the Legislature by no later than January 1, 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.

(d) Except as otherwise provided by law, when the corporation exercises its powers, the corporation will coordinate with other state agencies, institutions, and departments in order to develop and execute plans to utilize mineral rights which benefit their operations or the operations of any other state agencies, institutions, or departments.

§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
4 corporation holds any right, title or interest: Provided, 
5 That no lease or contract may be entered into for the 
6 extraction and removal of minerals by surface mining or 
7 auger mining of coal: Provided, however, That the corpo- 
8 ration or the state agencies, institutions or departments for 
9 which it is acting will not be required to post any type of 
10 surety or performance bond with the West Virginia 
11 Department of Environmental Protection or any other 
12 state agency when executing a lease for the development 
13 of minerals.

14 (b) With the exception of deep mining operations which 
15 are already in progress and permitted as of July 5, 1989, 
16 the extraction of coal by deep mining methods under state 
17 forests or wildlife refuges may be permitted only if the 
18 lease or contract provides that no entries, portals, air 
19 shafts or other incursions upon and into the land incident 
20 to the mining operations may be placed or constructed 
21 upon the lands or within three thousand feet of its bound- 
22 ary.

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

27 (d) Notwithstanding any other provisions of the code to 
28 the contrary, nothing herein may be construed to permit 
29 extraction of minerals by any method from, on or under 
30 any state park or state recreation area, nor the extraction 
31 of minerals by strip or auger mining upon any state forest 
32 or wildlife refuge.

33 (e) The corporation may enter into a lease or contract for 
34 the development of minerals where the lease or contract is 
35 not prohibited by any other provisions of this code, only 
36 after receiving sealed bids therefor, after notice by publi- 
37 cation as a Class II legal advertisement in compliance with 
38 the provisions of article three, chapter fifty-nine of this
(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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[\text{Chairman Senate Committee}\]

\[\text{Chairman House Committee}\]

Originated in the Senate.

In effect ninety days from passage.

\[\text{Clerk of the Senate}\]

\[\text{Clerk of the House of Delegates}\]

\[\text{President of the Senate}\]

\[\text{Speaker House of Delegates}\]

The within ............... this the ............ Day of ......................, 2010.

\[\text{Governor}\]
PRESENTED TO THE GOVERNOR

APR 01 2010

Time 11:25 am