

WV Code §5A-11

§5A-11-1. 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 January 1, 2007, 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.

§5A-11-3. Public Land Corporation, powers and duties.

(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-11-4. 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 competitive bidding, modified competitive bidding and direct sales.

§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 public hearing. The notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-

nine of this code and the publication area shall be each county in which the affected lands or minerals are located. The public hearing shall be held no earlier than the fourteenth successive day and no later than the twenty-first successive day following the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected lands or minerals;

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

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

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

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

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

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

§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: Provided,

however, That the corporation or the state agencies, institutions or departments for which it is acting will not be required to post any type of surety or performance bond with the West Virginia Department of Environmental Protection or any other state agency when executing a lease for the development of minerals.

(b) With the exception of deep mining operations which are already in progress and permitted as of July 5, 1989, 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.

§5A-11-7. Effectuation of transfer of Public Land Corporation and transition.

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 2007:

(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 2007: 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 July 1, 2007, 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.

§5A-11-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.