

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box
FILED

2003 SEP 11 A 11: 24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY: 20-1A-1 to 20-1A-9

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Public Land Corporation rules controlling the sale, lease,
exchange or transfer of land or minerals.

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: September 11, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Division of Natural Resources
Capitol Complex, Building 3, Room 669
Charleston, WV 25305
304-558-275

LEGISLATIVE RULE TITLE: 58

1. Authorizing statute(s) citation 20-1A-1 to 20-1A-9

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 10, 2003

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 11, 2003

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 11, 2003

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

J. M. "Mike" Withers, Chief, Real Estate Management Section
Capitol Complex, Building 3, Room 643
Charleston, WV 25305

304-558-3225/fax # 304-558-3680/mwithers@dnr.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'F'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

August 11, 2003

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 10, 2003

d. Attach findings and determinations and reasons:

Attached Yes, see attachments.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 2, Rules Controlling the Public Land Corporation's
Sale, Lease, Exchange or Transfer of Lands or Minerals
 Type of Rule: Legislative Interpretive Procedural
 Agency: Division of Natural Resources, Real Estate Management Section
 Address: Building 3, Room 643
1900 Kanawha Blvd., East
Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	10,500		10,500	3,700	3,700
PERSONAL SERVICES	10,500		10,500	3,700	3,700
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

Special Attorney General - \$2,500; Mineral Consultant - \$4,300;
 Auditor - \$3,700
 Total Estimate - \$10,500

3. Objectives of These Rules:

Provides interpretation and guidance for the sale or lease of lands or minerals by the Public Land Corporation.

Rule Title: Series 2, Rules Controlling the Public Land Corporation's Sale,
Lease, Exchange or Transfer of Lands or Minerals

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

If a successful mineral lease is finalized, it should bring in sufficient income to the Public Land Corporation to recoup the additional costs incurred

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:


Positive impact determined by the number of leases or sales.

C. Economic Impact on Citizens/Public at Large.

Positive impact determined by the number of leases or sales.

Date: _____

Signature of Agency Head or Authorized Representative:



**TITLE 58
LEGISLATIVE RULES
DIVISION OF NATURAL RESOURCES**

**SERIES 2
RULES CONTROLLING THE PUBLIC LAND CORPORATION'S
SALE, LEASE, EXCHANGE OR TRANSFER OF
LANDS OR MINERALS**

CIRCUMSTANCES REQUIRING THE PROPOSED RULE

Rules are required by §20-1A-4(f) and the passage of House Bill 2512 (related to establishing requirements of the Public Land Corporation for leasing minerals) during the 2003 regular Legislative Session.

TITLE 58
LEGISLATIVE RULES
DIVISION OF NATURAL RESOURCES

FILED

2003 SEP 11 A 11: 24

SERIES 2
RULES CONTROLLING THE PUBLIC LAND CORPORATION'S
SALE, LEASE, EXCHANGE OR TRANSFER OF
LANDS OR MINERALS

OFFICE WEST VIRGINIA
LEGISLATIVE SERVICES DIVISION

§58-2-1. General.

- 1.1. Scope and Purpose. - - This rule provides information and guidance for the sale or lease of lands or minerals by the Public Land Corporation.
- 1.2. Authority. - - West Virginia Code §20-1A-1 through §20-1A-9.
- 1.3. Filing Date. - -
- 1.4. Effective Date. - -

§58-2-2. Definitions.

- 2.1. "Public Land Corporation" means a unit of the Division of Natural Resources vested with the title of the State of West Virginia in certain public lands, including the beds of West Virginia's rivers and streams.
- 2.2. "Board of Directors" means the governing body of the Public Land Corporation consisting of five members of which three are ex officio and two who shall be appointed by the Governor.
- 2.3. "Secretary" means the Executive Secretary of the Public Land Corporation, Chief of the Real Estate Management Section of the Division of Natural Resources.
- 2.4. "Competitive Sale" means a sale to the highest responsible bidder at a public offering utilizing sealed bids.
- 2.5. "Modified Competitive Sale" means a sale to a government entity or adjoining landowner who meets the highest bid at a public offering.
- 2.6. "Direct Sale" means a sale without competitive bidding to an adjoining landowner who offers to pay the "fair market value" or a sale to a government entity at less than "fair market value".
- 2.7. "Fair market value" means the value determined by an appraisal made by an independent person or firm chosen by the Secretary.

2.8. "Independent Appraisal" means an appraisal performed by a West Virginia certified general appraiser using the principles contained in the current issue of "Uniform Standards of Professional Appraisal Practice" published by The Appraisal Foundation.

§58-26-3. Rules for Sale, Exchange or Transfer of Land or Minerals.

3.1. Prior to taking any action, the Secretary of the Public Land Corporation shall provide notice to the Board of Directors of the Public Land Corporation of any proposed land sale, exchange, transfer or lease of land or minerals. Provided: that this action shall not be required when the Public Land Corporation is leasing minerals (sand, gravel, or coal) dredged from the beds of West Virginia's rivers and streams. With the approval of the Board of Directors the Public Land Corporation staff shall:

3.1.a. Determine the "fair market value" of the land or minerals through an independent appraisal or assistance from an independent mineral consultant;

3.1.b. 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 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 required public hearing;

3.1.c. 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;

3.1.d. 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;

3.1.e. 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 the West Virginia 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;

3.1.f. 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;

3.1.g. Appoint a representative of the Public Land Corporation who shall conduct the required public hearing. The Public Land 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 Public Land Corporation conducting the public hearing shall make the results of the hearing available to the Public Land Corporation for its consideration prior to the Board of Directors making final decisions regarding the affected lands or minerals. The representative of the Public Land 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

3.1.h. If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (e) of section 3.1 of this rule does not reflect the true, fair market value, the Public Land Corporation shall cause another appraisal to be made.

3.1.i. If the evidence at the public hearing establishes by a preponderance that the sale or exchange of land does not meet any of the criteria set forth below, the Public Land Corporation may not proceed with the sale or exchange of said land without judicial approval.

3.1.i.1. Disposal Criteria

3.1.i.1.A. The tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose;

3.1.i.1.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

3.1.i.1.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;

3.1.j. The Public Land 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.

3.1.k. If the Public Land 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 Public Land Corporation.

3.1.l. With the approval of the Board of Directors, the Chairman shall sign the contract or lease.

§58-2-4. Bidding Procedures for Land Sales.

4.1. Sales, exchanges or transfers of public lands under this article shall be conducted under competitive bidding procedures. However, where the Secretary 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 by direct sale. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

4.1.a. The local government entities which are in the vicinity of the lands; and

4.1.b. Adjoining landowners;

4.2. The policy for selecting the methods of sale is as follows:

4.2.a. Competitive sale is the general procedure for sales of public lands and shall be used in the following circumstances:

4.2.a.1. Wherever in the judgment of the secretary the lands are accessible and usable regardless of adjoining land ownership; or

4.2.a.2. 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.

4.2.b. 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 area, 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.

4.2.c. 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.

4.2.d. In no event shall lands be offered for sale by "modified competitive sales" or "direct sale" unless and until the Public Land Corporation makes a written finding of justification for use of an alternative bidding procedure.

4.2.e. Subject to the bidding procedures set forth herein, the Public Land Corporation is authorized, at its discretion, to sell public lands subject to rights-of-way, restrictive covenants or easements retained by the Public Land Corporation, limiting the use of such lands to purposes consistent with the use of adjoining or nearby lands owned by the Public Land Corporation.

4.2.f. 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. However, if the provisions of the section is complied with and no bid equal to or in excess of the "fair market value" is received, the Public Land Corporation may, at any time during a period of six months after the opening of the bids, sell the property, but the contract price may not be less than the "fair market value".

4.2.g. Except as provided herein, public lands may not be sold, exchanged or transferred by the Public Land Corporation for less than "fair market value". Provided, That public lands 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 corporation determines that such a transfer would be in the best interests of the Public Land Corporation and the state.

4.2.h. The Public Land Corporation may reject any and all bids.

§58-2-5. Competitive Bidding and Notice Procedures for the Sale or Lease of Minerals.

5.1. The Public Land 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 Public Land 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.

5.2. 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.

5.3. Any lease or contract entered into by the Public Land 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.

5.4. Notwithstanding any other provisions of the West Virginia 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 refuse.

5.5. The Public Land Corporation may enter into a lease or contract for the development of minerals where in the lease or contract is not prohibited by any other provisions of the West Virginia Code, only after receiving sealed bids therefore, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the West Virginia Code. The area for publication shall be each county in which the minerals are located.

5.6. 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 Public Land Corporation, to the highest responsible bidder, who shall give bond for the proper performance of the contract or lease as the Public Land Corporation designates: Provided: That the Public Land Corporation may reject any and all bids and to re-advertise for bids.

5.7. 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 Public Land 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".

5.8. 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.

5.9. The Public Land Corporation shall consult with the Office of the Attorney General to assist the Public Land Corporation in carrying out the provisions of this section.

5.10. The Public Land Corporation shall consult with an independent mineral consultant and any other competent third parties with experience and expertise in the leasing of minerals as necessary, to assist the Public Land Corporation in carrying out the provisions of this section, including determining fair market value and negotiating terms and conditions of mineral leases. Provided: That the valuation of minerals is to be conducted at least every five years.

5.11. With the approval of the Board of Directors, the Chairman shall sign the contract or lease.

5.12. 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.