

WEST VIRGINIA CODE: §17-2A-17

§17-2A-17. Acquisition of property for state road purposes; “state road purposes” defined.

In addition to all other powers given and assigned to the commissioner in this chapter, the commissioner may acquire, either temporarily or permanently, in the name of the Division of Highways all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, deemed by the commissioner to be necessary for present or presently foreseeable future state road purposes by gift, lease, grant, bequest, devise, agreement, purchase, exchange, right of eminent domain, or other lawful means. Real property may be acquired in fee simple or in any lesser estate or interest therein, except in the case of a public road, only the right-of-way shall be acquired. Acquisition of such personal property shall be subject to the provisions of §17-2A-13 and §17-2A-15 of this code. The acquisition of all such real and personal property is hereby declared to be a cost of highway construction. Nothing in this section restricts or relinquishes any right the state or any agency thereof now or hereafter possesses or may exercise by virtue of the police power or other lawful authority.

As used in this article, “state road purposes” shall include provision for, but shall not be limited to, the following:

- (a) Constructing, establishing, laying out, widening, enlarging, extending, straightening, reconstructing, relocating, grading, altering, improving, and maintaining state roads;
- (b) Rights-of-way for state roads, including those needed for such roads within municipalities, such rights-of-way to be to such width and depth as deemed necessary for the project by the commissioner and shall include all material therein;
- (c) Adequate drainage of state roads;
- (d) Controlled-access facilities, as defined in §17-4-39 of this code, including existing and vested rights of access, air, view and light, whether privately or publicly owned, and local service roads to controlled-access facilities;
- (e) Broadcasting stations, weighing stations, shops, equipment sheds, office buildings, storage buildings and yards, snow fences, road maintenance, or construction sites;
- (f) Road-building material storage sites, quarry sites, gravel pits, sites for the acquisition or manufacture of road-building materials including borrow pits, stockpile sites, waste-material sites and access roads to any such sites or places;
- (g) The culture and support of trees which benefit any state road by aiding in the maintenance and preservation of the road;

(h) Landscape and roadside development, and maintenance thereof, within any state road right-of-way, and the acquisition and maintenance of lands and interests in lands for the restoration, preservation, and enhancement of places of scenic beauty, and other objects of attraction or scenic value adjacent to or near any state road, and the acquisition, development, and maintenance of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary for the accommodation of the traveling public, within, adjacent to, or near the right-of-way of any road within the state road system;

(i) Development and maintenance of parking places, auto camps, camp sites, roadside parks, historic roadside markers and sites, forest or timbered areas, or other places of attraction and scenic value which are adjacent to or near any state road and which in the judgment of the commissioner are necessary for the convenience of the public and will contribute to the general welfare and pleasure of the motoring public or road users;

(j) Maintenance of an unobstructed view of any portion of any state road in order to provide for the safety of the traveling public;

(k) Erection and maintenance of markers, warning signs and traffic signals;

(l) Construction and maintenance on state roads of sidewalks and highway illumination;

(m) Elimination or prevention of hazardous or undesirable points of entry to state roads from adjacent property;

(n) Acquisition of property, or any interest or right therein, for the purpose of exchanging it for other property, or any interest or right therein, which the Division of Highways is authorized to acquire by the other provisions of this section: *Provided*, That such substitute property, or any interest or right therein, may be acquired by the commissioner by condemnation only if the following conditions are satisfied: (1) Monetary compensation would be substantially inadequate for the property, or interest or right therein, which the commissioner is authorized to acquire by the other provisions of this section; and (2) the Division of Highways has entered into a written agreement to exchange the substitute property, or the right or interest therein, for the property, or right or interest therein, which is needed for state road purposes, regardless of whether the person who has agreed to accept the exchange has the right to condemn the substitute property, or the right or interest therein; and

(o) Acquisition of real property, not needed for a state road, for the purpose of moving and relocating thereon a building or other structure or appurtenance which is situated on a lot or tract of land all or a portion of which is needed for a state road and which, after relocation, will be suitable for the purpose for which it was used prior to its being relocated: *Provided*, That such additional real property may be acquired by the commissioner by condemnation only if the following conditions are satisfied: (1) The building or other structure or appurtenance is of substantial value; (2) the real property on which it is to be relocated is

not substantially improved and is adjacent to or near the location from which it is to be removed; (3) the owner of the real property needed for the state road has entered into a written agreement with the Division of Highways to accept in exchange the additional property with the relocated building or structure or appurtenance thereon; (4) substantial savings in expenditure of state road funds will result from condemning the additional property and relocating the building or structure or appurtenance rather than condemning the lot or tract, or the portion thereof, on which the building or other structure or appurtenance may be located; and (5) the real property with the relocated building or structure or appurtenance thereon will be relatively equal in value to the real property needed for the state road.