WEST VIRGINIA CODE: §17-2A-17A

§17-2A-17a. Acquisition of property for utility accommodation purposes; "utility" defined.

(a) The Legislature finds that it is in the public interest for utility facilities to be accommodated on the right-of-way of state highways when such use and occupancy of the highway right-of-way does not adversely affect highway or traffic safety or otherwise impair the highway or its aesthetic quality, and does not conflict with the provisions of federal, state, or local laws, legislative rules, or agency policies. Utilities provide essential services to the general public and, as a matter of sound economic public policy and law, utilities have used state road rights-of-way for transmitting and distributing their services. The accommodation of utility facilities on the rights-of-way of state highways serves an important public purpose by increasing public access to utility services.

(b) "Utility" means, for purposes of this chapter, any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, data, information, video services, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term "utility" also includes those similar facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use, or those facilities which are owned or leased by a local exchange carrier, as defined by 150 CSR 6.

(c) 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, and adjacent to public roadways or highways, all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, determined by the commissioner to be necessary for present or presently foreseeable future utility accommodation purposes.

(d) Notwithstanding any provision of this article to the contrary, the commissioner may lease real property held by the division or any interest or right in the property, including airspace rights, if any, for the purpose of accommodating any utility providing telecommunications or broadband services that has requested a lease if the commissioner finds, in his or her sole discretion, that entering into the lease agreement with such utility is in the public interest. The execution and governance of such accommodation leases are subject to the following:

(1) The term of any accommodation lease authorized by this section may not exceed 30 years;

(2) Neither competitive bids nor public solicitations are required prior to entering into a

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utility accommodation lease;

(3) Any utility accommodation lease shall require the utility to pay fair market value for the real property interest as determined by the commissioner: Provided, That because the social, environmental, and economic benefits from such use of state highway rights-of-way is of overwhelming value to the citizens of this state and is in the overall public interest, the division shall establish the fair market value for purposes of this article at $0 in monetary compensation: Provided, however, That a utility accommodation lease may include provisions that convey the state in-kind compensation if the lease includes multiple districts of the Division of Highways;

(4) For any utility which is not subject to the jurisdiction of the Public Service Commission, an accommodation lease may not contain any exclusivity provisions;

(5) The provisions of this subsection do not require any utility to lease any real property, or any interest or right in the property, from the commissioner; and

(6) The ownership, control, or any rights related to any in-kind compensation received by the division may, upon written approval of the Governor, be transferred or assigned to any other state agency.

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