WEST VIRGINIA CODE: §17-2A-19

§17-2A-19. Sale, exchange, or lease of real property.

(a) The Division of Highways, subject to the provisions of this section, may sell, exchange or lease real property, or any interest or right in the property, held by the Division of Highways. When the real property, or any interest or right in the property, is being held for future road purposes, it may be leased.

(b) This subsection applies to property held by the division, including a right-of-way, that was not acquired for use, or used, as a highway. When the real property, or any part of the property, or any interest or right in the property, is considered by the commissioner not necessary, or desirable for present or presently foreseeable future Division of Highways purposes, it may be exchanged for other real property, or any interest or right in the property, considered by the commissioner to be necessary or desirable for present or presently foreseeable future Division of Highways purposes, or it may be sold. In addition the division may exchange real property, or any part of the property, or any interest or right in the property, even though it may be necessary or desirable for present or presently foreseeable future Division of Highways purposes, if the exchange is made for other real property, or any interest or right in the property, in close proximity to the property which the commissioner considers of equal or superior useful value for present or presently foreseeable future Division of Highways purposes. In making exchanges the division may make allowances for differences in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures or appurtenances in connection with the exchange.

Every sale of real property, or any interest or right in the property or structure on the property, shall be at public auction in the county in which the real property, or the greater part of the property, is located, and the division shall advertise, by publication or otherwise, the time, place, and terms of the sale at least twenty days prior to the sale. The property shall be sold in the manner which will bring the highest and best price. The division may reject any or all bids received at the sale. The commissioner shall keep a record, open to public inspection, indicating the manner in which the real property, or any interest or right in the property or structure on the property, was publicly advertised for sale, the highest bid received and from whom, the person to whom sold, and payment received. The record shall be kept for a period of five years and may be destroyed after five years.

(c)(1) This subsection applies to property held by the division, including a right-of-way, that was acquired for use, or used, as a highway. The commissioner may transfer, sell or otherwise dispose of any right-of-way properties or any interest or right in the property, owned by or to be acquired by the Division of Highways which the commissioner in his or her sole discretion determines are not necessary or desirable for present or presently foreseeable future highway purpose by first offering the property to the principal abutting landowners without following the procedure for public auction provided in subsection (b) of

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this section.

(2) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the making of any leases or sales pursuant to the provisions of this subsection. The rules may provide for the giving of preferential treatment in making leases to the persons from whom the properties or rights or interests in the property were acquired, or their heirs or assigns and shall also provide for granting a right of first refusal to abutting landowners at fair market value in the sale of any real estate or any interest or right in the property, owned by the Division of Highways.

(3)(A) With respect to real property acquired subsequent to the year one thousand nine hundred seventy-three for use as a highway through voluntary real estate acquisition or exercise of the right of eminent domain, which real estate the commissioner has determined should be sold as not necessary for highways purposes, the commissioner shall give preferential treatment to an abutting landowner if it appears that:

(i) A principal abutting landowner is an individual from whom the real estate was acquired or his or her surviving spouse or descendant. In order to qualify for preferential treatment, the surviving spouse or descendant need not be a beneficiary of the individual. The terms used in this subdivision are as defined in section one, article one, chapter forty-two of this code; and

(ii) The primary use of the abutting property has not substantially changed since the time of the acquisition.

(B) When the provisions of paragraph (A) of this subdivision are met, the commissioner shall offer the property for sale to the principal abutting landowner at a cost equal to the amount paid by the Division of Highways in acquiring the real estate. If improvements on the property have been removed since the time of the acquisition, the cost shall be reduced by an amount attributable to the value of the improvements removed. The cost may be adjusted to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States department of labor since the time of disbursement of the funds.

(d) The commissioner may insert in any deed or conveyance, whether it involves an exchange, lease or sale, the conditions as are in the public interest and have been approved in advance by the Governor.

(e) All moneys received from the exchange, sale, or lease of real property, or any right or interest in the property, shall be paid into the State Treasury and credited to the state road fund.

(f) Notwithstanding the provisions of this section, property may not be transferred, sold or otherwise disposed of unless the commissioner finds that the right-of-way or other property

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has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties. This subsection does not apply to property that lies within six hundred feet of any dwelling house.

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