

WEST VIRGINIA CODE: §17-2A-19A

§17-2A-19a. Transfer of airspace; procedures to be followed.

In any instance where the West Virginia department of highways has or shall hereafter acquire title to the airspace upon and over any highway or right-of-way for highway purposes, such department may, subject to the conditions herein, transfer such airspace or any part thereof to any person, firm or corporation by sale, lease or permit to use.

When such airspace or any part thereof is determined by the commissioner not necessary, or desirable for present or presently foreseeable future state road purposes, it may be transferred by lease for such period or periods of time and on such terms and conditions, including consideration, as the commissioner shall determine to be fair and reasonable, or it may be transferred by sale, or the commissioner may transfer the use thereof by a permit to use such airspace or any part thereof for such period or periods of time as he shall determine and under such terms and conditions, including consideration, as he shall deem fair and reasonable, except that in the case of a publicly or privately owned utility, no consideration shall be required for an easement through such airspace or any part thereof.

Every such transfer by sale shall be at public auction in the county in which the airspace to be transferred by sale is located, and the department shall advertise, by publication, the time, place and terms of such sale at least twenty days prior thereto. The publication shall be published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the airspace to be transferred by sale is located. The airspace shall be sold in a manner which will bring the highest and best price therefor. The department may reject any or all bids received at the sale. The commissioner shall keep a record, open to public inspection, indicating the newspapers in which the airspace to be transferred by sale was publicly advertised for sale, the highest bid received therefor and from what party, the party to whom sold, and the payment received therefor. Such record shall be kept for a period of five years and may thereafter be destroyed. Every such transfer by lease with any party other than another agency of this state or any county or municipality in this state or any agency thereof shall be upon the basis of competitive bids solicited by publication of a notice of the proposed lease published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the airspace to be transferred by lease is located.

The commissioner shall adopt and promulgate rules and regulations governing and controlling the transferring of airspaces by sale, lease, or permit to use, pursuant to the provisions of this section, which rules and regulations shall provide for the giving of preferential treatment in making leases or issuing permits to use to the persons from whom the airspace was acquired, or their heirs or assigns.

The commissioner may insert in any instrument executed pursuant to the provisions of this section such conditions as are in the public interest and have been approved in advance by the Governor.

All moneys received from the sale or lease of, or permit to use, any airspace or any part thereof, shall be paid into the State Treasury and credited to the state road fund.