

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 209

(By Mr. Seibert)



PASSED June 5 1973

In Effect From Passage



C 641

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 6-13-73

209

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 209

(By MR. SEIBERT)

(Originating in the House Committee on the Judiciary)

[Passed June 5, 1973; in effect from passage.]

AN ACT to amend article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, authorizing the West Virginia department of highways to transfer airspace or any part thereof upon and over any highway or right-of-way for highway purposes to any person, firm or corporation by sale, lease or permit to use; establishing conditions for the transfer by lease or sale of any such airspace or any part thereof; establishing conditions for the transfer thereof by a permit to use such airspace or any part thereof; relating to the use of such airspace or any part thereof by publicly or privately owned utilities; prescribing procedures, practices and publication requirements concerning any such transfer by sale or lease; requiring the commissioner of the department of highways to promulgate rules and regulations in connection with the foregoing; requiring such rules and regulations to provide for the giving of certain preferential treatment in making such leases or issuing such permits to use; relating to instruments executed pursuant to the provisions of such section; and relating to

moneys received from the sale or lease of or permit to use any such airspace or any part thereof.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen-a, to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

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

1 In any instance where the West Virginia department of high-
2 ways has or shall hereafter acquire title to the airspace upon
3 and over any highway or right-of-way for highway purposes,
4 such department may, subject to the conditions herein, transfer
5 such airspace or any part thereof to any person, firm or corp-
6 oration by sale, lease or permit to use.

7 When such airspace or any part thereof is determined by the
8 commissioner not necessary, or desirable for present or pre-
9 sently foreseeable future state road purposes, it may be trans-
10 ferred by lease for such period or periods of time and on such
11 terms and conditions, including consideration, as the commis-
12 sioner shall determine to be fair and reasonable, or it may be
13 transferred by sale, or the commissioner may transfer the use
14 thereof by a permit to use such airspace or any part thereof
15 for such period or periods of time as he shall determine and
16 under such terms and conditions, including consideration, as
17 he shall deem fair and reasonable, except that in the case of a
18 publicly or privately owned utility, no consideration shall be
19 required for an easement through such airspace or any part
20 thereof.

21 Every such transfer by sale shall be at public auction in the
22 county in which the airspace to be transferred by sale is locat-
23 ed, and the department shall advertise, by publication, the
24 time, place and terms of such sale at least twenty days prior
25 thereto. The publication shall be published as a Class I-O legal
26 advertisement in compliance with the provisions of article three,
27 chapter fifty-nine of this code, and the publication area for
28 such publication shall be the county in which the airspace to

29 be transferred by sale is located. The airspace shall be sold in
30 a manner which will bring the highest and best price therefor.
31 The department may reject any or all bids received at the sale.
32 The commissioner shall keep a record, open to public inspec-
33 tion, indicating the newspapers in which the airspace to be
34 transferred by sale was publicly advertised for sale, the high-
35 est bid received therefor and from what party, the party to
36 whom sold, and the payment received therefor. Such record
37 shall be kept for a period of five years and may thereafter be
38 destroyed. Every such transfer by lease with any party other
39 than another agency of this state or any county or municipality
40 in this state or any agency thereof shall be upon the basis of
41 competitive bids solicited by publication of a notice of the
42 proposed lease published as a Class I-O legal advertisement in
43 compliance with the provisions of article three, chapter fifty-
44 nine of this code, and the publication area for such publication
45 shall be the county in which the airspace to be transferred by
46 lease is located.

47 The commissioner shall adopt and promulgate rules and
48 regulations governing and controlling the transferring of air-
49 spaces by sale, lease, or permit to use, pursuant to the pro-
50 visions of this section, which rules and regulations shall provide
51 for the giving of preferential treatment in making leases or
52 issuing permits to use to the persons from whom the airspace
53 was acquired, or their heirs or assigns.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

W. Darrel Darby
Chairman Senate Committee

Clarence C. Lumsden
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Robinson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. Brockton
President of the Senate

Lewis J. Thomas
Speaker House of Delegates

The within approved this the 12th
day of June, 1973.

Archie A. Harrison, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date June 8, 1973

Time 4:00 P.M.