

# 4439

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4439

(By Mr. Speaker, Mr. Chambers, and  
Delegate Swann  
[By Request of the Executive])

Passed March 12, 1988

In Effect From Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4439**

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)  
[By request of the Executive]

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[Passed March 12, 1988; in effect from passage.]

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AN ACT to amend and reenact section twenty, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections one, three and four, article three, chapter fifty-four of said code; all relating to implementing the 1987 amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which amendments are contained in Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 and designating department of highways as lead agency in the promulgation of rules.

*Be it enacted by the Legislature of West Virginia:*

That section twenty, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that sections one, three and four, article three, chapter fifty-four of said code be amended and reenacted, all to read as follows:

**CHAPTER 17. ROADS AND HIGHWAYS.**

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§17-2A-20. Relocation assistance to and replacement housing costs for persons dislocated by highway construction.**

1 The payment of relocation costs and replacement  
2 housing costs to persons dislocated by highway construc-  
3 tion is hereby declared to be a cost of highway construc-  
4 tion and may be paid from the state road fund, subject  
5 to the provisions of this section. The commissioner of  
6 highways shall make the payments authorized by this  
7 section to reduce hardships to persons so dislocated. In  
8 addition, the commissioner shall render advisory  
9 assistance to persons affected and shall call upon and  
10 coordinate the services of such other agencies of state  
11 and local government as may be capable of rendering  
12 such assistance to reduce hardships to persons affected  
13 and to reduce delays in highway construction. In  
14 rendering such advisory assistance, the commissioner  
15 may accumulate and maintain lists of various kinds of  
16 properties available to which persons affected may be  
17 relocated, and acquire and file such other information  
18 and take such other action as may be necessary to  
19 render such advisory assistance. With respect to persons  
20 dislocated by federal-aid highway projects, the commis-  
21 sioner shall provide a relocation assistance program  
22 which will comply with and implement the federal laws  
23 and regulations relating to relocation assistance to  
24 displaced persons as set forth in the Uniform Relocation  
25 Assistance and Real Property Acquisition Policy Act of  
26 1970, being Public Law 91-646 enacted by the Ninety-  
27 first Congress of the United States of America, and the  
28 1987 amendments thereto known as Title IV of the  
29 Surface Transportation and Uniform Relocation Assist-  
30 ance Act of 1987, being Public Law 100-17 enacted by  
31 the One Hundredth Congress of the United States of  
32 America.

33 Any individual, family, business concern (including  
34 the operation of a farm) or nonprofit organization to be  
35 displaced by a highway construction project shall be  
36 compensated consistent with the provisions and limita-  
37 tions of federal acts for reasonable and necessary costs  
38 to be incurred in consequence of being so displaced.

39 When a family is displaced, no additional payment shall  
40 be made to individuals who are members of such family;  
41 but, if two or more displaced families occupy the same  
42 dwelling or comprise a single household, each family  
43 within such dwelling or household may receive reloca-  
44 tion costs as provided in this section. Payments under  
45 this section are subject to the limitations provided  
46 herein and to any rules and regulations made by the  
47 commissioner as herein provided.

48 With respect to state highway projects and federal-aid  
49 highway projects, the commissioner shall have authority  
50 to make such payments for relocation costs, reestablish-  
51 ment costs, replacement housing costs, including the  
52 increased interest costs which the displaced person is  
53 required to pay for financing the acquisition of a  
54 comparable replacement dwelling, and reasonable  
55 expenses incurred by such displaced person for evidence  
56 of title, recording fees, and other closing costs incident  
57 to the purchase of the replacement dwelling, and  
58 expenses incidental to the transfer of property as are  
59 authorized by the abovementioned Uniform Relocation  
60 Assistance and Real Property Acquisition Policies Act  
61 of 1970, being Public Law 91-646 enacted by the Ninety-  
62 first Congress of the United States of America, and the  
63 1987 amendments thereto known as Title IV of the  
64 Surface Transportation and Uniform Relocation Assist-  
65 ance Act of 1987, being Public Law 100-17 enacted by  
66 the One Hundredth Congress of the United States of  
67 America.

68 The commissioner shall establish by rules and regu-  
69 lations a procedure for the payment of relocation costs  
70 within the limits of and consistent with the policies of  
71 this section and the aforesaid federal laws and regula-  
72 tions. Such rules and regulations may authorize lump  
73 sum payments to individuals or families, in lieu of their  
74 respective provable costs, based upon the size of the  
75 dwelling being vacated or the number of persons being  
76 affected or any other reasonable basis. The commis-  
77 sioner may authorize the obligations of or payment of  
78 relocation costs in advance of expenditure for relocation  
79 by any person, firm or organization eligible to receive

80 such payment where such advance obligation or pay-  
81 ment would speed the clearance of highway construction  
82 sites or reduce hardships.

83 With respect to state highway projects and federal-aid  
84 highway projects, the commissioner shall also have  
85 authority to comply with the aforesaid federal laws and  
86 regulations relating to providing last-resort replacement  
87 housing.

88 Nothing contained in this section or in the federal  
89 laws and regulations relating to relocation assistance  
90 and payments to displaced person shall be construed as  
91 creating in any condemnation proceedings brought  
92 under the power of eminent domain, any element of  
93 damages not in existence on the effective date of this  
94 section or of the federal laws and regulations relating  
95 to relocation assistance and payments to displaced  
96 persons.

#### CHAPTER 54. EMINENT DOMAIN.

#### ARTICLE 3. IMPLEMENTATION OF UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AND THE 1987 AMENDMENTS THERETO KNOWN AS TITLE IV OF THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987.

##### §54-3-1. Definitions.

1 As used in this article, the term:

2 (1) "Federal act" means the "Uniform Relocation  
3 Assistance and Real Property Acquisition Policies Act  
4 of 1970," being Public Law 91-646, enacted by the  
5 Ninety-first Congress of the United States of America,  
6 and the 1987 amendments thereto known as Title IV of  
7 the Surface Transportation and Uniform Relocation  
8 Assistance Act of 1987 being Public Law 100-17 enacted  
9 by the One Hundredth Congress of the United States of  
10 America.

11 (2) "Acquiring agency" means the state of West  
12 Virginia or any department, agency or instrumentality  
13 thereof, or any county, municipality or other political  
14 subdivision thereof or any department, agency or

15 instrumentality of two or more states or of two or more  
16 political subdivisions of a state or states, and any person  
17 who has the authority to acquire property by eminent  
18 domain under state law.

19 (3) "Person" means any individual, partnership,  
20 association or corporation.

**§54-3-3. Implementation of federal act; powers of state  
agencies; payments under act not considered  
income or resources for certain purposes.**

1 In order to accomplish the purposes set forth in  
2 section two of this article and to satisfy the requirements  
3 of adequately compensating displaced persons under  
4 such federal acts, each acquiring agency is hereby  
5 required and is hereby granted plenary power and  
6 authority to adopt rules and regulations, which shall  
7 have the force and effect of law, to implement the  
8 provisions of such federal acts and make applicable to  
9 such acquiring agency the policies and requirements of  
10 such federal acts which are pertinent to the mission and  
11 functions of such acquiring agency, including, without  
12 in any way limiting the generality of the foregoing, the  
13 carrying out of all procedures and the making of all  
14 financial assistance payments, relocation assistance  
15 payments, replacement housing payments, loans and  
16 expense reimbursement payments required by such  
17 federal acts, subject only to any restrictions or limita-  
18 tions imposed by the constitution of the state of West  
19 Virginia. The department of highways is hereby  
20 designated as the lead agency to develop, publish and  
21 issue such regulations to implement the provisions of  
22 this act and also to coordinate and provide policy and  
23 interpretations where necessary.

24 No payment of any type required by such federal acts  
25 and received by any person under this article and such  
26 rules and regulations shall be considered as income or  
27 resources for the purpose of determining the eligibility  
28 or extent of eligibility of any person for assistance under  
29 any state law, or under any state or local tax law or  
30 ordinance, and no such payment shall be considered as  
31 income or resources of any recipient of public assistance

32 and no such payment shall be deducted from the amount  
33 of aid to which the recipient would otherwise be entitled.

**§54-3-4. Construction of article; assistance for dislocation,  
etc., occurring prior to effective date.**

1 Neither the provisions of this article nor any rules and  
2 regulations promulgated pursuant to section three of  
3 this article are intended to abrogate or derogate the  
4 provisions of section twenty, article two-a, chapter  
5 seventeen of this code, and, to the extent not in conflict  
6 with said section twenty, the West Virginia department  
7 of highways shall be considered to be an acquiring  
8 agency within the meaning of this article. To the extent  
9 that such department may expend funds or make  
10 payments pursuant to the provisions of this article and  
11 such rules and regulations, such expenditures or  
12 payments are hereby declared to be a cost of highway  
13 construction and may be expended and paid from the  
14 state road fund.

15 Neither the provisions of this article nor any rules and  
16 regulations promulgated pursuant to section three of  
17 this article shall be construed or interpreted so as to  
18 create any element of value or damage not in existence  
19 prior to the effective date of this article in any  
20 condemnation proceedings brought under the power of  
21 eminent domain exercised by any state agency except  
22 to the extent, if any, required by applicable law of the  
23 United States; but, notwithstanding any other provision  
24 of law, whenever an acquiring agency in a condemna-  
25 tion proceeding pays a sum into court as representing  
26 the fair market value of property to be acquired, the  
27 amount of the award or verdict pertaining to such  
28 property shall not be less than such sum.

29 Any acquiring agency may provide assistance as  
30 contemplated in such federal act even though the  
31 dislocation or acquisition occasioning the same occurred  
32 prior to the effective date of this article if federal funds  
33 are available for the payment of any such assistance.

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

*Bruce O. Williams*  
Chairman Senate Committee

*Bernard V. Kelly*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Judd C. Wallin*  
Clerk of the Senate

*Donald G. Kopp*  
Clerk of the House of Delegates

*Don Tolson*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *Approved* this the *29th*  
*March* day of \_\_\_\_\_, 1988.

*Antonia P. [Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/88

Time 9:31 p.m.

RECEIVED

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OFFICE OF COMMISSIONER  
SECRETARY OF STATE