WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

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ENROLLED

Com. Sub. For

HOUSE BILL No. 4339

(By Delegates Poyh, Michael Campbell,
Putht, Vanu and Evans)

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Passed March 12, 1994

In Effect 90 Days from Passage
AN ACT to amend and reenact section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, exchange or lease of real property by the commissioner of highways; permitting adjoining landowners right of first refusal in certain instances; determination of sale price.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


1 The division of highways, subject to the conditions herein, may sell, exchange, or lease real property, or any interest or right therein, held by the division of highways.

2 When the real property, or any part thereof, or any interest or right therein, is being held for future road purposes, it may be leased. When the real property, or any part thereof, or any interest or right therein, is deemed by the
9 commissioner not necessary, or desirable for present or
10 presently foreseeable future highways purposes, it may
11 be exchanged for other real property, or any interest or
12 right therein, deemed by the commissioner to be
13 necessary or desirable for present or presently foresee-
14 able future highways purposes, or it may be sold. In
15 addition the division may exchange real property, or any
16 part thereof, or any interest or right therein, even
17 though it may be necessary or desirable for present or
18 presently foreseeable future highways purposes, if the
19 exchange is made for other real property, or any interest
20 or right therein, in close proximity thereto which the
21 commissioner deems of equal or superior useful value
22 for present or presently foreseeable future highways
23 purposes. In making exchanges the division may make
24 allowances for differences in the value of the properties
25 being exchanged and may move or pay the cost of
26 moving buildings, structures, or appurtenances in
27 connection with the exchange.
28
29 Every such sale of real property, or any interest or
30 right therein or structure thereon, shall be at public
31 auction in the county in which the real property, or the
32 greater part thereof in value, is located, and the division
33 shall advertise, by publication or otherwise, the time,
34 place, and terms of the sale at least twenty days prior
35 thereto. The property shall be sold in the manner which
36 will bring the highest and best price therefor. The
37 division may reject any or all bids received at the sale.
38 The commissioner shall keep a record, open to public
39 inspection, indicating the manner in which such real
40 property, or any interest or right therein or structure
41 thereon, was publicly advertised for sale, the highest bid
42 received therefor and from whom, the person to whom
43 sold, and payment received therefor. The record shall be
44 kept for a period of five years and may thereafter be
45 destroyed.
46
47 The commissioner may transfer, sell, or otherwise
48 dispose of any right-of-way properties or any interest or
49 right therein, owned by or to be acquired by the division
50 of highways which the commissioner in his or her sole
51 discretion shall determine are not necessary or desirable
for present or presently foreseeable future highways purposes by first offering the same to the principal abutting landowners without following the procedure for public auction hereinbefore set forth in this section.

The commissioner shall adopt and promulgate rules 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 section, which rules may provide for the giving of preferential treatment in making leases to the persons from whom the properties or rights or interests therein 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 therein owned by the division of highways.

Notwithstanding any other provision of this section to the contrary, with respect to real property acquired subsequent to the year one thousand nine hundred seventy-three for highways purposes 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:

(1) 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

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

When the foregoing conditions 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: Provided, That 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: *Provided, however, That* 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.

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.

All moneys received from the exchange, sale, or lease of real property, or any right or interest therein, shall be paid into the state treasury and credited to the state road fund.

Notwithstanding the provisions of this section, property shall not be transferred, sold or otherwise disposed of unless the commissioner finds that the right-of-way or other property 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, except that any such property that lies within six hundred feet of any dwelling house may be transferred, sold or otherwise disposed of without such a finding pursuant to the provisions of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the ___ day of March, 1994.

Governor

Winston C. Caprara