

HB 2257

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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

## House Bill No. 2257

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed March 12, 1999

In Effect Ninety Days from Passage

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**H. B. 2257**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed March 12, 1999; in effect ninety days from passage.]

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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 property by the division of highways; and clarifying that only property that was acquired for use, or used, as a highway is required to be offered to abutting landowners prior to sale.

*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.**

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

- 1 (a) The division of highways, subject to the provisions of
- 2 this section, may sell, exchange or lease real property, or any
- 3 interest or right in the property, held by the division of high-
- 4 ways. When the real property, or any interest or right in the
- 5 property, is being held for future road purposes, it may be
- 6 leased.

7 (b) This subsection applies to property held by the division,  
8 including a right-of-way, that was not acquired for use, or used,  
9 as a highway. When the real property, or any part of the  
10 property, or any interest or right in the property, is considered  
11 by the commissioner not necessary, or desirable for present or  
12 presently foreseeable future division of highways purposes, it  
13 may be exchanged for other real property, or any interest or  
14 right in the property, considered by the commissioner to be  
15 necessary or desirable for present or presently foreseeable  
16 future division of highways purposes, or it may be sold. In  
17 addition the division may exchange real property, or any part of  
18 the property, or any interest or right in the property, even  
19 though it may be necessary or desirable for present or presently  
20 foreseeable future division of highways purposes, if the  
21 exchange is made for other real property, or any interest or right  
22 in the property, in close proximity to the property which the  
23 commissioner considers of equal or superior useful value for  
24 present or presently foreseeable future division of highways  
25 purposes. In making exchanges the division may make allow-  
26 ances for differences in the value of the properties being  
27 exchanged and may move or pay the cost of moving buildings,  
28 structures or appurtenances in connection with the exchange.

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

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

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

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

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

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

82       (B) When the provisions of paragraph (A) of this subdivi-  
83 sion are met, the commissioner shall offer the property for sale  
84 to the principal abutting landowner at a cost equal to the  
85 amount paid by the division of highways in acquiring the real  
86 estate. If improvements on the property have been removed  
87 since the time of the acquisition, the cost shall be reduced by an  
88 amount attributable to the value of the improvements removed.  
89 The cost may be adjusted to reflect interest at a rate equal to the  
90 increase in the consumer price index for all urban consumers as  
91 reported by the United States department of labor since the time  
92 of disbursement of the funds.

93       (d) The commissioner may insert in any deed or convey-  
94 ance, whether it involves an exchange, lease or sale, the  
95 conditions as are in the public interest and have been approved  
96 in advance by the governor.

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

100       (f) Notwithstanding the provisions of this section, property  
101 may not be transferred, sold or otherwise disposed of unless the  
102 commissioner finds that the right-of-way or other property has  
103 no significant value to the state as a hiking trail and does not  
104 serve as a link between two or more state owned properties.  
105 This subsection does not apply to property that lies within six  
106 hundred feet of any dwelling house.

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

*Paul Schoonover*  
Chairman Senate Committee

*Joe F. Smith*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Darrell E. White*  
Clerk of the Senate

*Bryony M. Big*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *approved* this the *3/5*  
day of *March*, 1999.

*[Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/26/99

Time

2:35 pm