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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. 4339

(By Delegates *Rowe, Michael Campbell,*
Pitttel, Yarnu and Evans)



Passed March 12 1994

In Effect 90 Day from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4339

(By DELEGATES ROWE, MICHAEL, CAMPBELL, PETHTEL,
VARNER AND EVANS)

[Passed March 12, 1994; in effect ninety 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 land-owners 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.

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

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

5 When the real property, or any interest or right
6 therein, is being held for future road purposes, it may
7 be leased. When the real property, or any part thereof,
8 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 Every such sale of real property, or any interest or
29 right therein or structure thereon, shall be at public
30 auction in the county in which the real property, or the
31 greater part thereof in value, is located, and the division
32 shall advertise, by publication or otherwise, the time,
33 place, and terms of the sale at least twenty days prior
34 thereto. The property shall be sold in the manner which
35 will bring the highest and best price therefor. The
36 division may reject any or all bids received at the sale.
37 The commissioner shall keep a record, open to public
38 inspection, indicating the manner in which such real
39 property, or any interest or right therein or structure
40 thereon, was publicly advertised for sale, the highest bid
41 received therefor and from whom, the person to whom
42 sold, and payment received therefor. The record shall be
43 kept for a period of five years and may thereafter be
44 destroyed.

45 The commissioner may transfer, sell, or otherwise
46 dispose of any right-of-way properties or any interest or
47 right therein, owned by or to be acquired by the division
48 of highways which the commissioner in his or her sole
49 discretion shall determine are not necessary or desirable

50 for present or presently foreseeable future highways
51 purposes by first offering the same to the principal
52 abutting landowners without following the procedure
53 for public auction hereinbefore set forth in this section.

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

66 Notwithstanding any other provision of this section to
67 the contrary, with respect to real property acquired
68 subsequent to the year one thousand nine hundred
69 seventy-three for highways purposes through voluntary
70 real estate acquisition or exercise of the right of eminent
71 domain, which real estate the commissioner has deter-
72 mined should be sold as not necessary for highways
73 purposes, the commissioner shall give preferential
74 treatment to an abutting landowner if it appears that:

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

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

84 When the foregoing conditions are met, the commis-
85 sioner shall offer the property for sale to the principal
86 abutting landowner at a cost equal to the amount paid
87 by the division of highways in acquiring the real estate:
88 *Provided*, That if improvements on the property have
89 been removed since the time of the acquisition, the cost

90 shall be reduced by an amount attributable to the value
91 of the improvements removed: *Provided, however,* That
92 the cost may be adjusted to reflect interest at a rate
93 equal to the increase in the consumer price index for all
94 urban consumers as reported by the United States
95 department of labor since the time of disbursement of
96 the funds.

97 The commissioner may insert in any deed or convey-
98 ance, whether it involves an exchange, lease, or sale, the
99 conditions as are in the public interest and have been
100 approved in advance by the governor.

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

105 Notwithstanding the provisions of this section, prop-
106 erty shall not be transferred, sold or otherwise disposed
107 of unless the commissioner finds that the right-of-way
108 or other property has no significant value to the state
109 as a hiking trail and does not serve as a link between
110 two or more state owned properties, except that any
111 such property that lies within six hundred feet of any
112 dwelling house may be transferred, sold or otherwise
113 disposed of without such a finding pursuant to the
114 provisions of this section.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within *is* approved this the *30th*
day of *March* 1994

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 9:41 am