

E N G R O S S E D  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 473**

(By Senators Sypolt, Blair, Cookman, Williams, Plymale,  
McCabe, Nohe and Stollings)

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[Originating in the Committee on Transportation and  
Infrastructure; reported February 24, 2014.]

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A BILL to amend and reenact §17-2A-19 of the Code of West Virginia, 1931, as amended, relating to the sale of real property by the Division of Highways; and providing that property not necessary or desirable for highway purposes may be offered first to public service districts or municipalities for a public utility use without having to follow the public auction provisions of this section and without first offering such property to the principal abutting landowners.

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

That §17-2A-19 of the Code of West Virginia, 1931, 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  
2 of this section, may sell, exchange or lease real property, or  
3 any interest or right in the property, held by the Division of  
4 Highways. When the real property, or any interest or right in  
5 the property, is being held for future road purposes, it may be  
6 leased.

7 (b) This subsection applies to property held by the  
8 division, including a right-of-way, that was not acquired for  
9 use, or used, as a highway. When the real property, or any  
10 part of the property, or any interest or right in the property,  
11 is considered by the commissioner not necessary, or desirable  
12 for present or presently foreseeable future Division of  
13 Highways purposes, it may be exchanged for other real  
14 property, or any interest or right in the property, considered

15 by the commissioner to be necessary or desirable for present  
16 or presently foreseeable future Division of Highways  
17 purposes, or it may be sold. In addition the division may  
18 exchange real property, or any part of the property, or any  
19 interest or right in the property, even though it may be  
20 necessary or desirable for present or presently foreseeable  
21 future Division of Highways purposes, if the exchange is  
22 made for other real property, or any interest or right in the  
23 property, in close proximity to the property which the  
24 commissioner considers of equal or superior useful value for  
25 present or presently foreseeable future Division of Highways  
26 purposes. In making exchanges the division may make  
27 allowances for differences in the value of the properties being  
28 exchanged and may move or pay the cost of moving  
29 buildings, structures or appurtenances in connection with the  
30 exchange.

31 Every sale of real property, or any interest or right in the  
32 property or structure on the property, shall be at public  
33 auction in the county in which the real property, or the

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

47 (c) (1) This subsection applies to property held by the  
48 division, including a right-of-way, that was acquired for use,  
49 or used, as a highway. The commissioner may transfer, sell  
50 or otherwise dispose of any right-of-way properties or any  
51 interest or right in the property, owned by or to be acquired  
52 by the Division of Highways which the commissioner in his

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53 or her sole discretion determines are not necessary or  
54 desirable for present or presently foreseeable future highway  
55 purpose by first offering the property to the principal abutting  
56 landowners without following the procedure for public  
57 auction provided in subsection (b) of this section: Provided,  
58 That if the right-of-way or other interest or right in the  
59 property is within a public service district and the public  
60 service district states in writing to the Division of Highways  
61 that the right-of-way or other interest or right in the property  
62 will be used for a public utility, then the Division of  
63 Highways may offer the right-of-way or other interest or  
64 right in the property to the public service district without first  
65 offering it to the principal abutting landowner and may  
66 transfer the right-of-way or other interest or right in the  
67 property to the public service district without following the  
68 procedure for public auction provided in subsection (b) of  
69 this section.

70 (2) The commissioner shall propose rules for legislative  
71 approval in accordance with the provisions of article three,

72 chapter twenty-nine-a of this code governing and controlling  
73 the making of any leases or sales pursuant to the provisions  
74 of this subsection. The rules may provide for the giving of  
75 preferential treatment in making leases to the persons from  
76 whom the properties or rights or interests in the property  
77 were acquired, or their heirs or assigns and shall also provide  
78 for granting a right of first refusal to abutting landowners at  
79 fair market value in the sale of any real estate or any interest  
80 or right in the property, owned by the Division of Highways.

81 (3) (A) With respect to real property acquired subsequent  
82 to the year 1973 for use as a highway through voluntary real  
83 estate acquisition or exercise of the right of eminent domain,  
84 which real estate the commissioner has determined should be  
85 sold as not necessary for highways purposes, the  
86 commissioner shall give preferential treatment to an abutting  
87 landowner if it appears that:

88 (i) A principal abutting landowner is an individual from  
89 whom the real estate was acquired or his or her surviving  
90 spouse or descendant. In order to qualify for preferential

91 treatment, the surviving spouse or descendant need not be a  
92 beneficiary of the individual. The terms used in this  
93 subdivision are as defined in section one, article one, chapter  
94 forty-two of this code; and

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

97 (B) When the provisions of paragraph (A) of this  
98 subdivision are met, the commissioner shall offer the property  
99 for sale to the principal abutting landowner at a cost equal to the  
100 amount paid by the Division of Highways in acquiring the real  
101 estate. If improvements on the property have been removed  
102 since the time of the acquisition, the cost shall be reduced by an  
103 amount attributable to the value of the improvements removed.  
104 The cost may be adjusted to reflect interest at a rate equal to the  
105 increase in the consumer price index for all urban consumers as  
106 reported by the United States Department of Labor since the  
107 time of disbursement of the funds.

108 (d) The commissioner may insert in any deed or  
109 conveyance, whether it involves an exchange, lease or sale,

110 the conditions as are in the public interest and have been  
111 approved in advance by the Governor.

112 (e) All moneys received from the exchange, sale or lease  
113 of real property, or any right or interest in the property, shall  
114 be paid into the State Treasury and credited to the State Road  
115 Fund.

116 (f) Notwithstanding the provisions of this section,  
117 property may not be transferred, sold or otherwise disposed  
118 of unless the commissioner finds that the right of way or  
119 other property has no significant value to the state as a hiking  
120 trail and does not serve as a link between two or more state  
121 owned properties. This subsection does not apply to property  
122 that lies within six hundred feet of any dwelling house.