

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 473**

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

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7 [Originating in the Committee on Transportation and
8 Infrastructure; reported February 24, 2014.]
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12 A BILL to amend and reenact §17-2A-19 of the Code of West Virginia,
13 1931, as amended, relating to the sale of real property by the
14 Division of Highways; and providing that property not
15 necessary or desirable for highway purposes may be offered
16 first to public service districts or municipalities for a
17 public utility use without having to follow the public auction
18 provisions of this section and without first offering such
19 property to the principal abutting landowners.

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

21 That §17-2A-19 of the Code of West Virginia, 1931, as amended,
22 be amended and reenacted to read as follows:

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

24 **§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
4 Highways. When the real property, or any interest or right in the
5 property, is being held for future road purposes, it may be leased.

6 (b) This subsection applies to property held by the division,
7 including a right of way, that was not acquired for use, or used,
8 as a highway. When the real property, or any part of the property,
9 or any interest or right in the property, is considered by the
10 commissioner not necessary, or desirable for present or presently
11 foreseeable future Division of Highways purposes, it may be
12 exchanged for other real property, or any interest or right in the
13 property, considered by the commissioner to be necessary or
14 desirable for present or presently foreseeable future Division of
15 Highways purposes, or it may be sold. In addition the division may
16 exchange real property, or any part of the property, or any
17 interest or right in the property, even though it may be necessary
18 or desirable for present or presently foreseeable future Division
19 of Highways purposes, if the exchange is made for other real
20 property, or any interest or right in the property, in close
21 proximity to the property which the commissioner considers of equal
22 or superior useful value for present or presently foreseeable
23 future Division of Highways purposes. In making exchanges the
24 division may make allowances for differences in the value of the

1 properties being exchanged and may move or pay the cost of moving
2 buildings, structures or appurtenances in connection with the
3 exchange.

4 Every sale of real property, or any interest or right in the
5 property or structure on the property, shall be at public auction
6 in the county in which the real property, or the greater part of
7 the property, is located, and the division shall advertise, by
8 publication or otherwise, the time, place and terms of the sale at
9 least twenty days prior to the sale. The property shall be sold in
10 the manner which will bring the highest and best price. The
11 division may reject any or all bids received at the sale. The
12 commissioner shall keep a record, open to public inspection,
13 indicating the manner in which the real property, or any interest
14 or right in the property or structure on the property, was publicly
15 advertised for sale, the highest bid received and from whom, the
16 person to whom sold and payment received. The record shall be kept
17 for a period of five years and may be destroyed after five years.

18 (c) (1) This subsection applies to property held by the
19 division, including a right of way, that was acquired for use, or
20 used, as a highway. The commissioner may transfer, sell or
21 otherwise dispose of any right-of-way properties or any interest or
22 right in the property, owned by or to be acquired by the Division
23 of Highways which the commissioner in his or her sole discretion
24 determines are not necessary or desirable for present or presently

1 foreseeable future highway purpose by first offering the property
2 to the principal abutting landowners without following the
3 procedure for public auction provided in subsection (b) of this
4 section: Provided, That a public service district or municipality
5 within the county in which the property is situate may request in
6 writing such right of way or other interest or right in the
7 property for public utility use and such transfer to the public
8 service district or municipality may be completed without following
9 the procedure for public auction provided in subsection (b) of this
10 section and without first offering the property to the principal
11 abutting landowners.

12 (2) The commissioner shall propose rules for legislative
13 approval in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code governing and controlling the
15 making of any leases or sales pursuant to the provisions of this
16 subsection. The rules may provide for the giving of preferential
17 treatment in making leases to the persons from whom the properties
18 or rights or interests in the property were acquired, or their
19 heirs or assigns and shall also provide for granting a right of
20 first refusal to abutting landowners at fair market value in the
21 sale of any real estate or any interest or right in the property,
22 owned by the Division of Highways.

23 (3) (A) With respect to real property acquired subsequent to
24 the year 1973 for use as a highway through voluntary real estate

1 acquisition or exercise of the right of eminent domain, which real
2 estate the commissioner has determined should be sold as not
3 necessary for highways purposes, the commissioner shall give
4 preferential treatment to an abutting landowner if it appears that:

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

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

13 (B) When the provisions of paragraph (A) of this subdivision
14 are met, the commissioner shall offer the property for sale to the
15 principal abutting landowner at a cost equal to the amount paid by
16 the Division of Highways in acquiring the real estate. If
17 improvements on the property have been removed since the time of
18 the acquisition, the cost shall be reduced by an amount
19 attributable to the value of the improvements removed. The cost
20 may be adjusted to reflect interest at a rate equal to the increase
21 in the consumer price index for all urban consumers as reported by
22 the United States Department of Labor since the time of
23 disbursement of the funds.

24 (d) The commissioner may insert in any deed or conveyance,

1 whether it involves an exchange, lease or sale, the conditions as
2 are in the public interest and have been approved in advance by the
3 Governor.

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

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

(NOTE: The purpose of this bill is to provide 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. The existing statute provides that the commissioner must first offer the property to a principal abutting landowner.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)