

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

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

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

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

1 future Division of Highways purposes. In making exchanges the
2 division may make allowances for differences in the value of the
3 properties being exchanged and may move or pay the cost of moving
4 buildings, structures or appurtenances in connection with the
5 exchange.

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

20 (c) (1) This subsection applies to property held by the
21 division, including a right-of-way, that was acquired for use, or
22 used, as a highway. The commissioner may transfer, sell or
23 otherwise dispose of any right-of-way properties or any interest or
24 right in the property, owned by or to be acquired by the Division

1 of Highways which the commissioner in his or her sole discretion
2 determines are not necessary or desirable for present or presently
3 foreseeable future highway purpose by first offering the property
4 to the principal abutting landowners without following the
5 procedure for public auction provided in subsection (b) of this
6 section: Provided, That if the right-of-way or other interest or
7 right in the property is within a public service district and the
8 public service district states in writing to the Division of
9 Highways that the right-of-way or other interest or right in the
10 property will be used for a public utility, then the Division of
11 Highways may offer the right-of-way or other interest or right in
12 the property to the public service district without first offering
13 it to the principal abutting landowner and may transfer the right-
14 of-way or other interest or right in the property to the public
15 service district without following the procedure for public auction
16 provided in subsection (b) of this section.

17 (2) The commissioner shall propose rules for legislative
18 approval in accordance with the provisions of article three,
19 chapter twenty-nine-a of this code governing and controlling the
20 making of any leases or sales pursuant to the provisions of this
21 subsection. The rules may provide for the giving of preferential
22 treatment in making leases to the persons from whom the properties
23 or rights or interests in the property were acquired, or their
24 heirs or assigns and shall also provide for granting a right of

1 first refusal to abutting landowners at fair market value in the
2 sale of any real estate or any interest or right in the property,
3 owned by the Division of Highways.

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

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

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

18 (B) When the provisions of paragraph (A) of this subdivision
19 are met, the commissioner shall offer the property for sale to the
20 principal abutting landowner at a cost equal to the amount paid by
21 the Division of Highways in acquiring the real estate. If
22 improvements on the property have been removed since the time of
23 the acquisition, the cost shall be reduced by an amount
24 attributable to the value of the improvements removed. The cost

1 may be adjusted to reflect interest at a rate equal to the increase
2 in the consumer price index for all urban consumers as reported by
3 the United States Department of Labor since the time of
4 disbursement of the funds.

5 (d) The commissioner may insert in any deed or conveyance,
6 whether it involves an exchange, lease or sale, the conditions as
7 are in the public interest and have been approved in advance by the
8 Governor.

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

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