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**H. B. 4129**

(By Delegates Howell, Kump, Rowan  
and A. Evans)

[Introduced January 14, 2014; referred to the  
Committee on Political Subdivisions then the Judiciary.]

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 must 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.

*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.**

(a) The Division of Highways, subject to the provisions of  
this section, may sell, exchange or lease real property, or any  
interest or right in the property, held by the Division of

1 Highways. When the real property, or any interest or right in the  
2 property, is being held for future road purposes, it may be leased.

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

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

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

1 which the property is situate, for public utility use without  
2 following the procedure for public auction provided in subsection  
3 (b) of this section. If a public service district or municipality  
4 does not wish to purchase the property for public utility use, then  
5 the commissioner shall offer the property for sale to the principal  
6 abutting landowners without following the procedure for public  
7 auction provided in subsection (b) of this section.

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

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

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

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

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

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

24           (e) All moneys received from the exchange, sale, or lease of

1 real property, or any right or interest in the property, shall be  
2 paid into the State Treasury and credited to the state road fund.

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

NOTE: The purpose of this bill is to provide that property not necessary or desirable for highway purposes must 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.