



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

State Capitol Complex
Building Five
Charleston, West Virginia 25305

GASTON CAPERTON
GOVERNOR

FRED VANKIRK
ACTING COMMISSIONER
STATE HIGHWAY ENGINEER

May 16, 1989

Honorable Ken Hechler
Secretary of State
Suite 157-K
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Hechler:

Proposed Legislative Rule Changes
Processed As A Procedural Rule Change

Pursuant to the requirements of the Administrative Procedures Act,
enclosed are the following:

1. Proposed draft of changes to Title 157, Legislative Rules, Department of Highways, Series 2, Acquisition, Disposal, Lease And Management Of Property And Appurtenant Relocation Assistance.
2. Copy of Notice of Public Hearing to be held on June 23, 1989 at 2:00 p.m.

Very truly yours,

Fred VanKirk
Acting Commissioner -
State Highway Engineer

FV:Rk

Enclosures

FILED
MAY 18 PM 4:13
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Acquisition, Disposal, Lease and Management of Real Property and
 Rule Title: Appurtenant Structures and Relocation Assistance

Type of Rule: x Legislative Interpretive Procedural

Agency Division of Highways Address Building 5, State Capitol
Complex

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	-	-	-	-	-
Current Expense	\$200,000	\$ -	\$100,000	\$200,000	\$100,000 per year
Repairs and Alterations	None	None	None	None	None
Equipment	-	-	-	-	-
Other	-	-	-	-	-

2. Explanation of above estimates: Currently it costs the Department approximately \$2,000 per parcel to sell a piece of excess right of way. This cost covers engineering, survey, appraisal, legal and administrative services. We currently have pending approximately 100 requests to purchase these turnpike and railroad rights of way. If these requests follow the normal pattern, they should be reduced by approximately one half after the initial requests have been addressed and remain fairly consistent at that level.

3. Objectives of these rules: To carry out the legislative intent of WV Code 17-2A-5 et seq in allowing property owners abutting on abandoned railroad rights of way and turnpikes to purchase to the centerline of such railroads and/or turnpikes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is estimated that the economic impact in the implementation of this rule will be minimal. Much of the cost should be offset by the gains made from the sale of these properties. There may be additional tax revenues generated from businesses that will be established on certain portions of these rights of way, however, the number and size of these are considered to be insignificant.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Specific groups of citizens will benefit from this rule in that they can enlarge and enhance their individual property holdings. It is not anticipated that there will be any significant effect on political subdivisions or specific industries.

C. Economic Impact on Citizens/Public at Large.

The economic impact on the citizens/public at large is considered minimal.

Date: August 14, 1989

Signature of Agency Head or Authorized Representative

Fred Van Wert

DATE: August 10, 1989

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Transportation, Division of Highways

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation WV Code 17-2A-5, 8, 17, 19, 19A,
20
2. a. Date filed in State Register with Notice of Hearing:
May 16, 1989
- b. What other notice, including advertising, did you
give of the hearing?
Legal publication in all major newspapers in the State of West
Virginia.
- c. Date of hearing (s): June 23, 1989
- d. Attach list of persons who appeared at hearing, comments
received, amendments, reasons for amendments.
Attached x No comments received Oral Only
- e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)
August 14, 1989
- f. Name and phone number of agency person to contact
for additional information:
Joseph C. Riley, Director, Right of Way Division, Division of
Highways, 348-2822.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

TITLE 157
LEGISLATIVE RULES
DEPARTMENT OF HIGHWAYS
SERIES 2
ACQUISITION, DISPOSAL, LEASE AND
MANAGEMENT OF PROPERTY
AND APPURTENANT
RELOCATION ASSISTANCE

FILED
1983 MAY 18 PM 4:13
OFFICE OF THE CLERK
SECRETARY OF STATE

157-2-1. GENERAL.

1.01. Scope -- These legislative rules relate to the acquisition, disposal, lease and management of real property and appurtenant structures, and relocation assistance for persons dislocated by highway construction.

1.02. Authority. -- W. Va. Code § 17-2A-5, 8, 17, 19, 19A and 20.

1.03. Filing Date. --

1.04. Effective Date. --

1.05. Amendment to Former Rule. -- This procedural rule amends the West Virginia Legislative Rules "Department of Highways, Series 2, Acquisition, Disposal, Lease and Management of Property and Appurtenant and Relocation Assistance", filed December 16, 1982 and effective January 1, 1983. [The following amendments to the prior rule are new sections to be added to the prior rule, which shall

otherwise be continued in effect without change]

[Insert a new section, numbered 3.03 (2) (4), as follows]

(4) Private negotiated sale to principal abutting landowners, provided however that this method of permanent disposition of real property shall be available only with respect to former railroad rights-of-way owned by the Department of Highways and those properties owned by the Department of Highways which were formerly used as turnpike roads.

[Insert a new section, numbered 3.05, as follows]

3.05. Finding With Respect to Value as Hiking Trail. -- No real property owned by the Department of Highways shall be transferred, sold or otherwise disposed of unless the Commissioner finds that such property or right-of-way has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties, except that any such property that lies within six hundred feet of any dwelling house may be transferred, sold or otherwise disposed of without such a finding by the Commissioner.

[Insert a new section numbered § 157-2-5A, as follows]

§ 157-2-5A Disposition of Former Railroad Rights-of-Way and Former Turnpike Roads.

5A.1. Authority. -- In any instance where the West Virginia Department of Highways has or shall hereafter acquire title to property which was formerly used as a railroad right-of-way, or which was formerly used and designated as a turnpike road, the Commissioner of the Department of Highways may, subject to the conditions and procedures herein contained, transfer the same by sale on such terms and conditions, including consideration, as the Commissioner shall determine to be fair and reasonable, in accordance with the following procedure.

(a) Upon request by any interested party or on the Commissioner's initiative, the Commissioner shall determine and define those portions of any former railroad or turnpike properties owned by the Department of Highways which are not necessary or desirable for present or presently foreseeable future state road purposes, and shall designate the same for the sale hereunder.

(b) For each particular former railroad or turnpike property designated for sale, the Commissioner shall determine and establish (1) the fair market value for each such former railroad right-of-way or turnpike property

designated for sale, and (2) the total square foot area of each former railroad right-of-way or turnpike property designated for sale.

(c) Any person or persons owning the entire surface interest or the entire interest in the fee, to a lot, parcel or tract of land abutting on a former railroad right-of-way property or property formerly used for turnpike roads and now owned by the West Virginia Department of Highways, may, subject to the conditions, restrictions and requirements hereinafter set forth, purchase portions of said property.

(d) A determination of eligibility to purchase said property will be made following receipt of an application in writing from such owner(s) identifying the exact location of the property proposed to be purchased and the property owned by the applicant(s).

(e) If the Commissioner of Highways determines that such property is not necessary or desirable for present or presently foreseeable future state road purposes, has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties, its fair market value will be established by the Department of Highways and the applicant(s) will be permitted to purchase said property for the established price.

(f) Transfer of title will be accomplished by quitclaim deed prepared by the Department of Highways, conveying, without warranty, all of its right, title and interest, subject to appropriate restrictions, easements and reservations, if any, deemed necessary or desirable by its Commissioner.

(g) Property sold pursuant to these regulations shall embrace an area fronting the entire width of applicants(') abutting property and extending to the centerline of the former railroad right-of-way or turnpike road and terminating at both ends by lines perpendicular to the centerline or radially therefrom, except that if the opposite side of said property directly adjoins a public way the area to be sold and conveyed may embrace the entire width of said former right-of-way or turnpike road.

WEST VIRGINIA DEPARTMENT OF HIGHWAYS
NOTICE OF PUBLIC HEARING ON PRIVATE SALE
OF ABANDONED RAILROADS AND TURNPIKES

Notice is hereby given that the West Virginia Department of Highways will conduct a public hearing on Friday, June 23, 1989 at 2:00 p.m. in the Conference Center of Building #7 of the Capitol Complex in Charleston, West Virginia for the purpose of conducting a public hearing on proposed rules of procedure governing the private negotiated sale of lands designated as former railroad rights of way and/or used as turnpike roads now owned by the Department of Highways.

Anyone desiring to comment on such proposed rules of procedure may appear at such time and place and submit written or oral comments. A copy of said proposed rules may be obtained upon request to the Department of Highways, Right of Way Division, 1900 Washington Street, East, Charleston, West Virginia, 25305. Written comments may be submitted in advance to the Right of Way Division, Department of Highways at the above address.

Publish one time in newspapers in Kanawha County, Randolph County, Ohio County, Wood County, Harrison County, Raleigh County, Preston County, and Jefferson County.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

June 6, 1989

Alan Cuervo
Department of Highways
State Capitol
Charleston, WV 25305

Dear Alan:

On May 18, 1989, your office filed amendments to Series 2. There was no official cover letter on your rule, and one of the people in our office stamped it in and treated it as though it was another public notice about bridge or highway development that we are supposed to keep in our office for public inspection.

When I was working on the Register that week, I noticed that this indeed was a proposed rule change, and I typed the cover sheet for it.

As we discussed previously, this is a Legislative Rule, and must be treated this way. Even the cover letter dated May 16 acknowledges this fact.

Although I prefer to have the rule filed in its entirety, the 1989 Legislature amended §29A-3-1a which allows an agency to file only those sections being amended. (I am sending you a copy of this change to the Code.) Therefore, we must have a copy of the complete sections to each section being changed, with both underlining for new language and striking through old language.

Thank you so much for your cooperation.

Sincerely,

Judy Cooper, Director
Administrative Law Division

Enclosures