

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED

APR 20 3 39 PM '95

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Dept. of Transportation, Div. Highways TITLE NUMBER: 157

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Acquisition, Disposal, Lease & Management
of Real Property & Appurtenant Structures & Relocation Assist.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

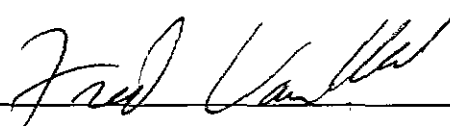
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

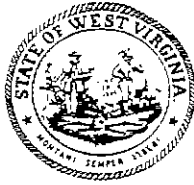
AUTHORIZATION IS CITED IN (house or senate bill number) HB 2823

SECTION 64-8-1, PASSED ON March 10, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 20, 1995



DEPUTY SECRETARY &
STATE HIGHWAY ENGINEER/COMMISSIONER



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Gaston Caperton
Governor

Charles L. Miller, P.E.
Secretary

April 20, 1995

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

Notice of Final Filing and Adoption of a
Legislative Rule Authorized by the Legislature
Division of Highways, Series 2

The attached information is being submitted by the Commissioner of Highways with my consent and agreement in accordance with the provisions of Chapter 5G, Article 1 of the State Code. This legislative rule was amended to comply with H.R. #4339 which addressed the Commissioner of Highways' authority to sell excess highway right-of-way.

Very truly yours,

A handwritten signature in cursive script that reads "Charles L. Miller".

Charles L. Miller, P.E.
Secretary

CLM:c
Attachment

DATE: FEBRUARY 7, 1995

TO: LEGISLATIVE RULE MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA DEPT. OF TRANSPORTATION, DIVISION OF HIGHWAYS

RULE TITLE: ACQUISITION, DISPOSAL, LEASE AND MANAGEMENT OF REAL PROPERTY
AND APPURTENANT STRUCTURES AND RELOCATION ASSISTANCE

PUBLIC COMMENT PERIOD REVIEW & AMENDMENTS TO PROPOSED RULE

Comments on the subject proposed rule were solicited by advertisement in the State Register on November 4, 1994. The following is a summary of comments and resulting amendments to the proposed rule.

COMMENTS:

Monongahela Power Company - The concerns expressed by this company related to the continuance of their rights to operate and maintain facilities on property that was once highway right-of-way. Where power company facilities have been installed on highway right-of-way under the authority of a Division of Highways' permit or license, the selling of that right-of-way by the Division of Highways would extinguish the power company's legal right to their in-place facilities.

To protect their rights to their facilities, the company suggested certain language be added to Highways' proposed rules. The suggested language is as follows:

3.5(e) Utilities - If public utility facilities are present on property being permanently disposed, the property shall be sold, exchanged or abandoned, and the buyer shall take such property, subject to such existing utility facilities. Any written instrument conveying, transferring, releasing, or otherwise disposing of such property shall specifically state that subsequent owners shall take and receive the property subject to the continued existence and development of such public utilities, but the failure to include such a provision shall not affect the valid reservation of the right for utility facilities.

Bell Atlantic - This company commented that they had read the comments of Monongahela Power Company and that they strongly concurred and that the suggested language should be adopted.

AMENDMENTS TO THE PROPOSED RULE:

The suggested wording by Monongahela Power Company was examined by an attorney of Highways' Right of Way Division. As a result, the following wording has been added to the Agency Approved Rule.

3.5 Permanent Disposition

(e) If public utility facilities are present on property being permanently disposed, that portion being used by the utility shall be excepted or reserved from the conveyance.

DATE: FEBRUARY 7, 1995

TO: LEGISLATIVE RULE MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA DEPT. OF TRANSPORTATION, DIVISION OF HIGHWAYS

RULE TITLE: ACQUISITION, DISPOSAL, LEASE AND MANAGEMENT OF REAL PROPERTY
AND APPURTENANT STRUCTURES AND RELOCATION ASSISTANCE

SUMMARY OF RULE CONTENT - This series was promulgated under the authority of West Virginia Code §17-2A-5, 8, 17, 19, 19A and 20. This series establishes rules for the handling of right-of-way matters associated with highway construction.

STATEMENT OF CIRCUMSTANCES REQUIRING CHANGES TO THE RULE - The WV Legislature's passage of H.R. #4339 mandated revisions to the WV Division of Highways' procedures for disposal of excess right-of-way. The revisions prescribed in the referenced bill became effective July 1, 1994. Therefore, the purpose of this filing is to change the subject rules to comply with the requirements of H.R. #4339 in as timely a manner as possible following the effective date.

These rule changes relate to the disposition of excess highway right-of-way. Prior to these changes, sale of the excess right-of-way to the principal abutting landowners was only permitted with respect to former railroad and former turnpike rights-of-way owned by the West Virginia Division of Highways. However, after July 1, 1994, the Division of Highways must first offer any excess right-of-way for sale to principal abutting landowners.

PROMULGATION HISTORY ABSTRACT

RULE TITLE: Acquisition, Disposal, Lease and Management of Real
Property and Appurtenant Structures and Relocation
Assistance

RULE TYPE: Legislative

FILED EMERGENCY RULE: November 2, 1994

FILED NOTICE OF PUBLIC COMMENT PERIOD: November 2, 1994

FILED EMERGENCY RULE WITH LRMRC: November 2, 1994

PUBLIC COMMENT PERIOD ENDED: December 9, 1994

EMERGENCY RULE DECISION BY SEC. OF STATE: December 14, 1995 -
Rejected

FILED AGENCY APPROVED RULE WITH SEC. OF STATE: February 15, 1995

FILED AGENCY APPROVED RULE WITH LRMRC: February 15, 1995

LEGISLATIVE ACTION: Passed HB 2823, '64-8-1 on March 10, 1995

DATE GOVERNOR SIGNED BILL
(10 DAY PERIOD LAPSED WITHOUT SIGNATURE): April 4, 1995

FINAL RULE FILED WITH SECRETARY OF STATE: April 20, 1995

157CSR2

FILED
APR 20 3 33 PM '95

TITLE 157
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

OFFICE OF SECRETARY OF STATE
SECRETARY OF STATE

SERIES 2
ACQUISITION, DISPOSAL, LEASE AND MANAGEMENT OF
REAL PROPERTY AND APPURTENANT STRUCTURES AND
RELOCATION ASSISTANCE

§157-2-1. General.

1.1. Scope. - These Interpretive, Legislative and Procedural rules and regulations relate to the acquisition, disposal, lease and management of real property and appurtenant structures, and relocation assistance for persons dislocated by highway construction.

1.2. Authority. - These rules and regulations are issued under authority of West Virginia Code, §17-2A-5, 8, 17, 19, 19A, and 20.

1.3. Filing Date. - April 20, 1995

1.4. Effective Date. - April 20, 1995

1.5. Amendment to Former Rule. - This legislative rule amends the West Virginia Legislative Rule, "Division of Highways, Series 2, Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance", filed April 25, 1990 and effective June 1, 1990.

§157-2-2. Acquisition of Real Property.

2.1. General. - The acquisition of real property, and interests therein, required for the state road program and system, is governed by statute. (Reference, in general, WV Code §17-2A-8 & 17.) The exercise of the sovereign power of eminent domain is controlled by substantive law principles.

§157-2-3. Sale, Exchange or Lease of Real Property and Structures.

3.1. Property Management Unit of Right of Way Division. - The sale, exchange, or lease of real property or any interest or right therein or any structure thereon, held by the Department of Transportation, Division of Highways, shall be under the control and management of the Property Management Unit of the Right of Way Division of the Division of Highways.

3.2. District Office. - In each District Office the District Right of Way Agent or his/her assistant shall perform the duties and functions of Property Management relating to the sale, exchange or lease of real property, any interest therein, or structures thereon, within the District.

3.3. Definition: Excess Real Estate. - Excess real estate, as used in these rules, shall mean any real property or any interest or right therein, which is held by the Division of Highways and which is not necessary or desirable for present or presently foreseeable future state road purposes, or any directly or indirectly related purposes connected with the construction, maintenance or operation of state roads. Any land within the right of way limits or a property required by the Division of Highways shall not be considered excess real property without the prior approval of the Commissioner of Highways or his/her designee.

3.4. Temporary Disposition. - Temporary disposition of real property or any interest therein, not needed for state road purposes, may be either by lease or permit.

3.5. Permanent Disposition.

a. Excess real estate may be permanently disposed of by:

(1) Exchange for other real property needed for any state road purpose.

(2) Public sale.

(3) Abandonment. (In the usual instance will apply only to road right of way easement.)

(4) Private negotiated sale at fair market value to the principal abutting landowners.

b. If excess real estate acquired subsequent to December 31, 1973, through voluntary real estate acquisition or exercise of the power of eminent domain is to be sold, it shall be first offered for sale to the principal abutting landowner at a cost equal to the amount paid by the Division of Highways in acquiring the real estate less any applicable reduction attributable to the value of improvements which have been removed, plus an adjusted amount to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States Department of Labor since the disbursement of funds, provided that the following conditions are met:

(1) A principal abutting landowner for purposes of this subsection is an abutting landowner who is an individual from whom the real estate was acquired or his or her surviving spouse or descendent as defined in West Virginia Code, §42-1-1; and

(2) The primary use of the abutting property shall not have substantially changed since the time of the acquisition. Primary use shall be deemed to have substantially changed if the abutting property's use has changed to or from any of the categories listed below:

- (a). vacant
- (b). residential
- (c). commercial.

If either condition is not met, the property can only be sold as otherwise provided in this section.

c. An abutting landowner shall be given the right of first refusal whenever the sale of excess property is contemplated under subparagraphs 3.5.a.B., or 3.5.a.D or under Paragraph 3.5.b. of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance," 157CSR2. Such right of first refusal gives the abutting landowner the right to purchase the excess property as provided in this section. The abutting landowner shall be notified in writing sent by certified mail, return receipt requested, of his/her right of first refusal and that he/she has sixty (60) days to exercise this right. The right of first refusal is exercised by the abutting landowner through his/her remittance of the price determined by the Division of Highways within sixty (60) days of notification. If the abutting landowner does not exercise his/her right of first refusal by remitting the purchase price to the Division of Highways within sixty (60) days, then the property may be otherwise sold. The Division of Highways will recognize and take action upon a release of the right of first refusal. However, the Division of Highways will not recognize or honor a purported transfer of the right of first refusal so as to create a right in a third party.

d. For purposes of Paragraph 3.5.c. of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance," 157CSR2, the abutting landowner is an abutting landowner at the time of the sale. Such landowner shall be determined by the Commissioner's employees or agents or staff, or by attorneys or other professionals employed by the Commissioner to make title examinations or other proof to substantiate who the landowner is. In all cases the landowner

shall submit proof of his or her ownership by way of certified copy of deed, payment of current year's taxes evidenced by tax receipt, or in the case of heirs who do not have deeds, such proof shall be by way of certified documented records of heirship or intestate ownership. In the absence of any documentation in the official records of County Clerks' offices in the various counties in the State of West Virginia, the Commissioner may accept duly executed affidavits in support of any alleged ownership by the landowner. Principal abutting landowners for purposes of subparagraph 3.5.a.D. of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance," 157CSR2 shall be determined in the same manner as abutting landowners.

e. If public utilities are present on property being permanently disposed, that portion being used by the utility shall be excepted or reserved from the conveyance.

3.6. Initiating Disposition. - Any person, firm or corporation, in accordance with the provisions of subsection 3.3 of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance," 157CSR2, may make a written request to the District Engineer of the Division of Highways District where the property involved is located, or such request may be made directly to the Commissioner of Highways in Charleston, West Virginia, for the disposition of any parcel or tract of real estate owned or otherwise held by the Division of Highways. Regardless of the manner in which the request is initiated, no real estate owned or held by the Division of Highways shall be sold, offered for sale, or released in any manner until such sale, offer or release has been approved by the District Engineer, the State Highway Engineer and the Commissioner of Highways or his/her designee.

3.7. Finding With Respect to Value as Hiking Trail. - No real property owned by the Division 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 (600) feet of any dwelling house may be transferred, sold or otherwise disposed of without such a finding by the Commissioner.

§157-2-4. Exchange of Real Property.

4.1. Property Not Necessary for Road Purposes. - Any real property, or any part thereof, or any interest or right therein, which is deemed by the Commissioner not necessary or desirable for

present or presently foreseeable state road purposes may be exchanged for other real property, or any interest or right therein, which is deemed by the Commissioner to be necessary or desirable for present or presently foreseeable state road purposes. (Reference: WV Code §17-2A-19.)

4.2. Property Necessary for Road Purposes. - Any real property, or any part thereof, or any interest or right therein, even though it may be necessary or desirable for present or presently foreseeable state road purposes, may be exchanged for other real property, or any interest or right therein, in close proximity thereto which the Commissioner deems of equal or superior useful value for present or presently foreseeable future state road purposes. (Reference: WV Code §17-2A-19.)

4.3. Appraisal. - Any exchange of real property, or any interest therein, must be based on an approved appraisal of each separate property involved, and a determination by the Chief Appraiser or his/her designee of the Division of Highways of the fair market value of the property. The Director of the Right of Way Division shall make a recommendation to the Commissioner as to whether or not the property the Commissioner desires to acquire by exchange is of equal or superior useful value for present or presently foreseeable future state road purposes as the property already owned by the Division.

4.4. Difference in Value. - The Commissioner of Highways may pay or require payment of any substantial difference in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures, or appurtenances in connection with any such exchange.

§157-2-5. Public Sale of Excess Real Property.

5.1. Public sales of excess real property shall be in accordance with sections 5.2 through 5.5, set out below.

5.2. Auction. - All excess real property, or any interest or right therein or structure thereon, shall be sold at public auction in the county in which the real property, or the greater part thereof, in value, is located. Such sale shall be made as provided by law and these regulations. Conveyance of real property by the Division of Highways to other public bodies may be handled on a negotiated basis. Such conveyances are subject to the approval of the Board of Public Works. (Reference: WV Code §17-2A-19.)

5.3. Published Notice of Auction. - Notice of public auction of excess real property shall be published on three different days in a newspaper of general circulation in the county in which the real property, or a part thereof, is situate.

a. The first publication of the notice shall be at least 20 days prior to the date of the public sale.

b. The notice shall set forth the time, place, date and terms of the proposed sale and a general description of the real property to be offered for sale.

c. The notice shall clearly state that the Division of Highways reserves the right to reject any or all bids received at a sale.

d. An affidavit of publication of notice, or a copy of the published notice, shall be obtained and filed with the Right of Way Division Office.

5.4. Conduct of Auctions. - The District Right of Way Agent shall conduct, or cause to be conducted, the public auction at the time and place specified in the notice. Another person appointed by the District Right of Way Agent, shall act as clerk and record the high bid and the name and address of the high bidder. The clerk shall also receive any monies paid at the time of sale and give a receipt therefor to the highest bidder. The District Right of Way Agent shall promptly forward the results of the auction, a copy of the receipt, a cashier's or certified check payable to the Division of Highways for all money received, and the recommendations of the District Office to the Right of Way Division Office.

5.5. Closing Sales of Real Property. - If the sale is approved by the Division Right of Way Office and the Commissioner of Highways, an executed deed shall be forwarded to the District Office for completion of the transaction. The District Right of Way Agent shall collect any balance of money due in the form of a cashier's or certified check prior to the delivery of the executed deed. Any monies so received shall be promptly forwarded to the Right of Way Division Office. The Property Management Section prepares a funds transmittal letter which is sent, along with the cashier's or certified check, to the Accounts Receivable Section of the Finance Division. The District Right of Way Agent shall remit to the Right of Way Division Office a copy of the deed with the recordation date of the deed, and the page and book number in which the deed is recorded in the appropriate County Clerk's Office.

§157-2-6. Disposition of Structures.

6.1. Methods of Disposing of Structures. - Structures which are not needed for road purposes but which are situated on land required for present or future contemplated road needs shall be disposed of by the following methods:

- a. Retention by former owner as a part of the consideration of acquisition of the land; or
- b. Public sale; or
- c. Letting a demolition contract; or
- d. Giving to a local public agency; or
- e. Removal by Division of Highways maintenance forces; or
- f. Inclusion in the prime construction contract.

6.2. Retention by Owner. - Property owners may be permitted to retain improvements for clearance from the right of way. Such improvements must be properly removed within the time agreed to between the property owner and the Commissioner of Highways, and if not so removed, the Commissioner of Highways, shall take proper action to clear the right of way of any such improvements.

6.3. Public Sale of Structures. - The sale of improvements upon state road property shall be at public auction as provided by law and these regulations. (Reference: WV Code §17-2A-19.)

a. Notice of Auction - The District Right of Way Agent shall cause a notice of the proposed sale of structures to be published during at least two different weeks in a newspaper of general circulation in the county in which the structures are located or as otherwise approved by the Director of the Right of Way Division. The first such notice shall be published at least 20 days prior to date of the proposed public auction.

b. Form of Notice - Notice of sale of structures shall set forth the time, place, and terms of the proposed sale. The notice shall clearly state that the Commissioner of Highways reserves the right to reject any and all bids. The notice shall describe the structures to be sold, indicate the location of the structures, set forth the terms of payment, and inform prospective bidders where they may obtain a copy of the specifications for removal and clearance of the structures and terms of the proposed bill of sale.

c. Proof of Publication - An affidavit of publication of the notice shall be obtained and filed with the Right of Way Division Office.

d. Auction Procedure - At the time and place specified in the notice, the District Right of Way Agent, or a person designated by him, shall first advise prospective bidders concerning the terms under which the improvements may be sold. Terms discussed include those concerning payment to the Division of Highways, the posting of a performance bond and rules governing the removal of the improvements and cleanup. After completing the discussion concerning the terms, the auctioneer may commence taking bids.

Only after all such items have been read shall the auction commence. Another person appointed by the District Right of Way Agent, shall act as clerk to record the high bid and the name and address of the high bidder on each property. The clerk shall also receive any monies paid at the time of the sale and give a receipt therefor to the high bidder. The clerk shall retain two copies of each such receipt.

e. Recommendation of Approval - If time is of the essence, the District Office may request by telephone an advance indication as to whether the high bid will be acceptable and inform the bidder that contingent upon final approval of the bill of sale, he may make arrangements to remove the improvement. However, actual work of removing the structure cannot begin until such final approval has been given by the Director of the Right of Way Division. If such advance notice is given the high bidder, he shall be clearly advised that the sale is still contingent upon approval by the Director of the Right of Way Division, and that the advance notice does not bind the Division of Highways. The District Right of Way Agent shall immediately forward the bill of sale, results of the auction, and a copy of the receipt to the Division Office with the District Right of Way Agent's recommendations.

f. Bill of Sale - The bill of sale, in quadruplicate, shall be completed and signed by the purchaser on the day of the auction for transmittal to the Division Office with the recommendations of the District Right of Way Agent.

g. Approval and Closing of Sale - If the sale is approved by the Director of the Right of Way Division, the District Office will notify the successful bidder by giving him the fully executed bill of sale (original), and shall obtain any balance due by certified or cashier's check and receive any required performance bond.

h. Removal of Structures - All improvements shall be removed from the state right of way by the buyer, at his/her own expense, in accordance with the terms of the bill of sale, or any extension of time authorized in writing by the Director of the Right of Way Division. If such improvements are not so removed, title thereto shall revert to the Division of Highways and all sums paid pursuant to said bill of sale shall be forfeited as liquidated damages.

6.4. Demolition Contract. - Removal of structures by demolition contract shall be solicited by public advertisement. Structures may be removed by demolition contract. Such contracts are subject to the provisions of "Construction and Reconstruction of State Roads," 157CSR3.

6.5. Removal of Structures From the Right of Way by Fire Department. - Structures which have been offered for sale and on which there were not acceptable bids may be removed by local fire departments after approval of the Director or Assistant Director of the Right of Way Division.

6.6. Removal by Maintenance Forces. - Removal by maintenance forces may be made after bids have been taken and there is no acceptable bid. However, maintenance forces may make removal in other instances prior to the taking of bids upon prior approval by the Director of the Right of Way Division and when such removal by maintenance forces is deemed to be in the public interest.

6.7. Removal by Contractor. - Structures may be left on the right of way for the prime contractor to remove when in a particular case it is more practicable or in the public interest to do so.

§157-2-7. Persons Ineligible to Purchase Real Property or Structures from the Division of Highways.

7.1. Employees of the Division of Highways. - No employee of the Division of Highways, or his or her immediate family, shall be eligible to bid, either directly or indirectly on any real property or structure offered for sale by the Division of Highways.

§157-2-8. Lease of Division of Highways' Property.

8.1. General. - In all instances where property or any interest or right therein, including airspace or any part thereof, is being held by the West Virginia Division of Highways, it may be leased pursuant to the provisions of West Virginia Code §17-2A-19 & 19a. Such leases will be made in accordance with the following regulations.

8.2. Prior Approval. - Prior approval of such lease must be obtained from the District Engineer and Commissioner of Highways except where the lease is a temporary continuation of an existing occupancy at the time of the Division of Highways acquisition and does not interfere with right of way clearance.

8.3. Appraisal. - Rentals shall be based on a written approval and determination of fair rental value approved by the Chief Appraiser or his/her designee for the Division of Highways.

8.4. Continuation of Existing Lease. - When a property acquired by the Division of Highways is subject to an existing lease or tenancy, the District Right of Way Agent, with the approval of the Director of the Right of Way Division, may continue such existing lease at the existing rental, provided proper arrangements are made to vacate the property promptly, in advance of its need for highway construction.

8.5. Owner-Occupant Retaining Possession. - Where property is acquired and the owner-occupant is permitted by the Division of Highways to retain possession in excess of the time allotted under the option or 30 days after closing, whichever is greater, the former owner-occupant may rent the property or interest therein at a fair rental determined by the Chief Appraiser or his/her designee, provided satisfactory arrangements are made for vacating the property prior to its need for highway purposes.

8.6. Rental Principles. - Division of Highways property which is leased to others, except to an owner-occupant or tenant at time of acquisition, shall be leased in accordance with the following principles:

a. The Chief Appraiser or his/her designee shall establish the fair rental value.

b. Each prospective tenant shall be required to execute a lease agreement which has been approved by the Legal Division.

c. All rent shall be due and payable on the first day of each rental period.

d. All lease agreements shall be in effect for an agreed term and may provide for termination upon thirty (30) days' written notice by either party.

e. The Division shall make no repairs or alterations without written authorization from the Director of the Right of Way Division.

f. The Division of Highways assumes no liability for any utility bills, sewer charges, or trash disposal costs.

g. No tenant shall be allowed to occupy Division of Highways property until he has paid first to the Division of Highways (by certified or cashier's check or money order) one (1) month's rent in advance.

h. No employee of the Division of Highways shall occupy Division of Highways property without authorization from the Commissioner of Highways.

i. The District Property Manager shall collect the first rental payments only. All future rents shall be paid directly by the tenant to the Accounts Receivable Section, Finance Division of the Division of Highways.

j. Occupants of properties acquired by the Division of Highways may remain in possession of such properties as tenants of the Division on a preferential basis.

§157-2-9. Rental of Property from Other Persons.

9.1. General. - The Division of Highways may lease real property from other persons upon the recommendation in writing of the District Engineer and the Director of the Right of Way Division and with the approval of the Commissioner of Highways. If the property to be rented is for use of a Headquarters Division, the approval of the District Engineer is not required. When so recommended and approved, the amount of the rental shall be approved in writing by the Chief Appraiser or his/her designee. (Reference: WV Code §17-2A-17.)

9.2. Office Space Leases. - Pursuant to the provisions of West Virginia Code §5A-5, et seq., as amended, office space is leased for the Division of Highways by the Commissioner of Administration upon receipt of proper requisition from the Commissioner of Highways.

§157-2-10. Damage by Owner or Occupant.

10.1. General. - The owner or occupant of real property acquired by the Division of Highways and who continues to do so by permission after the date of acquisition shall be responsible for all damages to or loss of the improvements which result from the negligent or willful actions of such owner or occupant.

10.2. Adjustment of Damages. - If the owner or occupant does not pay for such damages, the Chief Appraiser, or his/her designee, shall determine the value of the missing or damaged property and make appropriate adjustment in settlement price. If satisfactory adjustment is not made, the Legal Division shall take whatever action is necessary to protect the State's interest.

§157-2-11. Relocation Assistance.

11.1. Incorporation of Federal Regulations. -

a. Federal-Aid Highway Projects - By this Legislative rule and pursuant to the authority of West Virginia Code §§17-2A-20 & 54-3-3, 1931, as amended, the West Virginia Division of Highways adopts as its own, the provisions, procedures and regulations promulgated by the Federal Highway Administration of the United States Department of Transportation, as the same appear in the Federal Register and are reproduced for convenient reference as 23CFR740.

b. State Highway Projects - By this Legislative rule and pursuant to the authority of West Virginia Code §17-2A-20, 1931, as amended, the West Virginia Division of Highways adopts as its own, the provisions, procedures and regulations promulgated by the Federal Highway Administration of the United States Department of Transportation, insofar as they define terms, and relate to advisory assistance and relocation payments, as the same appear in the Federal Register and are reproduced for convenient reference as 23 CFR 740.

11.2. Forms. - By this Procedural rule, the West Virginia Division of Highways adopts the hereinafter identified forms, a copy of each of which is attached hereto. The applicable form or forms must be signed by claimant or others, where appropriate, as a prerequisite to receiving the payment described therein. Forms RW 12.01B, RW 12.04, RW 12.04A, RW 12.04E, RW 12.06, RW 12.06B, RW 12.07, RW 12.13 (Owner), RW 12.13 (Tenant), RW 12.14A, RW 12.16, RW 13.11, and RW 13.12.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

CERTIFIED
STATEMENT OF RENT
FORM RW 12.01B
REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

=====

OCCUPANT _____ SPOUSE _____

ADDRESS _____

=====

I certify that:

I have lived in this unit at the above address for _____ months;

I moved into this unit on the _____ day of _____, 19____;

My monthly rent is \$_____, which includes:

Income: \$ _____ per _____	_____ Gas	\$ _____	per month average est.
Verified by: Tax Return, Pay Stubs	_____ Water	\$ _____	per month average est.
(Attached - circle one)	_____ Electric	\$ _____	per month average est.
	_____ Sewer	\$ _____	per month average est.
	_____ Furniture	\$ _____	per month average est.
	_____ Other	_____	_____

TO THE BEST OF MY KNOWLEDGE ALL THE ABOVE INFORMATION IS TRUE AND CORRECT.

Occupant

Date

=====

Above information verified:

(Check one) _____ Contacted landlord (telephone, in person) (Circle one)

- _____ Observed rent receipts

I certify that I have verified the above rental information on _____
Date

Agent

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

RELOCATION CLAIM
RESIDENTIAL
FORM RW 12.04, REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

=====
At or soon after the beginning of negotiations to acquire the real property I occupy, a representative of the West Virginia Department of Transportation, Division of Highways personally contacted me, gave me a Relocation Brochure and explained relocation services and eligibility requirements necessary to qualify for relocation payments.

I certify that my family and I were in continuous occupancy of the subject property for a period of at least _____ 90 days or _____ 180 days prior to the beginning of negotiations to acquire the property; that the family unit numbered _____ persons; and that the family occupied _____ rooms of living area (Mobile Homes - Sq. Ft. _____) plus _____ rooms of storage area consisting of _____, I further certify that all my personal property was/will be moved to _____,

and the move was/will be completed on _____, 19____; that the replacement dwelling appears to be/will be made decent, safe and sanitary; and I understand and agree that the inspection or inspections made of the premises by the Division of Highways was made solely for the purpose of determining my eligibility for replacement housing payments under applicable laws and is not a representation for any other purpose, and I further understand and agree that the Division of Highways does not warrant or guarantee the real property; and that I now/will qualify to receive and that I agree with the relocation payments in the amounts and categories listed below:

Moving Costs \$ _____ Costs Incident To Purchase \$ _____
Replacement Housing \$ _____ Interest Differential \$ _____

DATE _____ CLAIMANT _____

I request payment to be mailed to: _____ Spouse _____

=====
I certify that negotiations to acquire the subject property began on _____, 19____; that the premises occupied by claimant qualify as _____ rooms (Mobile Homes - Sq. Ft. _____) eligible for reimbursement of Moving Costs; that his personal property has been/will be removed; that the replacement housing appears to be/will be decent, safe and sanitary; and that the amounts claimed by the Claimant are true and correct.

DATE _____ DISTRICT AGENT _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

ANNUAL INSTALLMENT CLAIM
FORM RW 12.04A, REV. 4/1/94

DISTRICT _____ PARCEL _____
FEDERAL PROJECT _____
STATE PROJECT _____

=====

INSTRUCTIONS

Second Payment If this is the second installment, circle the word First in the fourth line; the word One in the fifth line; and the word Second as Annual Installment due.

Third Payment If this is the third installment, circle the word Second in the fourth line; the word Two in the fifth line; and the word Third as Annual Installment due.

Fourth Payment If this is the fourth installment, circle the word Third in the fourth line; the word Three in the fifth line; and the word Fourth as Annual Installment due.

=====

I, _____, Spouse _____
certify that: My total Replacement Housing Determination was \$ _____;
I was informed that payment would be made in Four Equal Installments; I have received the
(First - Second - Third) Annual Installment Payment of \$ _____; it has been at least
(One - Two - Three) year(s) since I moved from the original location; I now occupy decent, safe and
sanitary housing at _____

Street

_____ City

_____ State and Zip Code

and I now qualify for the (Second - Third - Fourth) Annual Installment Payment of

\$ _____, 19____.

Date

Claimant

=====

APPROVED: _____

District Agent

_____ Date

RETURN TO: West Virginia Department of Transportation
Division of Highways - Right of Way

Street

_____ City

_____ State and Zip Code

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

QUARTERLY INSTALLMENT CLAIM
FORM RW 12.04AA, REV. 4/1/94

DISTRICT _____ PARCEL _____
FEDERAL PROJECT _____
STATE PROJECT _____

=====

I, _____, certify that: My total Replacement Housing
Determination was \$ _____; I was informed that payment would be made in
Sixteen Equal Quarterly Installments; I have previously received _____ payments
and I now qualify for the _____ Installment Payment in the amount of \$ _____;
I now occupy decent, safe and sanitary housing at:

_____ / _____ / _____
Street City State and Zip Code

Claimant Date

=====

Landlord Certification

I certify that as of this date _____
Occupant's Name
occupies a dwelling unit located at _____
Address
for which he pays \$ _____ per month rent.

District Agent Date

Address of Landlord

=====

APPROVED: _____
District Agent Date

RETURN TO: West Virginia Department of Transportation
Division of Highways - Right of Way

Street

City State and Zip Code

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

HARDSHIP RELOCATION CERTIFICATION
PRE-DRAW CHECK RECEIPT
FORM RW 12.04E, REV. 8/1/94

DISTRICT _____ PARCEL _____
PROJECT _____

=====

Occupant _____ Spouse _____

=====

Warrant Number(s)

Name(s)

Amount(s)

Type Claim

I acknowledge receipt of the above listed State Warrant(s) on the _____ day of

_____, 19____.

Warrant(s) delivered by _____
Agent

=====

I certify that all requirements for this payment have been fulfilled and that the
relocatee moved his personal property from the project _____
Date

Date

District Right of Way Agent

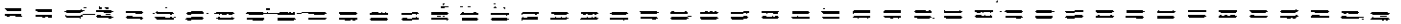
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

ESTIMATE - BID
FORM RW 12.07, REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____



(Circle One)

Residential Business Farm Operation Nonprofit Organization

Claimant (dba) _____ Distance of Move _____

Address (Old Location) _____

Address (New Location) _____

DESCRIPTION:

1. Residential (Residential Personalty, Tools, Lumber, Junked Cars, etc.) _____
2. Business (Service Station, Grocery, etc.) _____
3. Farm (Dairy, Produce, etc.) _____
4. Nonprofit (Church, School, etc.) _____

SEE ATTACHED DOCUMENTATION

The estimated cost to move the personalty (list attached) to the new address is

\$ _____

Moving Company Name _____

By Estimator _____ Date _____

*Estimator's Fee \$ _____ Approved For Fee Purposes

District Agent

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

REPLACEMENT PAYMENTS - OWNER DISTRICT _____ PARCEL _____

FORM RW 12.13 (Owner) FEDERAL PROJECT _____

REV. 4/1/94 STATE PROJECT _____

=====

OCCUPANT _____

This is to inform you that the West Virginia Department of Transportation, Division of Highways has authorized a supplemental housing payment offer to you. This amount is offered to you provided you meet all eligibility requirements of a 180 day owner occupant as outlined in the "Relocation Brochure". If you do not have a brochure, please request one immediately.

Based on information assembled by this office, you are entitled to an amount up to \$_____ additional dollars as a replacement housing payment provided you spend the fair market value of \$_____, plus the replacement housing supplement, on a decent, safe and sanitary replacement that cost at least \$_____. The amount of the replacement housing payment is based on a comparable dwelling located at _____.

This offer is subject to the condition that you meet all requirements of the Relocation Assistance and Real Properties Acquisition Policy Act of 1970 and its Amendments, which is summarized in the Relocation Brochure for further information about the exact procedure for payment computation. Before any payment can be made, you must be able to fully document your eligibility.

Personnel at our office are ready to assist you should you have any questions or need assistance.

Receipt Acknowledged

Date

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

REPLACEMENT PAYMENTS - TENANT DISTRICT _____ PARCEL _____

FORM RW 12.13 (Tenant)
REV. 4/1/94

FEDERAL PROJECT _____

STATE PROJECT _____

=====

OCCUPANT _____

This is to inform you that the West Virginia Department of Transportation, Division of Highways has authorized a rental subsidy offer to you. This amount is offered to you provided you meet all eligibility requirements as outlined in the "Relocation Brochure". If you do not have a brochure, please request one immediately.

Based on information assembled by this office, you will incur a higher monthly rental fee to rent a similar dwelling to the one you now occupy. The Division of Highways will offer you a total lump-sum payment of \$_____ if you rent and occupy a decent, safe and sanitary replacement dwelling costing at least \$_____ per month including estimated utilities; and provided you meet all other eligibility requirements. The amount of this payment is based on a comparable located at _____

If you elect to purchase a decent, safe and sanitary replacement instead of renting one, you are eligible for up to \$5,250.00 to help pay the downpayment and closing costs, provided you meet all other eligibility requirements.

Please refer to your Relocation Brochure for further information about the exact procedure for payment computation. Before any payment can be made, you must be able to fully document your eligibility. Personnel at our office are ready to assist you should you have any questions or need assistance.

Receipt Acknowledged

Date

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

INTEREST DIFFERENTIAL MORTGAGE DATA
FORM RW 12.14A, REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

=====

Claimant _____ Spouse _____

Address Old Property _____

Address New Property _____

=====

TO BE COMPLETED BY MORTGAGEE

MORTGAGE INFORMATION
(Old Address)

MORTGAGE INFORMATION
(New Address)

- 1. Amount of Loan \$ _____
- 2. Date of Mortgage _____
- 3. Interest Rate _____%
- 4. Principal and Interest Payment (do not include taxes and insurance) \$ _____/Mo.
- 5. Date This Loan Paid Off _____
- 6. Amount of Remaining Principal Balance at Time of Mortgage Payoff \$ _____
- 7. Remaining Term (remaining number of monthly payments) at Date of Payoff _____

- 1. Amount of Loan \$ _____
- 2. Date of Mortgage _____
- 3. Interest Rate _____%
- 4. Principal and Interest Payment (do not include taxes and insurance) \$ _____/Mo.
- 5. Term of New Loan _____/Yrs.
- 6. Origination Fee or Loan Service Charge Charged Purchaser (if applicable) \$ _____

I certify that the above information is true and correct.

Mortgage Company or Mortgagee

By

Date

=====

Information Obtained By _____

Date _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS
REQUEST FOR RELOCATION DISTRICT _____ PARCEL _____
APPEAL HEARING FEDERAL PROJECT _____
FORM RW 12.16, REV. 4/1/94 STATE PROJECT _____

=====

Date _____

Gentlemen:

I, _____, Spouse _____
am dissatisfied with the determination of payment of eligibility for (Moving Costs,
Replacement Housing or Mortgage Interest or Incidental Costs)
_____ and wish to appeal for the
following reason: _____

I, (occupy or occupied) _____ property at
_____ in _____
Street City

I, understand there will be a preliminary hearing held at the District level. Will you
inform me as to a convenient time and place to discuss my appeal?

Date

Claimant

Form RW 13.11
 Rev. 10/12/90
 CLOSING STATEMENT AND
 CLAIM FOR REIMBURSEMENT
 Expenses incidental to transfer
 of property to the
 WEST VIRGINIA DEPARTMENT OF
 TRANSPORTATION, DIVISION OF HIGHWAYS

Parcel No.	Project No.
District	County

Land or interest in land sold by

	PAID BY SELLER	DISTRIBUTION OUT OF STATE CHECK
1. LIENS AND ENCUMBRANCES:		
(A.) _____	\$ _____	\$ _____
(B.) _____	\$ _____	\$ _____
(C.) _____	\$ _____	\$ _____
(D.) _____	\$ _____	\$ _____
2. RECORDING FEES:		
_____	\$ _____	\$ _____
3. EXPENSES SIMILAR TO RECORDING FEES AND TRANSFER TAXES: (Explain)		
_____	\$ _____	\$ _____
4. PENALTY COSTS FOR PREPAYMENT OF QUALIFIED MORTGAGE OR DEED OF TRUST: (Date of instrument, mortgagee, where recorded)		
_____	\$ _____	\$ _____
5. 19__ REAL PROPERTY TAXES	\$ _____	\$ _____
6. PRORATED REAL PROPERTY TAXES		
(Amount F on reverse side of this form)	\$ _____	
7. NET BALANCE TO PAYEES		\$ _____
8. TOTAL GROSS CONSIDERATION		\$ _____
9. TOTAL REIMBURSABLE EXPENSES CLAIMED (Sum of Items 2, 3, 4 and 6) \$ _____		

H. B. 2823

(BY DELEGATES DOUGLAS, LINCH, COLLINS, JENKINS, TILLIS,
KIME AND THOMAS)

(Originating in the House Committee on the Judiciary)

[February 27, 1995]

A BILL to amend and reenact section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the promulgation of legislative rules by the division of highways.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of highways.

- 1 (a) The legislative rules filed by the division of
- 2 highways on the fifteenth day of February, one thousand

