



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Administration

RULE TYPE: Legislative

TITLE-SERIES: 148-19

RULE NAME: Leasing of Space and Acquisition of Real
Property on Behalf of State Spending
Units

CITE AUTHORITY: §5A-10-11

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jennelle H Jones -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION
REAL ESTATE DIVISION**

**SERIES 19
LEASING OF SPACE AND ACQUISITION OF REAL PROPERTY
ON BEHALF OF STATE SPENDING UNITS**

§148-19-1. General.

1.1. Scope. -- This Legislative Rule provides for the selection, negotiation and acquisition by contract or lease of all grounds, buildings, office space or other space required by any spending unit of the executive branch of State government. This Legislative Rule, except as otherwise set forth in ~~§148-2-13~~ §148-19-10 of this Rule, does not apply to: public lands, rivers and streams acquired or managed by, or which title is vested in or transferred to, the Division of Natural Resources; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of the W. Va. Code; the real property held by the Department of Agriculture; the real property held by the West Virginia State Conservation Committee; and, except as to office space, the Division of Highways. This exemption does not apply to the office space of spending units of the executive branch.

1.2. Authority. -- W. Va. Code §5A-10-11.

1.3. Filing Date. -- ~~April 11, 2008.~~

1.4. Effective Date. -- ~~July 1, 2008.~~

1.5. Sunset provision. – This rule shall terminate and have no further force or effect ten years from the effective date.

§148-19-2. Request for Leased Space.

2.1. Generally.

2.1.a. A spending unit desiring to lease any ground, building, office space or other space shall submit to the Real Estate Division of the Department of Administration a completed Requisition for Leased Space on the form provided by the Real Estate Division, signed by the chief executive officer of the spending unit or his or her designee, no later than six (~~6~~) months prior the date the space is required.

2.1.b. The requisition shall require that the spending unit provide any information requested by the Executive Director to accurately assess the spending unit's leasing needs. The requisition shall contain a certification by the chief executive officer of the spending unit or his or her designee that the space is necessarily required for the proper function of the spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the lease, and that satisfactory space is not available on grounds or in buildings now owned or leased by the State.

2.1.c. A request to renew an existing lease with or without changes shall be submitted by requisition no later than six ~~(6)~~ months prior to expiration of the existing lease. The Executive Director shall determine if it is necessary to seek proposals for new leases within thirty ~~(30)~~ days of such submission. The current landlord will be simultaneously notified by the Executive Director upon the determination of the necessity to seek proposals for new leases.

§148-19-3. Authority, Lease Acquisition, Negotiation, Inspection and Notification.

3.1. Authority.

The Executive Director has the sole authority to select and to acquire by lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit except those spending units exempted under W. Va. Code §5A-10-2.

3.2. Lease Acquisition and Lessor Registration.

3.2.a. Following the Real Estate Division's receipt of the spending unit's Requisition for Leased Space, the Executive Director may require the spending unit to provide further justification or may approve the requisition as submitted or as modified by the Executive Director. If the spending unit has requested a specific location or property (referred to herein as "sole source"), the Executive Director may approve the sole source request upon receipt of written justification made by the spending unit explaining in detail why the space is being requested as a sole source. The Executive Director may make any further inquiry or investigation, and may require any further certification from the spending unit that he or she deems necessary to determine whether an approval of the sole source request is in the best interests of the State. When a spending unit requests additional space in the same building in which they are already leasing space, the additional space may be considered a sole source and the existing lease may be amended accordingly.

3.2.b. If a request for leased space which is not a sole source is approved, the spending unit shall submit additional criteria for the requested space to the Executive Director ~~in order~~ to advertise for the requested space. The Executive Director shall review submitted criteria and may include this criteria in any bid specifications or requirements that may be set forth in a Solicitation of Interest.

3.2.c. Following approval of a spending unit's request for leased space, the Executive Director shall find, inspect and select appropriate space for the spending unit. For all leases of office space in excess of 10,000 square feet net, the Executive Director shall issue a Solicitation of Interest in the State Purchasing Bulletin in order to elicit responses from the largest number of lessors registered as vendors with the Purchasing Division as set forth in subsection 3.2.f. of this Rule. For all leases of office space less than 10,000 square feet net, the Executive Director shall not be required to issue a Solicitation of Interest, but shall find and select the appropriate space for the spending unit by the manner in which he or she determines to be most efficient and effective for the spending unit's request, which may include issuing a Solicitation of Interest. The Executive Director may further advertise the Solicitation of Interest by whatever other means he or she chooses ~~in order~~ to elicit the largest number of responses from potential bidders.

3.2.d. Where a Solicitation of Interest is issued, the Executive Director shall provide bid specifications to all bidders. The Executive Director shall require that each bid for office space clearly disclose: (i) the Usable Square Feet offered to the spending unit and the corresponding Rentable Square Feet, as those terms are defined in the then current Building Owners and Managers Association Method for Measuring Floor Area in Office Buildings; (ii) the names of the owner(s) of the property offered for lease. If the property offered for lease is owned by a legal entity as opposed to an individual, e.g., a corporation, limited liability company, limited partnership, partnership, etc., then the Executive Director shall also require that the bid disclose the names of all of the respective owners thereof; (iii) include a complete and accurate description of the building in which the office space offered for lease is housed and the mechanical equipment installed therein on a form provided by the Real Estate Division; and (iv) photographs of the office space offered for lease, including the building in which the office space is housed. Bid specifications may include, at the Executive Director's discretion, special consideration, including but not limited to, consideration for revitalization of downtown areas and historical areas, and facilities that are on the National Register of Historic Places.

3.2.e. Where bid proposals are received by the Real Estate Division pursuant to a Solicitation of Interest, the Executive Director will evaluate and rate all qualifying bid proposals, and may, at any time during the evaluation process, utilize any persons who possess expertise or knowledge associated with the proposed lease to review bids and recommend an award. Such persons shall complete and sign a non-conflict of interest form, as provided by the Executive Director, with regard to any of the bids to be evaluated. The Executive Director shall not utilize any person who, as determined by the Executive Director, has an existing conflict of interest with ~~regard to~~ any of the bids to be evaluated. The Executive Director shall select one or more bidders, if any, and initiate negotiations with the selected bidder(s) pursuant to Subsection 3.3 of this Rule. All non-selected bidders shall be promptly notified by the Executive Director. The Executive Director reserves the right to cancel a Solicitation of Interest at any time.

3.2.f. The Real Estate Division shall establish and maintain a list of registered lessors. Lessors shall be considered vendors and register with the Purchasing Division pursuant to 148 CSR 1-6.1. The Department of Administration shall ensure that all registered lessors receive the

State Purchasing Bulletin in which all Solicitations of Interest shall be published.

3.3. Lease Negotiation.

The Executive Director shall negotiate with one or more potential lessors following the approval of a spending unit's requisition. Where a Solicitation of Interest has been issued, or where some other manner of seeking leased space from potential lessors has been undertaken by the Executive Director, the Executive Director may enter into simultaneous negotiations with any of the selected bidders as set forth in Subsection 3.2.e of this Rule or with any potential lessors. All recommendations and bids shall remain confidential until execution of the lease.

3.4. Lease Notification.

The Executive Director shall provide written notification to the spending unit of his or her selection of space prior to execution of the lease.

§148-19-4. Fair Rental Value.

4.1. Before executing any lease, the Executive Director shall determine the fair rental value for the rental of the requested space by the manner ~~in~~ which he or she determines to be most efficient and effective for the spending unit's request. To determine the fair rental value of the space requested, the Executive Director may cause an appraisal to be conducted by a licensed real estate appraiser, and may require the spending unit to pay for the cost of the appraisal.

4.2. The Executive Director may not enter into any lease if the rental exceeds the fair rental value of the space requested.

§148-19-5. Lease Terms and Execution.

5.1. General.

A lease shall be prepared by the Executive Director. The term of the lease shall not exceed forty ~~(40)~~ years. Leases for a term of more than six ~~(6)~~ months, including any options, shall be filed with the State Auditor. If the term of the lease is for a period longer than one year, the following terms and conditions, in substance, shall be included in the lease:

5.1.a. The Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the State upon thirty ~~(30)~~ days' written notice to the lessor, such notice being given at least thirty ~~(30)~~ days prior to the last day of the succeeding month.

5.1.b. The lease shall be considered canceled without further obligation on the part of the State in the event the West Virginia Legislature or the federal government fails to appropriate sufficient funds with which to pay the rentals and other sums reserved in the lease, or otherwise

acts to impair the lease or causes it to be canceled. The Department of Administration shall promptly give written notice of such cancellation to the applicable lessor.

5.1.c. The lease shall be considered renewed for each fiscal year during the term of the lease unless canceled by the Department of Administration before the end of the then current fiscal year.

5.2. The lease may be executed in any number of counterparts, as determined by the Executive Director, each of which shall constitute an original and which taken together, shall constitute one and the same lease. All leases shall be acknowledged before a notary public by each signatory.

5.3. Execution by the Lessor.

5.3.a. Prior to execution of a lease, the lessor shall register as a vendor with the Purchasing Division pursuant to Subsection 3.2.f of this Rule.

5.3.b. When the lessor is a corporation, or other corporate entity, the lease shall be executed by its president or vice president and duly attested to by another officer of the corporation. The corporate seal shall be affixed, when available.

5.3.c. When the lessor is a limited liability company which is member managed, any member authorized to bind the limited liability company shall execute the lease. When the lessor is a limited liability company which is manager managed, the manager shall execute the lease on behalf of the limited liability company.

5.3.d. When the lessor is an individual or sole proprietor, the lease shall be executed by the owner of the property or his or her authorized representative.

5.3.e. When the lessor is a partnership, any partner authorized to bind the partnership shall execute the lease. In a limited partnership, the general partner may execute the lease on behalf of the limited partners.

5.3.f. When an individual or sole proprietor lessor is married, his or her spouse must also execute the lease, even if the subject property has been deeded to only one of the parties.

5.3.g. If an individual or corporate entity other than the owner of the property is authorized to execute the lease on behalf of the owner or receive rentals and notices, written authorization, duly signed by the property owner, shall be filed with the Executive Director at the time of execution of the lease by the lessor.

5.4. Execution by the Lessee.

The Executive Director shall execute each lease in the name of the State for and on behalf

of the spending unit requesting the space after execution by the lessor. Execution of a lease by the Executive Director on behalf of a spending unit will in no way make the Executive Director, the Secretary or the Department of Administration, or any party other than the spending unit requesting the space, responsible for the payment of any rentals or other sums contemplated by the lease. All rentals and other sums shall be paid by the spending unit on whose behalf the Executive Director executed the lease.

5.5. Approval as to Form.

Following execution of the lease by the Executive Director, the lease shall be transmitted to the office of the Attorney General for approval as to form. Leases that have been approved as to form by the Attorney General shall be filed with the Real Estate Division, with copies being sent to the lessor, the office of the Auditor if the term of the lease, including any options, is for more than six months, and the spending unit.

§148-19-6. Lease Cancellation.

6.1. In order to allow sufficient delivery time and to comply with the conditions of the lease, a spending unit desiring to cancel a lease must submit a letter requesting cancellation to the Executive Director no later than sixty (~~60~~) days prior to the requested cancellation date. The letter must be signed by the chief executive officer of the spending unit or his or her designee. The Executive Director shall immediately forward a copy of the letter requesting cancellation to the Secretary of the Department of Administration or his or her designee, and may assist the Secretary of the Department of Administration or his or her designee in determining whether the request for cancellation will be granted. If the spending unit's request for cancellation is granted, the Secretary of the Department of Administration or his or her designee shall send written notice to the lessor at the last known address on file with the Real Estate Division, notifying the lessor of the cancellation and the effective date of the cancellation.

§148-19-7. Delegation of Authority for Leasing of Temporary Space.

7.1. The Executive Director may authorize spending units to lease temporary space, other than office space, including conference meeting rooms, as well as for athletic events, seminars or other educational, recreational or social events in an amount less than \$10,000. The spending unit shall complete a WV-15 Request for Temporary Space, as provided by the Real Estate Division, and if the temporary space lessor requires a lease to be executed by the spending unit for the temporary space, the lease shall not have a term exceeding six (~~6~~) months, and the spending unit shall require that the temporary lessor execute a WV-96 Agreement Addendum to accompany such lease.

§148-19-8. Leases Between State Spending Units for Space.

8.1. Leases between spending units of the State for space shall be prepared by the Executive Director, unless otherwise directed by the Executive Director, and shall be signed by the Executive

Director on behalf of the lessee and by the chief executive officer of the lessor or his or her designee.

§148-19-9. Real Property Acquisition.

9.1. Authority.

The Executive Director, has the sole authority to select, inspect and to acquire by contract, in the name of the State, real property which is necessarily required by any spending unit except those spending units exempted under W. Va. Code §5A-10-2. Said real property to be acquired may be purchased from Department of Administration funds, the requesting spending unit's funds, or any other funds available to a requesting spending unit which may properly be applied to the purchase of real property.

9.2. Applicability.

Any contracts wherein the State purchases real property, is deeded real property, or has the right or option to purchase real property at any time or at the conclusion of the contract, shall be treated as a real property acquisition under Section 9 of this Rule.

9.3. Request to Purchase Real Property.

9.3.a. A spending unit desiring to have the Executive Director acquire real property on its behalf shall submit to the Real Estate Division a completed Requisition for Real Property on the form provided by the Real Estate Division signed by the chief executive officer of the spending unit or his or her designee. The requisition shall require that the spending unit provide information necessary for the Executive Director to accurately assess the spending unit's real property needs, including but not limited to, the number of employees contemplated in the request, current location and space utilized, anticipated location and space to be utilized, customer needs, parking needs, and any other information which the Executive Director may request be provided. The requisition shall contain a certification by the chief executive officer of the spending unit or his or her designee that the real property is necessarily required for the proper function of the spending unit and that satisfactory grounds, buildings, office space or other space are not available on real property now owned or leased by the State.

9.3.b. Upon receipt of the spending unit's request, the Executive Director may require further justification or may approve the request as written. If the spending unit has requested a specific location or property (referred to herein as "sole source") the Executive Director may approve the sole source request with written justification made by the spending unit explaining in detail why the real property is being requested as a sole source. The Executive Director may make any further inquiry or investigation, and may require any further certification from the spending unit that he or she deems necessary to determine whether an approval of the sole source request is in the best interests of the State.

9.4. Selection.

9.4.a. If a request for real property which is not a sole source is approved, the spending unit shall submit criteria for the real property to be acquired to the Executive Director. The Executive Director shall review the submitted criteria and may include this criteria in any bid specifications or requirements that may be set forth in a Solicitation of Interest.

9.4.b. The Executive Director may, at his or her discretion, issue a Solicitation of Interest in the State Purchasing Bulletin and by whatever other means he or she so chooses in order to elicit responses from the largest number of potential bidders.

9.4.c. Where a Solicitation of Interest is issued, the Real Estate Division shall provide specifications to all potential bidders. Bid specifications may include special considerations, including but not limited to, consideration for revitalization of downtown areas and historical areas, and facilities that are on the National Register of Historic Places.

9.4.d. Where bids are received pursuant to a Solicitation of Interest, an evaluation committee shall be appointed by the spending unit with the approval of the Executive Director, or, at the request of the spending unit, the Executive Director may form an evaluation committee on behalf of the spending unit to review and rank qualifying bids. The evaluation committee shall consist of persons possessing expertise or knowledge associated with the real property to be acquired. Each member of the evaluation committee shall complete and sign a non-conflict of interest form, as provided by the Executive Director, ~~with regard~~ as to the bids to be evaluated.

9.4.e. Where bids are received pursuant to a Solicitation of Interest, the Executive Director shall select one or more bidders, if any, ranked by the evaluation committee and initiate negotiations with the bidder(s) pursuant to Subsection 9.5 of this Rule. All non-selected bidders shall be promptly notified by the Executive Director. The Executive Director reserves the right to cancel a Solicitation of Interest at any time.

9.5. Negotiation.

The Executive Director shall negotiate with a sole source property owner or, if applicable, one or more selected bidders pursuant to Subsection 9.4.e of this Rule. The Executive Director may enter into simultaneous negotiations with any of the selected bidders. All recommendations and bids shall remain confidential until execution of the contract.

9.6. Fair Market Value.

Before executing any contract, the Executive Director shall determine the fair market value of the real property by the manner in which he or she determines to be most efficient and effective for the spending unit's request. To determine the fair market value of the real property requested,

the Executive Director may cause an appraisal to be conducted by a licensed real estate appraiser, and may require the spending unit to pay for the cost of the appraisal.

9.7. Preparation of Contract to Purchase Real Property.

A contract shall be prepared by the Executive Director, and shall not be executed until the spending unit's chief executive officer or his or her designee has provided the Executive Director with a written certification, in the form provided by the Real Estate Division, that sufficient funds are available and may be properly applied to the purchase price of the real property to be acquired by the Executive Director. Upon receipt of the certification of funding, the Executive Director shall inform the ~~office of the~~ State Auditor of the impending real property acquisition, and of the funds which will be applied to the purchase price of the real property.

9.8. Execution by the Seller.

9.8.a. When the seller is a corporation, or other corporate entity, the contract shall be executed by its president or vice president and duly attested to by another officer of the corporation, usually the secretary. The corporate seal shall be affixed, when available.

9.8.b. When the seller is a limited liability company which is member managed, any member authorized to bind the limited liability company shall execute the contract. When the seller is a limited liability company which is manager managed, the manager shall execute the contract on behalf of the limited liability company.

9.8.c. When the seller is an individual or sole proprietor, the contract shall be executed by the owner of the property or his or her authorized representative.

9.8.d. When the seller is a partnership, any partner authorized to bind the partnership shall execute the contract. In a limited partnership, the general partner may execute the contract on behalf of the limited partners.

9.8.e. When an individual or sole proprietor is married, his or her spouse must also execute the contract, even if the subject property has been deeded to only one of the parties.

9.8.f. If an individual or corporate entity other than the owner of the property is authorized to execute the contract on behalf of the owner, written authorization, duly signed by the property owner, shall be filed with the Executive Director at the time of execution of the contract by the seller.

9.9. Execution by the Executive Director.

The Executive Director shall execute each contract in the name of the State for and on behalf of the spending unit requesting the real property after execution by the seller. Execution of

a contract by the Executive Director on behalf of a spending unit will in no way make the Executive Director, the Secretary or the Department of Administration, or any party other than the spending that provided the Executive Director with a certification of funding pursuant to Subsection 9.7 of this Rule, responsible for the payment of any sums contemplated by the contract.

9.10. Approval as to Form

Following execution of the contract by the Executive Director, the contract shall be transmitted to the office of the Attorney General for approval as to form. Contracts that have been approved as to form by the Attorney General shall be filed with the Real Estate Division, with copies being sent to the seller, and the spending unit.

§148-19-10. Real Property Accounting and Records.

10.1. All real property owned or leased by the State shall be accounted for by the spending unit that owns, leases, or is in the possession of the real property.

~~10.2. The accounting and reporting requirements of this section, except as to office space, do not apply to: the Division of Highways of the Department of Transportation; public lands, rivers and streams acquired or managed by, or which title is vested in or transferred to, the Division of Natural Resources; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; and the institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen b of the W. Va. Code.~~

~~10.3.~~ 10.2. Each spending unit shall establish and maintain a record of each item of real property it owns, leases, or possesses, ~~and shall annually report its real property inventory in the centralized accounting system maintained by the Enterprise Resource Planning Board, and provide, on or before December 30th, its records to the Real Estate Division in a format that is approved by the Real Estate Division: *Provided, That any change in ownership status or occupancy of real estate must be reported within thirty days of the change by the spending unit to the centralized accounting system maintained by the Enterprise Resource Planning Board, and to any cabinet secretary or equivalent agency head to which the spending unit reports.*~~ Said reporting shall include:

~~10.3.a.~~ 10.2.a. A description of the real property ~~with the deed book and page number including address and lot number if available,~~ or a description of the subject lease, and the county where the property is located.

~~10.3.b.~~ 10.2.b The date the property was purchased or leased.

~~10.3.c.~~ 10.2.c. The purchase price of the property or the rental costs of leased real property.

~~10.3.d.~~ 10.2.d. The name of the spending unit or owner holding title to or leasing the real property.

~~10.3.e.~~ 10.2.e. A description of the current uses of the property as well as a description of projected future uses.

~~10.3.f.~~ 10.2.f. A description of all buildings, structures or other improvements located on the property.

~~10.3.g.~~ 10.2.g. The identity of any written agreements affecting the real property, including but not limited to, covenants, easements, rights of ways, etc.

§148-19-11. Emergency Situations.

11.1. In the event ~~that~~ the Executive Director is unable to perform his or her duties or in the event of a vacancy, all powers and duties of the Executive Director shall reside in the Secretary of the Department of Administration.

11.2. In the event of a natural disaster or other emergency situation, the Real Estate Division shall be exempt from the normal leasing and real property acquisition rules and procedures. In the event of a natural disaster or emergency situation, the Executive Director shall continue to have the authority to select and to acquire by contract or lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit. An emergency situation is an emergent need for space due to unforeseen circumstances that are out of the control of the Executive Director.

11.3. The spending unit shall notify the Real Estate Division at the earliest possible date of any emergency situation and its need to rent, lease, or purchase space or to relocate from an existing lease. This notice will allow the Executive Director to better assist the spending unit and determine space alternatives that may be available in a given area if necessary.