

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2004 AUG 27 P 3:50

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 5A-3A-42

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Leasing space on behalf of state spending units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature



BOB WISE
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

JOHN T. POFFENBARGER
ACTING CABINET SECRETARY

August 25, 2004

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Manchin,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are in regard to leasing space on behalf of state spending units. I will provide the copies of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of comments received, agency response, and amendments,
4. Proposed Rules,
5. Fiscal Note
6. Questionnaire.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Donna M. Lipscomb".

Donna M. Lipscomb
Executive Coordinator

Enclosures

QUESTIONNAIRE

DATE: August 26, 2004

TO: Legislative Rule-Making Review Committee

FROM: Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Room E-119
Charleston, WV 25305
304-558-3392

LEGISLATIVE RULE TITLE: 148, Series 2

1. Authorizing statute(s) citation W.Va. Code 5A-3-42

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 20, 2004

- b. What other notice, including advertising, did you give of the hearing?
Mailing to Leasing Coordinators of every State Agency and current owners of property being leased by all state agencies

- c. Date of Public Hearing(s) or Public Comment Period Ended:
July 22, 2004

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
August 26, 2004

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (please type)

Donna Lipscomb, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305 304-558-3392

g. IF DIFFERENT FROM ITEM "f", please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (please type)

John Poffenbarger, Acting Cabinet Secretary

Tammy King, Leasing Manager

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305 304-558-4331

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 or comment period:

May 22, 2004 through July 22, 2004

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 X

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 148, Series 2, Leasing Space on Behalf of State Spending Units

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East

Building 1, Room E-119

Charleston, WV 25305

1. Effect of Proposed Rule:

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	40,000	-0-	-0-	40,000	40,000
PERSONAL SERVICES	40,000				
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There will be minimal costs associated with the passage of the proposed rule changes as the Department of Administration plans to move employees from the General Services Division into the Leasing positions. However, it may be necessary to hire additional staff depending upon the requirements of the rule changes.

3. Objectives of These Rules:

To address concerns regarding the fair market value; to further define the acquisition, negotiation and inspection aspects of leasing; to establish compliance standards for structures to be leased; and to provide for additional requirements by the Department of Administration.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Minimal fiscal impact as a result of the proposed rule changes. The proposed changes will have a positive impact upon the quality of buildings being leased for our public employees and will help the Department of Administration in the negotiation process to obtain the best price possible.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

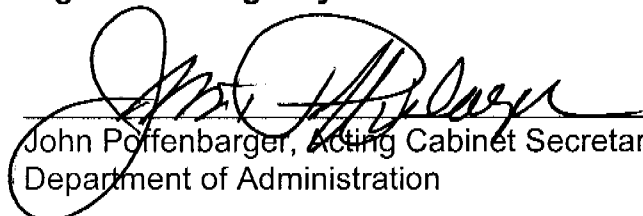
C. Economic Impact on Citizens/Public at Large.

None

Date:

8/20/04

Signature of Agency Head or Authorized Representative:



John Poffenbarger, Acting Cabinet Secretary
Department of Administration

Agency: Department of Administration
Rule Type: Legislative

Title Number: 148
Cite Authority: 5A-3-42

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The Department of Administration proposes revising its Legislative Rules on Leasing Space on Behalf of State Spending Units in order to address concerns regarding the fair market value; to further define the acquisition, negotiation and inspection aspects of leasing; to establish compliance standards for structures to be leased; and to provide for additional requirements by the Department of Administration.

Agency: Department of Administration
Rule Type: Legislative

Title Number: 148
Cite Authority: 5A-3-42

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

General Corporation Comments:

Several comments were received of a grammatical type nature. The comments of substance are reflected below:

Comment 1: How would we know about the under 10,000 sf requirements?

Agency Response 1: The Department of Administration agrees that the proposed rules do not include information regarding space under 10,000 sq ft. We are modifying the rules to change the 10,000 sq. ft. to 7,000 sq. ft and will address space under that amount in the rules under section 4.2.c

Amendment 1: Rules amended at 4.2.c are a result of this comment.

Comment 2: Recommend changing the word "may" to "shall" in section 6.2c.

Agency Response 2: The Department of Administration does not agree that the word should be changed.

Amendment 2: No amendment made

Comment 3: We feel that parabolic light fixtures are too expensive.

Agency Response 3: The Department of Administration believes that these lights will be more cost effective in the long run. Additionally, these are the type of lights required by the building codes.

Amendment 3: No amendments

Harrison Holdings LLC Comments:

Comment 1: The leasing section 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 upon the determination of the necessity to seek proposals for new leases.

Agency Response 1: The Department of Administration agrees with this comment and will add language that the landlord will also be notified.

Amendment 1: Rules amended at 2.1.c as a result of this comment.

Comment 2: Market survey must be defined and should embrace all outstanding State leases in addition to the state of the current lease rate market value in a given location.

Agency Response 2: The Department of Administration will amend the rules to give clarification of market survey.

Amendment 2: Rules will be amended.

Comment 3: The Department of Administration shall have the sole authority to select and to acquire by contract or lease, in the name of the State, based solely on the results of the market survey or appraisal.

Agency Response 3: The Department of Administration does not agree with this comment as the decision can not be based solely on the survey. This decision must also be based on adherence to compliance standards and agency criteria. (bid specifications)

Amendment 3: No amendments

Comment 4: There must be public criteria regarding renting space under 10,000 sq ft. It is a violation of constitutional rights if not.

Agency Response 4: The Department of Administration agrees that the proposed rules do not include information regarding space under 10,000 sq ft. We are modifying the rules to change the 10,000 sq. ft. to 7,000 sq. ft and will address space under that amount in the rules under section 4.2.c

Amendment 4: The rules will be amended under section 4.2.c

Comment 5: The word unit was omitted from 4.2.4. There should be a uniform list of bid specifications for all State leases, however, if a spending unit requests a sole source, this request must be made a matter of public information. Uniform rating specifications should be the rule, not the exception. The State must be obligated, pursuant to regulation, to notify any bidder of 1.) Receipt of the bid and 2.) Decision re: the project.

Agency Response 5: The Department of Administration agrees that the word "unit" was omitted and this will be inserted. Also, in regard to making a sole source request a matter of public information, all leasing information is already public information and subject to the West Virginia Freedom of Information Act. The Department of Administration agrees to notify all bidders of the decision.

Amendment 5: Amending the rule to insert the word "unit".

Comment 6: Section 4.3 must specify that EITHER the Leasing Section OR the Spending Unit negotiate the rental agreement. There needs to be time limitation on reaching agreement on the lease for both the State and the selected bidder.

Agency Response 6: The Department of Administration does not agree with the words "either" and "or" as it does not matter who negotiates the lease as all leases must be approved by the Leasing Unit and the Cabinet Secretary . The Department of Administration does agree that a time limit is warranted and will set a time limit of 15 days.

Amendment 6: Rule being amended as a result of the comment.

Comment 7: The term "escalation clause" needs to be defined.

Agency Response 7: The Department of Administration agrees and will amend the rule to give clarification of "escalation clause".

Amendment 7: Rule being amended as a result of the comment.

Comment 8: A letter of intent shall be issued to the successful bidder within a certain number of days of the selection. If not, there is undue hardship to the landowner. Letters of intent issued too close in time to when the State intends to move operates to work a disadvantage to the landowner, and allows the State to manipulate lease negotiations.

Agency Response 8: The Department of Administration agrees that a time should be set forth and will set a time limit of 30 days.

Amendment 8: Rule being amended as a result of the comment.

Comment 9: There are no provisions for time-requirements for notification to the landowner. This is problematic and, again allows the State to manipulate the lease negotiations.

Agency Response 9: The Department of Administration does not believe any modifications are warranted as this issue is already addressed in section 4.3.c of the rules.

Amendment 9: No amendment made.

Comment 10: The State should consider establishing appropriate notification criteria for all lease bidders, particularly with the requirement that protests be made in 10 days.

Agency Response 10: The Department of Administration agrees and will revise the rules in section 4.4 to add this in.

Amendment 10: Rule being amended as a result of the comment.

Comment 11: There should never be a provision under State law that allows for a forty year lease. Leases should not exceed 10 years. Also this renders the State's tenancy as no more than a month-to-month tenant, even though a "lease" is in force. To require the automatic renewal of a lease "for each fiscal year during the term of the lease" unless the State cancels "before the end of the current fiscal year" requires further clarification and modification as unduly onerous on the landlord.

Agency Response 11: The Department of Administration does not believe that these comments warrant a modification to the rules as the issues are all set by West Virginia Code and the Statute takes precedence over legislative rules.

Amendment 11: No amendment made

Real Estate Resources, Inc. Comments:

Comment 1: Is six months notification reasonable for all needs? Larger users would certainly need more time.

Agency Response 1: The six months is the minimum not the maximum. A larger user could have additional time at the discretion of the Leasing Unit.

Amendment 1: No amendment made

Comment 2: Does this mean the State will pay the higher market rent?

Agency Response 2: No. The State will not pay higher rent, just determine that the rent does not exceed fair market value.

Amendment 2: No amendment made

Comment 3: Name all spending units that are exempt. How will the leasing community be advised of a smaller than 10,000 sf need? Will the bid specifications be provided in a standardized format like GSA request for proposals? Would supporting documentation include operating expense history, real estate taxes, or CPI? What type of escalations will be acceptable?

Agency Response 3: Exemptions are shown under section 148-2-1. The Department of Administration agrees that the proposed rules do not include information regarding space under 10,000 sq ft. We are modifying the rules to change the 10,000 sq. ft. to 7,000 sq. ft and will address space under that amount in the rules under section 4.2.c. The bid specifications will be similar to GSA. Escalation will be acceptable for taxes and utilities.

Amendment 3: Amendment being made as a result of comment.

Comment 4: If due diligence has been completed and lease award meets compliance issues why would there be any need for a protest provision. If protest provision remains consider reducing the protest time to 5 days- 10 days is too long and will hold up the lease transaction.

Agency Response 4: The Department of Administration believes that 10 days is sufficient as meritorious protestors need adequate time to bring their protest.

Amendment 4: No amendment made

Comment 5: These appear to be class A office building standards which will affect lease rates paid by the State of WV. It is good that compliance standards are created and monitored so all State properties will be maintained in better condition. Will there be additional staff hired to review and maintain compliance standards, if so this will be an additional cost to the State and its taxpayers.

Agency Response 5: The Department of Administration does not currently plan to hire any additional staff. The compliance officers will be existing staff of the General Services Division of the Department of Administration and the ADA Compliance officer who is currently part of the Department of Administration.

Amendment 5: No amendment made

Comment 6: Expect existing lease rates to increase due to compliance to new standards. How will Landlords be expected to perform upgrades after hours and weekends or during the workday?

Agency Response 6: The Department of Administration does not believe that it is necessary to address upgrades in the rules as that will be decided based upon individual circumstances on a case-by-case basis.

Amendment 6: No amendment made

Board of Physical Therapy Comments:

Comment 1: I believe that any agency who does not receive funds from the General Revenue and whose funds are not appropriated by the legislature should be exempt from these rules and would like consideration be given to that suggestion.

Agency Response 1: The Department of Administration does not agree. Although professional licensing boards are funded with special revenue the revenue is still public funds and the standards assure taxpayers that public funds are spent wisely. Additionally, the Department of Administration does not make the decision as to who shall be exempted, this must be done by the legislature.

Amendment 1: No amendment made.

Comment 2: I do not believe that someone removed from the daily operation of this office should have the final say in where we are allowed to locate.

Agency Response 2: The Department of Administration does not agree. Although professional licensing boards are funded with special revenue the revenue is still public funds and they need to be held to the same standards to assure that public funds are spent wisely. Additionally, the Department of Administration does not make the decision as to who shall be exempted from the leasing rules, this must be done by the legislature.

Amendment 2: No amendment made

Comment 3: The wording for compliance is too restrictive and financially cumbersome for the average landlord. In order for a landlord to fulfill the compliance requirements would necessitate an increase in the monthly rent in order to offset those requirements.

Agency Response 3: The Department of Administration does not agree. Compliance standards are necessary to evaluate and compare proposals in a bid situation. These are minimum requirements for the comfort and safety of our employees and clients and are similar to the standards used by the federal government.

Amendment 3: No amendment made

West Virginia University Comments:

Comment 1: We are not in agreement with the 6 months requirements in section 2.1. The majority of leasing that WVU undertakes is for small research projects for which the need for space arises quickly and if a six month lead time was required we would not be capable of beginning a project and expending the grant funds in a required time frame.

Agency Response 1: The Department of Administration does not believe that any modifications are warranted as the 6 month requirement is needed to assist the majority of agencies we serve. If a lease was needed more quickly an agency could request the Cabinet Secretary for it to be considered an emergency situation.

Amendment 1: No amendment made.

Comment 2: We are not in agreement with the required market survey and/or appraisal. To have such would add significant time and money that most grantees/tenants do not have.

Agency Response 2: The Department of Administration does not agree as we believe that market surveys and/or appraisal are an important requirement to assure the State is getting the best space for the money.

Amendment 2: No amendment made

Comment 3: We are opposed to moving this process into the procurement bidding realm, which would add a great amount of time to finding and occupancy of space by the requirement of creation, submission and response time of detailed specifications.

Agency Response 3: The Department of Administration believes that this requirement is needed in order for the process to be fair to all involved.

Amendment 3: No amendment made

Comment 4: We do not believe that 5% difference provides appropriate allowance for the difference of location. Bidding and "low bidder with 5% difference" will not resolve the need for shared resources tied to a specific location.

Agency Response 4: The Department of Administration believes that no modifications are necessary as this issue is addressed in section 4.2.b. of the rules.

Amendment 4: No amendment made

Comment 5: We do not believe it practical for the Leasing Section to tour all leased sites for inspection.

Agency Response 5: This duty will not be performed only by the current staff of the Leasing Section but also by the compliance officers who are well qualified employees of the General Services Division and the ADA Compliance Officer for the Department of Administration.

Amendment 5: No amendment made

Comment 6: To add an appropriate protest time would add an even greater period of time before final award is concluded and occupancy could occur, thus risk losing research dollars for inability to occupy quickly.

Agency Response 6: Based upon the level of detail used to perform evaluations we do not anticipate protests. However, we believe that this requirement is necessary to ensure meritorious protestors have a venue for their complaints.

Amendment 6: No amendment made

Comment 7: We are in agreement that compliance standards are needed to provide safe working environment. However, we are not in agreement with the requirement that all noted standards are to be met for alternative facilities that are not office space.

Agency Response 7: The Department of Administration agrees that all compliance standards would not be required for space being leased that is not office space. We will amend the rules to address this issue.

Amendment 7: Amendment being made based upon the comment.

Comment 8: We do not agree with the requirement that all existing leases must be in compliance with the standards within 6 months prior to the expiration of the lease or by July 1, 2008. The lessor should not be required to adhere to "office" type specifications when the lease of space is for storage or shop use.

Agency Response 8: The Department of Administration agrees that all compliance standards would not be required for space being leased that is not office space. We will amend the rules to address this issue.

Amendment 8: No amendment made

Kanawha Investment Company Comments:

Comment 1: The rules do not allow for any variances to code requirement for a particular property even where a governing code authority has issued variances for the same property; take into consideration the effect these standards would have on multi-tenant office building where a state spending unit occupies only a portion of the building; or allow for flexibility with regard to historic building

Agency Response 1: The Department of Administration and a committee worked to determine what compliance standards should be in order to assure safety and health of the people we serve. We realize that it will result in additional cost and inconvenience to landlords but will be in best interest of the employees of the State. Section 4.2.d has exemptions for historic buildings.

Amendment 1: No amendment made.

Al Summers Comments:

Several comments were received. The comments of substance are reflected below:

Comment 1: Proposed rules provide no guidance as to what information a spending unit should supply to the Leasing Section in its Request.

Agency Response 1: The Leasing Section will provide a "requisition for space" form that contains all information needed from the Spending Unit.

Amendment 1: No amendment made

Comment 2: The function of leasing space should be completely centralized in the Leasing Section. The provisions that allow a spending unit to request sole sources of leased property, select bidders, negotiate rental agreements, and negotiate with prospective lessors in emergency situations should be eliminated.

Agency Response 2: All leases must ultimately be approved by the Leasing Unit and the Cabinet Secretary and the Leasing Section provides oversight of entire process so no modifications are required to the rules.

Amendment 2: No amendment made

Comment 3: The concept of specifications should be fully developed in the regulations. By establishing minimum specifications for each property, inferior properties would be eliminated from consideration, which would assist the Leasing Section in securing the best possible property at the lowest possible rental price.

Agency Response 3: Specifications are addressed in 148-2-12 and no modifications are necessary. Additionally, the rule's compliance standards will eliminate inferior properties.

Amendment 3: No amendment made

Comment 4: These rules provide for at least 6 methods of procuring leases on behalf of spending units. This is unacceptable. The Leasing Section should follow two methods at the most.

Agency Response 4: The evaluation committee reviewed all potential situations and determined that on rare occasions a competitive bid process is not always appropriate. All methods called for in the rules are necessary.

Amendment 4: No amendment made

Comment 5: It is in the best interest of the Leasing Section to establish structured bid review and award process. I suggest a bid review and award committee be established. During the bid review, emphasis should be given to the concept of "net rentable" square feet.

Agency Response 5: The Department of Administration has an evaluation committee process to review and evaluate based upon the new rules. The rentable square foot issue is addressed in the specifications and therefore no modification is needed.

Amendment 5: No amendment made

Comment 6: I propose the Leasing Section follow the same procedure to procure leases in all non-emergency situations in order to ensure an impartial bid award process. A large number of state leases involve less than 10,000 sq ft. Those should go through the same process.

Agency Response 6: The Department of Administration agrees that the proposed rules do not include information regarding space under 10,000 sq ft. We are modifying the rules to change the 10,000 sq. ft. to 7,000 sq. ft and will address space under that amount in the rules under section 4.2.c

Amendment 6: No amendment made

Comment 7: I suggest you establish a more defined set of circumstances that would permit the Leasing Section to circumvent the rules on behalf of an emergency situation.

Agency Response 7: We believe that the explanation of an emergency situation as described in 148-2-11 is sufficient and needed in order to move quickly when warranted; to list every emergency situation that could occur would be impossible. The Cabinet Secretary must be able to quickly and efficiently exercise his/her discretion when dealing with emergency situations.

Amendment 7: No amendment made



SALLY B. OXLEY
Board Chair

WEST VIRGINIA
BOARD OF PHYSICAL THERAPY

FRANKIE S. CAYTON
Administrator

July 7, 2004 - Certified

State of WV
D. O. A. -Leasing
1900 Kanawha Blvd., East
Bldg. 1, Room E-119
Charleston, WV 25305-0120

ATTN: Donna Lipscomb, Executive Coordinator

Dear Mr. Lipscomb:

I am writing to make comment in regards to the Proposed Legislative Rules regarding Leasing Space on Behalf of State Spending Units.

I believe that any Agency who does not receive funds from the General Revenue and whose funds are not appropriated by the legislature should be exempt from these Rules and would like to request that consideration be given to that suggestion.

We are currently housed in Temporary Space that I secured that meets our daily as well as storage needs. It was with great difficulty that I obtained approval to lease my current space. I do not believe that someone removed from the daily operation of this office should have the final say in where we are allowed to locate.

I also believe that the wording as it appears in §148-2-12. Compliance is too restrictive and financially cumbersome for the "average landlord". Again, I believe that it should be the decision of the Agency involved as to whether or not the space meets or exceeds their office needs requirements. We have seen to it that all of our permanent records are housed in fire proof filing cabinets for safe keeping. As a result of that, we employ the use of fire detectors in our office space, and do not have need of a sprinkler system. In order for a Landlord to install sprinkler systems into existing space or for the Landlord to be required to fulfill any other of the Compliance requirements would necessitate an increase in the monthly rent in order to offset those improvements. Again, as a Licensing Board we do not receive any monies from the General Revenue and do not feel that our rent should be increased to meet the demands or the proposals stipulated by these Rules.

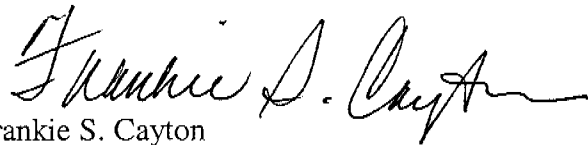
Page 2

We are well pleased with our current space. It is professional in its appearance and more than adequately meets our needs for record keeping for the Professionals that we license.

We were previously housed in the J. W. Davis Government Bldg. located in downtown Clarksburg. During the five years that we were forced to be there, we never had hot running water in our restroom; one sink was permanently disabled and never repaired; one toilet constantly ran over and flooded not only the restroom, but also the hallway; we never had any outside lighting in the dark, downtown parking lot that we often walked through after the sun went down; we had a constant problem with bug infestations - - to the extent that we even had ants falling out of the ceiling on our desks; we never had adequate lighting and often had one or more fluorescent bulbs burnt out in each of the three offices; we never had control of the heating or the air conditioning - - we ran heaters in the winter and fans in the summer - - during the winter months, the a/c would be turned on with the cold air blowing down on our heads all day to the point that we were sick and had sore throats often; the building had two elevators and one was always either broken or being repaired - - everyone was afraid to get on it. I tell you all this because this was space that was not only approved as State Office Space, but also because we were forced to be there. We made numerous complaints and suggestions and nothing was ever done about the aforementioned horrific conditions that we submitted to on a daily basis. Again, we should not be forced or required to move into space that is substandard or that does not meet our office needs. We should be exempt from being under the dictates or whims of some political office or official.

Our current space is 100 times better than when we were forced to submit to the bondage of "approved government space."

Sincerely,

A handwritten signature in cursive script, appearing to read "Frankie S. Cayton". The signature is written in dark ink and is positioned above the printed name and title.

Frankie S. Cayton
Administrator

To: Donna Lipscomb, Exec. Coordinator
Department of Administration
1900 Kanawha Boulevard East
Building I, Room E-119
Charleston, West Virginia 25305

From: Harrison Holdings, LLC
Lisa Ford
217 East Main Street
Clarksburg, West Virginia 26301

Re: Proposed Rules: Leasing Space on Behalf of State Spending Units

COMMENTS

Suggestions for revised language:

2.1.c. "The Leasing Section 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 upon the determination of the necessity to seek proposals for new leases."

148-2-3.

3.1 "To determine the fair market value of the space requested the Leasing Section shall conduct market surveys prior to award." [At this point, the term "market survey" must be defined. A "market survey" should embrace all outstanding State leases, in addition to the state of the current lease rate market value in a given location. For example, a building in Keyser, West Virginia, owned by the Warners, is being leased on a "full service" lease for 16.50 per square foot. The State offered a full service lease in Clarksburg, West Virginia at 10.00 per square foot. This is a disparity that is inexplicable on its face.

4.1 "The Secretary of Administration shall have the sole authority to select and to acquire by contract or lease, in the name of the State, *based solely on the results of the market survey or appraisal*, all grounds, etc."

4.2.c There must be public criteria regarding renting space under 10,000 square feet. It is a violation of constitutional rights if not. Who's to say that an unscrupulous Secretary of Administration would not refuse carte blanche to lease in blocks of 9,999 square feet to his/her cronies?

4.2.d There should be a uniform list of bid specifications for all State leases. (the word "unit" is omitted from 4.2.4)—however, if the Spending Unit requests a sole source, this request must be made a matter of public information. Uniform rating specifications should be the rule, and not the exception. If there are extenuating

circumstances that warrant the request of a single source, it must be a matter of public information, not "behind-closed-doors" negotiations.

Also, the State must be obliged, pursuant to regulation, to notify any bidder of: 1.) receipt of the bid and 2.) decision re: the project.

4.3 a This section must specify that EITHER the Leasing Section OR the Spending Unit negotiate the rental agreement. There needs to be a time limitation on reaching agreement on the lease for both the State and the selected bidder.

4.3.b The term "escalation clause" needs to be defined for the public.

4.3.c A letter of intent shall be issued to the successful bidder WITHIN ____ DAYS OF THE SELECTION. If not, there is undue hardship to the landowner. Letters of intent, issued too close in time to when the State intends to move, operates to work a disadvantage to the landowner, and allows the State to manipulate lease negotiations.

4.4, 4.5: There are no provisions for time-requirements for notification to the landowner. This is problematic, and, again allows the State to manipulate lease negotiations.

5.1 In order for this good suggestion to become effective, the State should consider establishing appropriate notification criteria for all lease bidders, particularly with with the requirement that protests be made in ten (10) days.

§§148-2-6

6.1 There should never be a provision under State law that allows for a forty-year lease. Leases with the State should not exceed ten (10) years.

6.1.a. This provision renders the State's tenancy as no more than a month-to-month tenant, even though a "lease" is in force. This one-sided provision, that is currently pursuant to regulation, has not been tested in court. However, if it was, it is likely that the entire "lease" could be deemed as nothing more than a month-to-month tenancy regarding both parties. Such a heavy-handed provision, as requiring the landowner to absorb onerous up-front costs for a "lease" only to give the State the right to back out, without cause, "without further obligation" with a mere 30 days' notice would likely not be upheld by the Courts.

6.1.c Likewise, to require the automatic renewal of a lease "for each fiscal year during the term of the lease" unless the State cancels "before the end of the then current fiscal year" requires further clarification and modification as unduly onerous on the landlord. If the state cancels "before the end of the then current fiscal year", assuming that "fiscal year" means the State's fiscal year, the landowner could be looking at an arbitrary lease cancellation before the end of the leaseterm, after unduly relying on those lease terms.



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*Commercial Sales and Leasing
Consulting and Property
Management*

July 19, 2004

Ms. Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard East
Building #1, Room E119
Charleston, WV 25305-0120

**Re: Notice of a Comment Period on a Proposed Rule
Title of Rule Being Amended: Leasing space on behalf of state spending
units**

Dear Ms. Lipscomb:

Thank you for the opportunity to comment and question the proposed changes to the above referenced item. The following are a list of comments or questions concerning the proposed changes to the Legislative Rules on Leasing Space on behalf of State Spending Units:

§148-2-2 Request for Space

Is six (6) months notification reasonable for all needs? Larger users would certainly need more time.

§148-2-3 Fair Market Value and Appraisals

Does this mean that the State will pay the higher market rent?

§148-2-4 Authority, Acquisition, Negotiation, Inspection and Award

Name all spending units that are exempt.
How will the leasing community be advised of a smaller than 10,000 sf need?
Will the bid specifications be provided in a standardized format like a GSA Request for Proposal?
Would supporting documentation include operating expense history, real estate taxes, or CPI? What type of escalations will be acceptable?

§148-2-5 Protests

If due diligence has been completed and lease award meets compliance issues why would there be any need for a protest provision. If protest provision remains consider reducing protest time to 5 days – 10 days is too long and will hold up the lease transaction.

§148-2-12 Compliance

These appear to be Class A office building standards which will affect lease rates paid by the State of WV. It is good that compliance standards be created and monitored so all State properties will be maintained in better condition. Will there be additional staff hired to review and maintain compliance standards, if so this will be an additional cost to the State and its taxpayers.

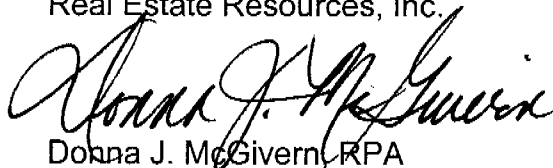
§148-2-13 Existing Lease

Expect existing lease rates to increase due to compliance to new standards. How will Landlords be expected to perform upgrades, after hours and weekends or during the workday?

These changes are very good ideas, however the State should take a very hard look at the fiscal impact these proposed rules will have along with the additional staff needed to enforce and oversee.

Sincerely,

Real Estate Resources, Inc.



Donna J. McGivern, RPA
Executive Vice President/Broker

Cc: Ms. Tammy King
Mr. Ed Maier
Ms. Melanie McClellan
Mr. Patrick McGivern



Physical Plant

July 21, 2004 – Faxed and Overnight Mailed, 4 pages

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, WV 26305-0120
FAX: 304-558-2999

Dear Ms. Lipscomb:

As the Real Estate Planner for West Virginia University and the regional campuses of Potomac State College, Institute of Technology, and Parkersburg Community College, I would like to offer the following commentary regarding the proposed changes to the referenced legislation:

Agency: Department of Administration	Title Number: 148
Rule Type: Legislative	Cite Authority: 5A-3-42
Amendment to an Existing Rule: Yes	
Series Number of Rule Being Amended: 2	
Title of Rule Being Amended: Leasing space on behalf of the state pending units.	

1. REF: §148-2-2 Request for Space

2.1 Generally. 2.1.a A spending unit desirous of leasing any ground...shall submit...a completed Requisition for Space...no later than **six (6) months prior to the date the space is required.**

And...

2.1.c A request to renew...shall be submitted...**six months prior to expiration of the existing lease.**

COMMENT: We are **not** in agreement with this requirement. The majority of leasing that WVU undertakes is for small research projects (200 to 5,000 square feet) for which the need for space arises quickly and if a six month lead time would be required for lease creation, we would not be capable of beginning a project and expending the grant funds in a required time frame thus risking loss of the grant. Also, for renewals, smaller units (i.e. storage facilities of 50-500 square feet) are often not prepared to predict the need for continued leasing this far in advance; however, WVU makes every attempt to conclude desires for renewal or expiration as early as possible.

SUGGESTION: We would be in agreement to this time frame for properties of greater than **20,000 square feet**, in which case building creation or major alteration would probably require this time frame for completion. We would need, however, a Letter of Intent to bind us to the period until the lease could be created. The owner would be assured that the lease terms were agreed and would eventually receive payment. And,

Planning, Design, and Construction

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Morgantown, WV 26506-6572

Equal Opportunity/Affirmative Action Institution

for renewals, the same would apply in that programs requiring this large space should be capable of predicting continued use six months in advance.

2. §148-2-3 Fair Market Value and Appraisals

3.1 Before executing any rental contract or lease... **the Leasing Section shall conduct market surveys prior to award. If a market survey is impracticable, an appraisal shall be conducted by a licensed real estate appraiser...If an appraisal is conducted, the Leasing Section may require the spending unit to pay for the cost of the appraisal.**

COMMENT: We are **not** in agreement with a required market survey and/or appraisal. To have such would add significant time and money that most grantees/tenants do not have. In fact, WVU has a record of paying less than market value for leased property due to the inability to fund prime real estate with administrative or grant funds. Therefore, funds for such would result in diminished volume of space being capable of rental. Also, the time factor would also cause delayed occupancy (an appraisal takes a minimum of 30 days after the time period needed for creation of a specification and appraisal contract), which could affect research dollars as described in the time delay of #1.

3. §148-2-4 Authority, Acquisition, Negotiation, Inspection, and Award.

4.2.c. **The Leasing Section shall issue a solicitation of interest in the State Purchasing Bulletin and by whatever other means it so chooses in order to elicit responses from the largest number of qualified bidders for office space in excess of 10,000 square feet net.**

COMMENT: We are **opposed** to moving this process into the Procurement bidding realm, which would add a great amount of time to the finding and occupancy of space by the requirement of creation, submission, and response time of detailed specifications.

4.2.d **The Leasing Section shall provide bid specifications to all bidders.**

COMMENT: Same comments as above; we are **opposed** to moving this process into a Procurement specification realm which would not permit the changing of slight details after bidding which could enhance the use of space by the user. For example, an original specification may not typically specify the need for conference/meeting or refreshment/vending space; however, the awarded "low bidder" in all probability might be of such a remote location from the main campus that such services are not available in the vicinity thus necessitating their creation within the leased space, resulting in "additions to the specifications." It is an often occurrence that non-typical assignable space is added to the original space analysis based on location found. In a Procurement bidding environment, those additions would cause a great delay in finding and occupying space, rebidding, etc.; again, possibly causing the loss of research dollars for inability to occupy quickly.

4.2.e **The spending unit may select any bidder from the top three rated bidders, provided that the bid selection shall not exceed the low bid by more than 5%.**

COMMENT: We do not believe that 5% difference provides appropriate allowance for the difference of location. When at all possible, we attempt to go with the lowest rental location;

however, with the volume of research project tenants, they often must be co-located for shared resources with their home program or with other research projects. Therefore, bidding and "low bidder with 5% difference" will not resolve their need for shared resources tied to a specific location.

4.5 Inspection and Award. Prior to the award of a contract, the **Leasing Section** shall inspect the potential site to ensure that all bid specifications have been met...

COMMENT: Given the volume of leasing by WVU, we do **not** believe it practical for the Leasing Section to tour all leased sites for inspection. My role for WVU real estate is to provide inspection services and bring in expertise of ADA, mechanical, electrical, construction, etc. as needed based on the use and new construction and/or renovation being performed by the owner.

4. §148-2-5 Protests

5.2 The Leasing Section shall establish a process by which a vendor/lessor may protest the selection of a lease.

COMMENT: As noted in #3 4.2.d above, we are opposed to using the procurement-bidding process for acquiring leased space for this very reason. To permit appropriate protest time would add an even greater period of time before final award is concluded and occupancy could occur; thus, the risk of losing research dollars for inability to occupy quickly.

5. §148-2-12 Compliance

12.1 The Leasing Section shall develop compliance standards and shall monitor all leased properties on a systematic and regular basis to insure that all properties continue to confirm to these standards. And...

12.2 Definition of the standards. And...

12.3 The Secretary of Administration...shall disbar the lessor from entering into any other lease..for failing to meet the standards...

COMMENT: We are in agreement for the need for standards to provide a safe working environment for our occupants; however, we are **not** in agreement with the requirement for all noted standards to be met. Often, WVU leases warehouse or shop space for research projects. To require that they be air condition (section C.b) would be impractical and unnecessary and result in the cost of the property to exceed that payable by the tenant. Also, often research projects emit factors that create indoor air quality problems (section C2) for which they are responsible for correction; this should not be the requirement or obligation of the Lessor, nor should it "disbar" the owner from being a Lessor of alternative facilities (i.e. office space) for which he would be in compliance. Finally, similar to #3, section 4.5 commentary above, it is not practical or cost effective for the Leasing Section to provide monitoring services of all leased properties with the volume of properties leased by our institution.


6. §148-2-13 Existing Leases

All existing leases which do not meet the compliance standards...must submit a timetable for compliance at least 6 months prior to expiration of an existing lease or by July 1, 2008 whichever comes first...

COMMENTS: We are **not** in agreement with this requirement for the same reasons indicate in #5 comments above. The Lessor should not be required to adhere to "office" type specifications when the lease of space is for storage or shop use; the cost for this unnecessary compliance would result in too costly of leased space an loss of research rental funds.

Thank you for the opportunity to provide commentary regarding these proposed changes in legislation. Please feel free to contact me with any questions at susan.mccollum@mail.wvu.edu, phone (304) 293-2864, or fax (304) 293-2864.

Sincerely,


Susan L. McCollum
Business Manager/Real Estate Planner



EXECUTIVE OFFICES

CITY CENTER WEST
900 PENNSYLVANIA AVENUE
TELEFAX (304) 343-2243
TELEPHONE (304) 343-2201

July 20, 2004

Ms. Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard East
Building #1, Room E119
Charleston, WV 25305-0120

Dear Ms. Lipscomb:

We are responding to your Proposed Legislative Rules and the proposed changes to them. I am responding on behalf of our president, Ed H. Maier and myself.

Page 1 - 2.1c last line should be an apostrophe after the word months'

Page 2 - 4.2c How would we know about the under 10,000 sf requirements?

Page 4 - 6.2c next to last line, we recommend that the word "may" be changed to "shall"

Page 5 - 8.1 next to last line, economically-sound should be hyphenated.

Page 7 - D. Lighting 2. We feel parabolic light fixtures are too expensive.

We appreciate the opportunity for questions and comments and look forward to learning the outcome of the Title 148, Legislative Rule, Department of Administration.

Sincerely,

A handwritten signature in cursive script that reads 'Mary P. Casto'.

Mary P. Casto
Marketing Director

KANAWHA INVESTMENT COMPANY

Owner & Operator of THE PEOPLES BUILDING
179 Summers St., Suite 703
Charleston, WV 25301

Telephone (304) 342-7015

July 20, 2004

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard East
Building 1, Room E-119
Charleston, WV 25305

Pursuant to your "Notice of a Comment Period on a Proposed Rule" (copy attached), I herewith submit my comments on the proposed modifications to Title 148, "Leasing Space on Behalf of State Spending Units." Specifically, I wish to comment on the proposed new §148-2-12, which I find so restrictive as to virtually negate the Department of Administration's ability to lease office space in any existing building – particularly at the rates the Department customarily budgets for rent. Parts of §148-2-12 also appear to be contrary to other sections of Title 148.

The proposed new §148-2-12 does not:

- allow for any variances to code requirements for a particular property, even where a governing code authority has issued variances for the same property.
- take into consideration the effect of these stringent new standards on a multi-tenant office building where a state spending unit occupies only a part of the total building. Requiring a lessor to upgrade the entire building to satisfy the needs of such a state tenant would necessitate either losing the state tenant or increasing the rents of the lessor's other tenants beyond their means, thus threatening the viability of the entire property.
- allow for any flexibility with regard to older, historic buildings that are otherwise safe and "... well maintained and ... aesthetically pleasing..." (§148-2-12.2.B.1.). In such cases there is always tension between conforming to building codes and preserving historical character. Such flexibility is needed if the state is to give "... consideration for revitalization of downtown areas and historical areas...." (§148-2-4.2.d.).

Further, practically no newly-constructed building, much less historic building, could meet all of the requirements of all of the codes listed in §148-2-12.2.A. – some of which codes are arcane and not generally referenced by the property management industry.

Sincerely,



John Wehrle, RPA, President
KANAWHA INVESTMENT COMPANY
(Member, BOMA)

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2004 MAY 24 P 3:2

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: 5A-3-42

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Leasing space on behalf of state spending units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 22, 2004 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Exec. Coordinator

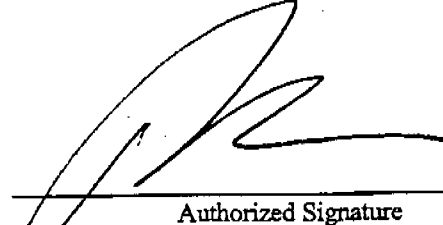
Department of Administration

1900 Kanawha Boulevard, East

Building 1, Room E-119

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

July 21, 2004

Via Hand Delivery

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard East
Building 1 Room E-119
Charleston, West Virginia 25305

Re: Comments on Amendment to Legislative Rule 148-2-1 et. seq.

Dear Ms. Lipscomb:

Enclosed please find my comments on the proposed amendment to Legislative Rule 148-2-1 et. seq., which I respectfully submit pursuant to the comment period established in lieu of a public hearing.

If I can be of further assistance, please contact me at (304) 345-8700.

Sincerely,



Albert T. Summers

ATS/GKD;bj

**COMMENTS ON PROPOSED RULE
TO BE CODIFIED AT TITLE 148, SERIES 2
OF THE WEST VIRGINIA CODE OF STATE RULES
REGARDING THE LEASING OF SPACE ON BEHALF
OF STATE SPENDING UNITS**

Pursuant to the decision to establish a comment period in lieu of holding a public hearing on the Proposed Legislative Rules governing the Leasing of Space on Behalf of State Spending Units ("Proposed Rules"), which expires at 10:00a.m. on July 22, 2004, I, Albert T. Summers, hereby submit the following document and exhibits to Donna Lipscomb, Executive Coordinator of the West Virginia Department of Administration, on July 21, 2004, via hand delivery at her office located at 1900 Kanawha Boulevard, East, Building 1, Room E-119, Charleston, West Virginia 25305.

This submission of comments is comprised of three sections. First, I make general observations and recommendations regarding the Proposed Rules as they were submitted to the Administrative Law Division of the West Virginia Secretary of State. Second, I provide a revised version of the Proposed Rules, in the form of a document containing revisions to the Proposed Rules that are evidenced by underlined insertions and strike-through deletions. I respectfully suggest that the revised version of the Proposed Rules ("Revised Proposed Rules") would provide a more comprehensive and meaningful framework within which the Leasing Section may acquire leased space on behalf of spending units. See **Exhibit 1**. Third, I submit several "forms" that could be used, either in their present form or after further modification, to assist the Leasing Section in obtaining the most suitable property for lease at the most competitive rental prices by (1) identifying the specific needs of the spending unit prior to issuing a Request For Bids; (2) providing prospective lessors with a greater amount of

information upon which to formulate their bids; and (3) providing the Leasing Section with a form on which to record site-specific information that will permit it to make a more informed decision when selecting a site for lease. See **Exhibit 2**. I recognize that these forms would likely need to be modified by the Leasing Section. The forms in Exhibit 2 are provided, however, to illustrate the concepts embodied in the Revised Proposed Rules.

General Observations and Recommendations

As an initial matter, §148-2-4 of the Proposed Rules needs further development. First, §4.2.a of the Proposed Rules provides no guidance as to what information a spending unit should supply to the Leasing Section in its "request." Certain basic information must be submitted by a spending unit when it requests a lease for space in order to permit the Leasing Section to procure the most appropriate space for the spending unit, considering its unique needs. Therefore, the revisions contained in §§2.1.a; 2.1.b; and 4.2.a of the Revised Proposed Rules should be adopted. See **Exhibit 1**. These revisions would require the spending unit to disclose to the Leasing Section information about the spending unit's present leased space, its need for space that forms the basis of the request, specific infrastructure needs of the spending unit, and a written justification supporting the spending unit's request. Moreover, the Leasing Section should develop a standard form for a spending unit to use when submitting said information. A sample form entitled "Requisition for Space" is provided as **Exhibit 2, Form 1**.

Second, as an overarching principle, the function of leasing space on behalf of spending units should be completely centralized in the Leasing Section. Therefore, the provisions that allow a spending unit to request sole sources of leased property, select bidders, negotiate rental agreements, and negotiate with prospective lessors in emergency situations with appropriate

consent, see §148-2-4.2.d; 4.2.e; 4.3.a; and 11.3 of the Proposed Rules, respectively, should be eliminated.

Third, the concept of "specifications" included in § 148-2-4.2.d and 4.5 of the Proposed Rules should be fully developed in the Regulations. For example, the Specifications, as that term is developed in §4.2.b of the Revised Proposed Rules, should form an integral part of the bid solicitation process. See **Exhibit 1**. The Specifications should establish the minimum standards that a building must satisfy before it will be considered for lease by the Leasing Section on behalf of a spending unit. See §4.2.b of the Revised Proposed Rules in **Exhibit 1**. Minimum Specifications would also provide prospective lessors/bidders with specific information they could use to determine what, if any, renovations, modifications, upgrades, etc. would be required in order to offer their facility to the State for lease. This information would permit prospective lessors/bidders to make a more informed bid. In addition, by establishing minimum Specifications for each property, inferior properties would be eliminated from consideration, which would assist the Leasing Section in securing the best possible property at the lowest possible rental price. Such a result is in the best interest of the State of West Virginia's employees, customers, and fiscal policy. See §§4.2.b; 4.2.c; 4.3.a; 4.3.e; 4.4.c; 4.4.d; 4.4.g of the Revised Proposed Rules in **Exhibit 1**.

Fourth, the Proposed Rules provide for at least six methods of procuring leases on behalf of spending units. This is unacceptable. The Leasing Section should follow, at most, two methods of procuring leases on behalf of spending units, a standard method and an emergency method. As the Proposed Rules are presently written, the Leasing Section may bid out a particular lease, see §148-2-4.2.b and 4.2.c, the Leasing Section may procure a lease of space below 10,000 square feet in any manner it chooses, see §148-2-4.2.c, a spending unit may

request a sole source for leased space, see §148-2-4.2.d, spending units may enter into leases between one another with the consent of the Leasing Section, see §148-2-10, the Department of Administration may procure leases in any manner it chooses when its Secretary, in its sole discretion, declares an "emergency situation," see §148-2-11.1, and a spending unit may negotiate a lease during an "emergency situation" with the consent of the Leasing Section or the Secretary of the Department of Administration, see § 148-2-11.3.

One standard method of procuring leases on behalf of spending units should be established for non-emergency situations, to-wit, a Request for Bids ("RFB"), and another method should be established for emergency situations. See §§4.2.c; 4.2.d; 4.2.e and 11 of the Revised Proposed Rules, respectively in **Exhibit 1**. By utilizing the standard RFB process for soliciting bids, which ensures a wide dissemination of information to prospective lessors/bidders, competition among prospective lessors/bidders will increase and the State will benefit from the increased competition. In addition, administrative ease will be achieved once the process is implemented as the same process will be followed each time a lease is procured. By ensuring that only one method of soliciting bids is followed during non-emergency situations, public confidence in the procurement of State leases will increase as the potential for "back-room deals" will be reduced.

Fifth, it is in the best interest of the Leasing Section to establish structured bid review and award procedures. I suggest that a bid review and award committee be established. The bid review and award committee should be comprised of three to five disinterested individuals knowledgeable in the field of commercial real estate (the "Committee"). The Committee should evaluate bids and properties in order to ascertain which bid/property combination presents the spending unit with the best property at the best rental rate. During bid review, emphasis on the

concept of "net rentable square feet" will allow the Committee to make its comparison of properties more meaningful. For example, when comparing a 10,000 square foot two-story building to a 10,000 square foot four-story building, the Committee's emphasis on the number "net rentable square feet" of each building will most likely reveal that the two-story building contains more office space than the four-story building. This is true because elevator shafts, bathrooms, stairwells, etc in the four-story building will occupy more square footage, thereby decreasing the square footage of the office space. By focusing on a property's net rentable square feet, a more meaningful cost comparison may be performed.

Moreover, the Committee should also be required to perform inspections of all competitively priced properties offered for lease prior to making an award. These inspections would allow the Committee to ensure that all Specifications are satisfied and that the property is what it was represented to be in the bid. The data compiled on the site evaluation sheets, a sample of which is provided as Form 2 in Exhibit 2, will be helpful to the Committee when making its final site selection. Completed site evaluation forms should be retained for public inspection. Lastly, the Committee should be required to submit written justification supporting its site selection. See §§4.4.a; 4.4.b; 4.4.c; 4.4.d; 4.4.e; 4.4.f; 4.4.g of the Revised Proposed Rules in **Exhibit 1**.

Sixth, as with any procurement of goods or services by a state agency, the public should be confident that the agency is acting in the best interest of the State when spending taxpayer dollars. Therefore, I propose the Leasing Section follow the same procedure to procure leases in all non-emergency situations in order to ensure an impartial bid award process for all leases entered into on behalf of spending units. I am informed that a large number of state leases involve leases of less than 10,000 square feet. Therefore, in order for the Proposed Rules to

achieve the stated purpose of ensuring "better working conditions for our employees and [giving] the leasing section the ability to negotiate for the best price for office space," the Proposed Rules should mandate that a standard bid solicitation and lease award procedure be followed for all state leases. For this same reason, the spending unit must not be permitted to negotiate the terms of a lease with a prospective lessor; all leases must be procured by the Leasing Section. Lastly, in order to expose potential conflicts of interest, all bidders must be required to disclose the identity of the persons who own the property proposed to be leased to the State. See §§ 4.2.c; 4.3.c; 11.3 of the Revised Proposed Rules in **Exhibit 1**.

Lastly, I suggest that the Proposed Rules establish a more defined set of circumstances that would permit the Leasing Section to circumvent the Proposed Rules on the basis of an "emergency situation," while preserving sufficient flexibility for the State to procure leased space in bona fide emergencies. To accomplish this goal, I urge the adoption of §§ 11.1; 11.2; 11.3; 11.4 of the Revised Proposed Rules. See **Exhibit 1**.

TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION
LEASING SECTION

SERIES 2
LEASING SPACE ON BEHALF OF STATE SPENDING UNITS

§148-2-1. 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, except for the division of highways, the higher education policy commission, the lottery commission, or those spending units of the State with independent leasing authority pursuant to the code of West Virginia Code. This exemption does not apply to the office space of spending units of the executive branch.

1.2. Authority - W. Va. Code §5A-3-42.

1.3. Filing Date -

1.4. Effective Date -

§148-2-2. Request for Space.

2.1. Generally.

2.1.a A spending unit desirous of leasing any ground, building, office space or other space shall submit to the Leasing Section of the Department of Administration a completed Requisition for Space on the form provided by the Leasing Section. The Requisition for Space shall be submitted no later than six (6) months prior to the date the space is required, and shall be signed by the chief executive officer spending unit or his/her designee, no later than six (6) months prior to the date the space is required;

2.1.b In addition to the information required to be submitted pursuant to Section 4.2.a below, the Requisition for Space shall contain a certification by the chief executive officer of the spending unit or his/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 contract or 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 Leasing Section shall determine if it is necessary to seek proposals for new leases. Spending units seeking a new lease must give the Leasing Section six (6) months notice.

§148-2-3. Fair Market Value and Appraisals.

3.1. Before executing any rental contract or lease, the ~~Secretary of Administration~~ Leasing Section shall determine the fair market value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist. To determine the fair market value of the space requested, the Leasing Section shall conduct market surveys prior to award. If a market survey is impracticable, an appraisal shall be conducted by a licensed real estate appraiser. If an appraisal is conducted, the Leasing Section may require the spending unit to pay for the cost of the appraisal.

3.2. No contract or lease shall be entered into if the rental exceeds the fair market value of the space requested, unless approved by the Secretary of Administration with proper written justification, ~~such justification may include, but is not limited to, the specifications outlined in 4.2.d.~~

§148-2-4. Authority, Acquisition, ~~Negotiation~~, Inspection and Award.

4.1. Authority. - The ~~Secretary of Administration~~ Leasing Section shall have the sole 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, except those spending units ~~that are exempt by~~ with independent leasing authority pursuant to the West Virginia State Code.

4.2. Acquisition.

4.2.a The spending unit shall provide the Leasing Section with a ~~request on a form~~ Requisition For Space ("Requisition") on a standard form provided by the Leasing Section, which ~~to justify~~ their request. At a minimum, the Requisition shall include the following information: type of grounds, buildings, office space or other space currently occupied by the spending unit, if any; number of square feet ~~leased~~ of space occupied by the spending unit at the time of the Requisition; location of the spending unit's leased space at the time of the Requisition; number of persons employed by the spending unit at the time of the Requisition; number of parking spaces available to ~~required by~~ the spending unit at the time of the Requisition; type of grounds, buildings, office space or other space that the spending unit desires to lease; number of square feet requested; desired general geographic location of the requested space; number of persons that will be employed by the spending unit and that will maintain their principle office in the requested space; number of parking spaces required by the spending unit in connection with the requested space; and a detailed written justification ~~that supports~~ supporting the spending unit's desire to lease new space. The Leasing Section may require further justification or may approve the ~~request~~ Requisition as written.

4.2.b If the ~~request~~ Requisition is approved, the Leasing Section shall develop a list of Specifications for the grounds, buildings, office space or other space to be leased based on the needs identified in the Requisition ("Specifications"). The Specifications shall not be changed except, at the discretion of the ~~commissioner~~ Secretary of Administration, when the lease process is initiated again pursuant to Section 4.4.g below. The Specifications shall be kept on file in the office of the Leasing Section. The

Specifications shall contain, at a minimum, the following criteria: type of grounds, buildings, office space or other space to be leased on behalf of the spending unit; net rentable square feet required; number of persons that will occupy the space; required number of parking spaces, including employee, handicapped and visitor spaces; desired general geographic location; engineering and infrastructure requirements, including but not limited to, electrical system, HVAC, sprinkler systems, plumbing, number of bathrooms, number of rooms dedicated to housing computers that require a dedicated cooling system; number of offices; special requirements in exterior and interior design, if necessary for the proper, efficient and economically sound operation of the spending unit; a requirement that the leased space comply with the Americans With Disabilities Act; and anticipated date of occupation. The Specifications adopted by the Leasing Section shall constitute the minimum acceptable standards to which all grounds, buildings, office space or other space offered for lease shall conform. ~~spending unit may submit criteria for rental space. The Leasing Section shall review criteria and may include this criteria in the bid specifications requirements.~~

4.2.c The Leasing Section recognizes only one method of soliciting bids from prospective lessors for the leasing of grounds, buildings, office space or other space on behalf of a spending unit. That method is an Request For Bid ("RFB"). A RFB shall incorporate the Specifications developed by the Leasing Section pursuant to Section 4.2.b above for each respective lease procured on behalf of a spending unit. The Leasing Section shall utilize a RFB to solicit bids for all leases obtained by it on behalf of a spending unit, regardless of the number of net rentable square feet required by the spending unit.

~~The Leasing Section shall issue a solicitation of interest in the State Purchasing Bulletin and by whatever other means it so chooses in order to elicit responses from the largest number of qualified bidders for office space in excess of 10,000 square feet net. Renting space under 10,000 square feet net does not have to be bid but must meet all specifications and other requirements.~~

4.2.d In order to solicit bids, the Leasing Section shall issue a RFB to all persons or entities listed on the List of Registered Lessors, which shall be established and maintained by the Leasing Section, and all other persons or entities that request a RFB from the Leasing Section. The List of Registered Lessors ("LRL") shall be comprised of all persons or entities that are parties to a lease of grounds, buildings, office space or other space with the State of West Virginia and all other persons or entities that request to be included thereon. If a prospective lessor desires to be included on the LRL but is not a party to a lease of grounds, buildings, office space or other space with the State of West Virginia, he or she may request to be included thereon by submitting a written request to the Leasing Section. The Leasing Section shall charge an annual Registration Fee to each person or entity included on the LRL. The Registration Fee shall be determined by the Leasing Section, shall be the same for all persons and entities listed thereon, and shall equal, in the aggregate, an amount sufficient to offset the Leasing Section's reasonable estimates of the cost of maintaining the LRL and mailing RFBs to the persons and entities listed thereon. In addition to mailing RFBs to the prospective lessors listed on the LRL, the Leasing Section shall also publish notice of a RFB by whatever other means it so chooses in order to elicit responses from the largest number of qualified bidders. ~~The Leasing Section shall provide bid specifications to all bidders. Specifications may~~

~~include consideration for revitalization of downtown areas and historical areas. Special consideration may also be given to facilities that are on the National Register of Historic Places. The Leasing section will evaluate and rate all bid proposals. If the spending had requested a sole source, it must be approved by the Secretary of Administration with written Justification. The spending unit may request to participate in this process.~~

~~4.2.e The spending unit may select any bidder from the top three rated bidders, provided that the bid selected shall not exceed the low bid than 5%. If the spending unit elects not to select a bidder, the Leasing Section shall make the selection on behalf of the spending unit.~~

4.2.e The Leasing Section shall state the deadline for submission of bids clearly and conspicuously on the first page of the RFB, which shall not be less than sixty (60) days from the issuance of the RFB. All bidders are responsible for submitting accurate bids prior to the deadline set forth in the respective RFB. In no event shall the Leasing Section accept a bid, regardless of the circumstances, that is submitted after the deadline for submission. The bidder is responsible for submitting a bid to the Leasing Section and a duplicate bid to the State Auditor. Fax bids are acceptable, but transmission must be completed prior to the bid deadline and must also be followed by an original bid that is received by the Leasing Section within two business days from the deadline established in the RFB.

4.3. Bid Content and Format.- The bid shall be separated into two parts, a technical specifications section and a cost section.

4.3.a The technical specifications section must contain a statement from the prospective lessor, or his or her designee, that the property offered for lease complies with each Specification contained in the RFB or a statement identifying each Specification with which the property offered for lease does not comply. For each Specification with which the property offered for lease does not comply, the prospective lessor must provide a detailed description of how it will correct the respective non-compliance. In addition, the prospective lessor must correct the non-compliance at its sole cost and shall include the costs of such remedial actions in its bid price.

4.3.b The cost section shall contain an accurate disclosure regarding the number of "Net Rentable Square Feet" offered for lease to the spending unit. "Net Rentable Square Feet" is defined as the total interior rentable square feet less the number of square feet occupied by vertical building penetrations and their enclosing walls, such as stairs, elevator shafts, bathrooms and vertical ducts, which shall reflect the aggregate number of square feet capable of being occupied as office space by the spending unit. In addition to stating the number of "Net Rentable Square Feet," the cost section of the bid must contain a calculation of lease cost per Net Rentable Square Foot, which shall be stated as the quotient of a fraction, the numerator of which shall equal the gross annual lease payment proposed in the bid, and the denominator of which shall equal the number of "Net Rentable Square Feet" disclosed in the bid. The lease cost per Net Rentable Square Foot shall be the primary cost criteria to be considered by the Leasing Section when evaluating bids. The lease cost per Net Rentable Square Foot shall be stated two ways in a bid. First, the lease cost per Net Rentable Square Foot shall be stated to reflect the total cost to

the spending unit if the prospective lessor were to pay for all necessary buildouts and/or renovations. Alternatively, the lease cost per Net Rentable Square Foot shall be stated to reflect the total cost to the spending unit if the spending unit were to pay for all necessary buildouts and/or renovations. Lastly, any escalation clauses proposed by the bidder must be reasonable in an amount and shall not to exceed two (2) percent per year.

4.3.c The bid must disclose the identity of the owner of the fee simple title of the property offered for lease. In the event that the owner is a corporation, partnership, limited partnership, limited liability company, business trust, association or other artificial entity created by law, the bid shall disclose the identity of each owner holding an ownership interest of greater than five (5) percent in that entity. It is the goal of the Leasing Section to identify the natural persons who own the property offered for lease.

4.3.d The bid shall also describe particularly the property offered for lease. Such description shall be furnished on the Property Disclosure Form provided by the Leasing Section.

4.3.e No bid submitted in response to a RFB shall be considered by the Leasing Section if the property offered therein fails to comply with the Specifications set forth in the RFB, unless: (1) the bid provides that the prospective lessor, at his or her sole expense, will perform whatever repairs or upgrades are necessary to satisfy the Specifications; or (2) the bid accurately discloses which Specifications are not satisfied and the State, after determining that it is economically feasible, agrees to undertake corrective actions at its expense. If the State chooses to undertake the corrective actions itself, the Leasing Section must provide sufficient written justification to the Secretary of Administration supporting its decision and must demonstrate that, notwithstanding the expense of the corrective actions, the overall rental price plus the renovation costs do not materially exceed the rental price of comparable properties offered for lease that do not require the State to fund renovation expenses.

4.4. Bid Evaluation

4.4.a. The Leasing Section shall adopt a standard, formalized process for the evaluation of bids that is comparable to the Formal Acquisition Procedures set forth in Section 7 of the West Virginia Purchasing Division's Policies and Procedures Handbook, as that Section may be amended from time to time.

4.4.b. At a minimum, the evaluation process adopted by the Leasing Section shall require: an evaluation of bids by a committee comprised of at least three (3) and no more than (5) disinterested professional individuals knowledgeable and/or credentialed in the business of commercial real estate; public bid opening and award; and a vendor preference for lessors who reside in the State of West Virginia. In addition, the evaluation process must ensure that the Leasing Section only enters into leases for grounds, buildings, office space or other space with the owner of the fee simple title to the property being leased.

4.4.c.3. ~~Negotiation~~ Inspection.- After receipt of bids, the Leasing Section shall inspect each competitively-priced space offered for lease in order to determine its compliance

with the Specifications and its suitability to the reasonable needs of the spending unit that requested the space. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form. Completed site evaluation forms shall be kept on file.

~~4.3.a The Leasing Section and /or spending unit may negotiate a rental agreement with the selected bidder. If a negotiated rental agreement cannot be reached, the Leasing Section and/or spending unit shall enter into negotiations with one of the remaining top three bidders. The successful bid shall not exceed 5% of any remaining bid.~~

~~4.3.b Any escalation clauses during the negotiation shall require supporting documentation as evidence of the escalation prior to issuance of a rental increase based on the escalation.~~

4.4.d The committee shall assess the bids, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property is in substantial conformity with the Specifications.

4.4.e The committee shall choose the best bid in the interest of the State of West Virginia. The committee shall put in writing a summary of the reasons underlying its selection of a particular bid. This writing shall be kept on file in the Leasing Section.

4.34.ef A letter of intent shall be issued to the successful bidder. All bids shall remain confidential until the issuance of a letter of intent.

4.4.g Prior to the execution of a lease, the Leasing Section shall reinspect the property that is the subject of the successful bid to ensure that all bid Specifications have been met. If the property does not comply with the Specifications, the prospective lessor shall correct the deficiencies at his or her sole cost within sixty (60) days after the Leasing Section notifies the successful bidder of the deficiencies. If the prospective lessor is unable or unwilling to correct said deficiencies, the Leasing Section shall re-bid the RFB according to the procedures in Section 4.2 above.

The Leasing Section shall provide written notification of its site selection within thirty (30) days of the award to: (1) the spending unit and (2) all persons or entities who submitted a bid in response to the respective RFB. Said notification shall state the date by which an unsuccessful bidder must lodge his or her protest pursuant to Section 5.1 below.

~~4.4.Notification The Leasing Section shall provide written notification of its site selection recommendation to the spending unit within thirty (30) days of the evaluation of the spending unit's request for space which includes the review of bids, evaluation of bids by the Leasing Section and any negotiations conducted by the Leasing Office pursuant to Subsection 4.3 of this~~

rule prior to final location selection.

~~4.5. Inspection and Award - Prior to the award of a contract, the Leasing Section shall inspect the potential site to insure that all bid specifications have been met. If the site does not meet bid specifications, the bidder shall correct said deficiencies at bidder's sole expense. If said deficiencies are not corrected, negotiation may begin with another vendor as described in section 4.3. Once all deficiencies, if any, are corrected, execution of a lease may proceed.~~

§148-2-5. Protests

5.1. The Leasing Section shall establish a process by which a ~~vendor/lessor~~ prospective lessor who submitted a bid in response to a particular RFB ~~may~~ protest the ~~selection~~ award of the respective lease. Protests must be made, in writing, to the Leasing Section, within twenty (20) days of the date that the Leasing Section mails notification of the award of a lease pursuant to Section 4.4.g above. The Leasing Section shall have fifteen (15) days consider the protest, but may ultimately deny the protest. ~~as determined by the Leasing Section. Should the protestor so choose~~ If the Leasing Section denies the protest, it shall provide the protestor with written notification of the denial. ~~They~~ Upon receipt of written notification that its protest was denied by the Leasing Section, the protestor may request an administrative hearing ~~on the protest~~ to review the Leasing Section's denial by filing a written request with the Leasing Section within fifteen (15) days of the Leasing Section's written notification of denial. The deadline for filing a request for an administrative hearing shall be stated in the written notification of denial

§148-2-6. Lease

6.1. General - A lease shall be prepared by the Leasing Section. 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 fiscal year, the following terms and conditions, in substance, shall be included in the lease:

6.1.a The Department of Administration shall have the right to cancel the lease without further obligation on the part of the State upon thirty (30) days prior written notice, such notice being given at least thirty (30) days prior to the last day of the succeeding month.

6.1.b The Department of Administration shall have the right to immediately cancel the lease 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.

6.1.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.

6.1.d The lease may be executed in any number of counterparts, as determined by the Leasing Section, 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.

6.2. Execution by the Lessor

6.2.a When the lessor is a corporation, the lease 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.

6.2.b When the Lessor is a limited liability company, the lease shall be executed by ~~the owner thereof~~ a member authorized to enter into contracts on behalf of the limited liability company.

6.2.c When the lessor is a partnership, any partner authorized to bind the partnership shall execute the lease, and, if possible, all partners should execute. In a limited partnership, the general partner may execute the lease on behalf of the limited partners.

6.2.d When a lessor is an individual, his/her marital status must be stated on the request for space form. If a lessor is married, his/her spouse must also execute the lease, even if the subject property has been deeded to only one of the parties.

6.2.e If an individual or corporation other than the owner of the property is authorized to execute the lease on behalf of the owner and/or receive rentals and notices, written authorization, duly signed by the property owner, shall be filed with the Leasing Officer at the time of execution of the lease by the lessor.

6.3. Execution by Lessee - The Secretary of Administration or the Director of the Purchasing Division of the Department of Administration shall execute each contract of 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 Secretary of Administration or his/her designee or Director of Purchasing on behalf of a spending unit will in no way make either the Secretary or the Department of Administration 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 Secretary or his/her designee or Director executed the lease.

6.4. Approval as to Form - After execution by the Secretary of Administration or his/her designee or the Director of the Purchasing Division, 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 Leasing Section, with copies being sent to the lessor, office of the Auditor if the term of the lease, including any options, is for more than six months, and the spending unit.

§148-2-7. Cancellation.

7.1 In order to allow sufficient delivery time and to comply with the conditions of the lease, the spending unit requesting cancellation must submit a letter requesting cancellation to the Leasing Officer. The letter must be signed by the chief executive officer of the spending unit or his/her designee. The Secretary of Administration or his/her designee or the Director of the Purchasing Division shall send a certified letter to the lessor at the last known address on file with the Leasing Officer, notifying the lessor of the cancellation and the effective date of the

cancellation. This request should be sent to the Leasing Section no later than forty-five (45) days prior to the requested cancellation date.

§148-2-8. Permanent Changes.

8.1. A spending unit shall not order or make permanent changes of any type to space that is leased in accordance with these regulations without the prior approval of the Secretary of Administration. The Secretary of Administration shall determine that the change is necessary for the proper, efficient and economically sound operation of the spending unit before granting such approval.

8.2. A permanent change means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of State funds for the installation of any tangible thing which cannot be economically or legally removed when the space is vacated by the spending unit.

§148-2-9. Delegation of Authority for Leasing of Temporary Space.

9.1. The Secretary of Administration 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, when the rental and other costs for that space do not exceed two thousand dollars (\$2,000.00), unless an agreement or contract must be executed. Such leases shall not have a term exceeding six (6) months. If an agreement or contract must be executed to obtain the space, the agreement or contract must be approved by the Leasing Section. The spending unit shall utilize the form made available by the Leasing Section to process payment.

§148-2-10. Agreements Between State Spending Units.

10.1. Leases between spending units of the State shall be prepared by the Leasing Section, ~~unless otherwise directed by the Leasing Section,~~ and shall be signed by the Secretary of Administration or his/her designee ~~or the Director of the Purchasing Division~~ on behalf of the lessee and by the chief executive officer of the lessor.

§148-2-11. Emergency Situations.

11.1. ~~In the event of a natural disaster or other emergency situation as determined by the Secretary, the Department of Administration~~ Leasing Section shall be exempt from the normal Leasing rules and procedures when an emergency situation makes compliance therewith impossible. An emergency situation shall be deemed to exist only in cases where the head of an agency already occupying leased premises certifies in writing to the Leasing Section that:

- a The leased premises have been damaged or destroyed by fire, windstorm, or other casualty; or
- b The leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and regulations and cannot be made safe within a reasonable time; and

- c An emergency, other than one described in paragraphs a and b above, exists, and the Governor has given his express written authorization of an emergency lease.

The certificate shall state the details of the emergency, and the head of the agency shall include the Governor's written authorization along with the certificate sent to the Leasing Section, if required. ~~In the event of a natural disaster or emergency situation, the Secretary of Administration~~ Leasing Section 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.

11.2. The spending unit shall notify the Leasing Section at the earliest possible date of any emergency situation and need to lease space or to relocate from an existing lease. This notice will allow the Leasing Section to better assist the spending unit and determine space that may be available in a given area. ~~if necessary.~~

11.3. At no time shall ~~the spending unit does not~~ have the authority to negotiate with a prospective lessor on behalf of the State. ~~without the consent of the Leasing Section or the Secretary of the Department of Administration.~~

11.4. When possible, the Leasing Section will place a Class II legal advertisement in the newspaper soliciting proposals for space prior to entering into lease agreements. ~~In addition, when possible, the Department of Administration, with assistance of the spending unit, Leasing Section will obtain three proposals in writing prior to entering into lease agreements.~~

~~11.5. When possible, the Department of Administration will put a Class II legal advertisement in the newspaper soliciting proposals for space over 10,000 square foot prior to entering into lease agreements.~~

§148-2-12. Compliance

12.1. The Leasing Section shall develop compliance standards and shall monitor all leased properties on a systematic and regular basis to insure that all properties continue to conform to these standards. The compliance standards will be included as part of bid selections. A procedure for processing violations shall be developed by the Leasing Section and shall include; penalties up to and including an amount not to exceed the amount of the monthly rental (or the ability to withhold that amount); cancellation of the lease agreement; and relocation of the spending unit at the discretion of the Secretary of Administration.

12.2. The compliance standards shall include at a minimum:

12.2.a. Codes and Standards

12.2.a.1. Facilities shall conform to the requirements of the State Building Code, which incorporates the following:

12.2.a.1.a. The International Building Code*, First Edition, 2000.

12.2.a.1.b. The International Plumbing Code, First Edition, 2000.

- 12.2.a.1.c. The International Mechanical Code, First Edition, 2000.
- 12.2.a.1.d. The International Fuel Gas Code*, First Edition 2000.
- 12.2.a.1.e. The International Property Maintenance Code, First Edition, 2000.
- 12.2.a.1.f. The International Energy Conservation Code, First Edition, 2000.

*See the State Building Code for exceptions.

12.a.2 Facilities shall conform to the requirements of the WV State Fire Code (effective May 1, 1998).

12.a.3. Changes in the State Building Code or State Fire Code will be automatically adopted as new leasing standards.

12.2.b. Quality and Appearance

12.2.b.1. The building must be well maintained and should project a professional and aesthetically pleasing appearance, including adequate landscaping and grounds maintenance if applicable.

12.2.c. Minimum Heating, Ventilating and Air Conditioning Requirements

12.2.c.1. All occupied spaces shall ~~meet the following design conditions~~ maintain the following indoor air temperatures:

- 12.2.c.1.a. Winter Design—Heating RequirementsConditions — Between 68 degrees Fahrenheit and 74 degrees Fahrenheit during the heating season.~~75 deg F DB at an outside temperature of 7 deg F DB. Those areas to be heated and ventilated, or heated only, to be maintained at 68 deg F DB.~~
- 12.2.c.1.b. Summer Cooling Requirements Design—Conditions — Between 74 degrees Fahrenheit and 78 degrees Fahrenheit during the cooling season.~~75 deg F DB at 50% RH at outside temperature of 94 deg F DB and 78, deg F WB.~~

12.2.c.2. Minimum Indoor Air Quality Requirements (IAQ) - The lessor shall control contaminants at the source and/or operate the leased space in such a manner that the indicator levels for Carbon monoxide (CO), carbon dioxide (CO₂), an formaldehyde (HCHO) are not exceeded. The indicator levels for office areas are as follows: CO-9 parts per million (PPM) time weighted average (TWA-8-hour sample); CO₂-1,000 PPM (TWA); HCHO-0.1 PPM-(TWA) The Lessor shall promptly investigate IAQ complaints and shall implement controls including

alteration of building operating procedures (e.g. adjusting fresh air intakes, adjusting air distribution, cleaning and maintaining HVAC equipment etc.). The Leasing Section reserves the right to conduct independent IAQ assessments and detailed studies in space it occupies, as well as in space serving the leased space (e.g. common use areas, mechanical rooms, HVAC systems, etc.). The lessor shall assist the Leasing Section in making said assessments by making available information on building operations and Lessor activities, and by providing access to space, for assessment and testing, if required, and by implementing corrective measures when needed.

12.2.d. Lighting

12.2.d.1. The following light levels shall be provided: Interior Offices-50 foot candles at working surface height throughout, Exterior Spaces-2.5 foot candles (average) at five feet above grade in all parking and pedestrian areas.

12.2.d.2. Lighting Fixtures: General Office fixtures shall be 2' x 2' and/or 2' x 4' recessed parabolic fluorescent fixtures and recessed down lights on dimmers- at Conference Rooms (preferred).

12.2.e. Fire Protection - The building shall provide a complete, automatic fire protection system including fire sprinklers and alarms, standpipe and fire department connections where required by the State Fire Code. A Certificate of Occupancy and any subsequent inspection reports from the office of the State Fire Marshal shall be, available for review by the agency prior to occupancy. At the spending unit's request, an inspection by the State Fire Marshal may be required prior to occupancy and the expense shall be borne by the lessor.

12.3. The Secretary of Administration or his/her designee shall disbar the lessor from entering into any other lease with the State of West Virginia for failing to meet the standards set forth herein or failing to comply with all applicable rules and regulations for a period of one (1) year if the lessor fails to cure the non-compliance in a reasonable time following receipt of written notice of said non-compliance.

12.4. All lessors shall comply with the Purchasing Division vendor registration requirements, workers compensation requirements, and all other applicable statutes and regulations.

12.5. The Leasing Section shall send a report to the Secretary of Administration or his/her designee providing compliance information regarding all lessors on an annual basis.

§148-2-13. Existing Leases

All existing leases which do not meet the compliance standards established by the Leasing Section, must submit a timetable for compliance at least six (6) months prior to the expiration of an existing lease or by July 1, 2008 whichever comes first. This timetable must be approved by the Leasing Section prior to execution of a new lease agreement with an existing lessor. All existing leaseholders will be notified by the Leasing Section of compliance criteria

prior to implementation of the standards.

REQUISITION FOR SPACE

Agency Name: _____

Address: _____

Contact Person: _____ **Position:** _____ **Telephone:** _____

Net Rentable Square Feet Required: _____

Number of Offices Required: _____ **Size of Offices Requested:** _____

Car Spaces: _____

Electric Load (number & load in amps/watts/size) of all copiers, map machines, mailing equipment, etc.:

Dedicated circuits & size amperage required: _____

Number of computers, faxes, etc: _____

Number of copiers and electric needs to supply them: _____

Is there a DP/ main frame computer room: _____

Hours of occupancy per week/ by day: _____

Overtime Usage (over 40 hours): _____

Do you occupy the leased space on Saturday? _____ **Sunday?** _____

Lounge area convenience appliances (coffee pots, microwaves, toasters, ovens, refrigerators, etc..)
Please describe and list items you will use in this area:

Date to occupy: _____

Written justification for request: _____

PROPERTY DISCLOSURE

Building Name: _____

Address: _____

Owned By: _____

Managed By: _____ **Leased By:** _____

Contact Person: _____ **Telephone:** _____

DESCRIPTION OF BUILDING:

Type: _____

Size: **Gross:** _____ **Sq. Ft.** **Net Rentable:** _____ **Sq. Ft.**

Method of Area Measurement: _____

Parking: _____

On-Site Amenities: _____

Age: _____ **years** **Class:** _____

DESCRIPTION OF TENANTS:

Major Tenants: _____

Number of Tenants: _____ **Mix:** _____

Average Sq. Ft. Occupied: _____

LOCATION ANALYSIS (Transportation, Area, Building Class)

FACILITIES ANALYSIS:

Heating: _____ **AC:** _____

Special Electrical: _____

Building Standard Tenant Finish: _____

PROPERTY DISCLOSURE

Page 2

SERVICES PROVIDED BY OWNER:

- All utilities included in rent
- All utilities except electricity
- All utilities except: _____
- Hot and cold water
- Elevator service: # of Cabs: _____
- Freight Elevator Service: # of Cabs: _____
- Cleaning service
- Security (describe): _____
- # of guards: _____
- On-site Management
- On-site leasing:
- Storage:

RENTAL ANALYSIS:

As of: _____

Vacancy: Sq. Ft: _____ % Total Sq. Ft.: _____
Age of vacancies: _____

Average rate occupied space per net rentable area: \$ _____ Per sq. ft.
Range: \$ _____ to \$ _____ Per sq. ft.

Asking rates for vacant space: _____

Terms: _____ Workletter _____ Per sq. ft

Escalations: _____

Concessions: _____

COMMENTS:

Prepared By: _____ Date: _____

SITE EVALUATION FORM

Prepared By: _____

Date: _____

SITE:

1. Building name						
2. Address						
3. Age						
4. Management company						

TERMS:

5. Net rentable area						
6. Sq. Ft. vacant Percentage of whole						
7. Rental rate Workletter						

EXTERIOR:

8. Exterior appearance						
9. Parking						
10. Transportation						
11. Neighborhood atmosphere and amenities						
12. Miscellaneous						
13. Overall rating						

INTERIOR:

14. Interior finish						
15. Cleanliness						
16. Acoustics						
17. Lobby appearance						
18. Character of tenancy						
19. Amenities: shops, food, etc						

MECHANICAL & STRUCTURAL:

20. Number of floors						
21. Floor size						
22. Floor load						
23. Elevator Appearance Number of Elevators						
24. Lighting						
25. Electrical Service						
26. Technological capabilities Rating: A, B, C						
27. HVAC						
28. Loading Dock Freight elevator						

SERVICES:

29. Life support						
30. Security						
31. Janitor						
32. Storage						

TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION
LEASING SECTION

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 2
LEASING SPACE ON BEHALF OF STATE SPENDING UNITS

§148-2-1. 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, except for the division of highways, the higher education policy commission, the lottery commission, or a spending unit of the state with independent leasing authority pursuant to the code of West Virginia. This exemption does not apply to the office space of spending units of the executive branch.

1.2. Authority. -- W. Va. Code §5A-3-42.

1.3. Filing Date. --

1.4. Effective Date. --

§148-2-2. Request for Space.

2.1. Generally.

2.1.a A spending unit desirous of leasing any ground, building, office space or other space shall submit to the Leasing ~~Officer~~ Section of the Department of Administration a completed Requisition for Space on the form provided by the Leasing ~~Office~~, Section, signed by the chief executive officer spending unit or his/her designee, no later than two ~~(2) months~~ six (6) months prior the date the space is required, ~~except as provided in Section 8 of these regulations. Whenever possible, alternate space should be listed on the requisition.~~

2.1.b The requisition shall contain a certification by the chief executive officer of the spending unit or his/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 contract or lease, and that satisfactory space is not available on grounds or in buildings now owned or leased by the State.

~~2.2. New Leases:~~

~~_____ A request for new space shall include a floor plan, specifications and any other available information describing the space, and a letter justifying the agency's need for leasing the new space.~~

~~2.3. Renewal of Existing Leases:~~

2.1.c A request to renew an existing lease with or without changes shall be submitted by requisition no later than ~~two (2)~~ six (6) months prior to expiration of the existing lease. The Leasing Section 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 upon the determination of the necessity to seek proposals for new leases. Spending units seeking a new lease must give the Leasing Section six (6) months notice.

§148-2-3. Fair Rental Market Value and Appraisals.

3.1 Before executing any rental contract or lease, the Secretary of Administration shall determine the fair rental market value for the rental

of the requested grounds, buildings, office space or other space, in the condition in which they exist. To determine the fair rental market value of the space requested, the Leasing Section shall conduct market surveys prior to award. If a market survey of the area is impracticable, an appraisal shall be conducted by a licensed real estate appraiser. the Secretary of Administration may appoint a real estate appraiser to make such determination. The cost of the appraisal shall be borne by the spending unit requesting the space and the appraisal shall be based on the condition in which the space exists and any improvements required by the spending unit. If an appraisal is conducted, the Leasing Section may require the spending unit to pay for the cost of the appraisal.

3.2 No contract or lease shall be entered into if the rental exceeds the fair rental market value of the space requested, unless approved by the Secretary of Administration with proper written justification, such justification may include, but is not limited to, the specifications outlined in 4.2.d.

§148-2-4. Authority, Selection Acquisition, Negotiation, Preparation and Occupancy Inspection and Award.

4.1. Authority.

The Secretary of Administration shall have the sole 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 except those spending units that are exempt by West Virginia State Code.

4.2. Selection: Acquisition

4.2.a The spending unit shall notify the Leasing Officer at the earliest possible date of any interest to lease space or to relocate from an existing lease. This notice will allow the Leasing Officer to better assist the spending unit and determine space that may be available in a given area. The spending unit shall provide the Leasing Section with a request on a form provided by the Leasing Section to justify their request. The

Leasing Section may require further justification or may approve the request as written.

4.2.b The Leasing Officer shall solicit proposals on any space to be leased when considered by the Leasing Officer in the best interest of the State. If the request is approved, the spending unit may submit criteria for rental space. The Leasing Section shall review criteria and may include this criteria in the bid specifications requirements.

4.2.c The Leasing Officer shall put a Class II legal advertisement in the newspaper soliciting proposals for any office space that is 10,000 square foot or more prior to entering into any lease agreements. The Leasing Section shall issue a solicitation of interest in the State Purchasing Bulletin and by whatever other means it so chooses in order to elicit responses from the largest number of qualified bidders for office space in excess of 7,000 square feet net. Renting space under 7,000 square feet net does not have to be bid but must meet all specifications and other requirements. The spending unit must also provide a detailed list of at least three (3) other sites considered along with a letter of justification for the site selected.

4.2.d. The Leasing Section shall provide bid specifications to all bidders. Specifications may include consideration for revitalization of downtown areas and historical areas. Special consideration may also be given to facilities that are on the National Register of Historic Places. The Leasing Section will evaluate and rate all bid proposals . If the spending unit has requested a sole source, it must be approved by the Secretary of Administration with written justification.. The spending unit may request to participate in this process.

4.2.e. The spending unit may select any bidder from the top three rated bidders, provided that the bid selected shall not exceed the low bid by more than 5%. If the spending unit elects not to select a bidder, the Leasing Section shall make the selection on behalf of the spending unit.

4.3. Negotiation.

4.3.a. The Leasing Officer shall have full authority to negotiate with a prospective lessor for a price that does not exceed the fair rental value of the space or the estimated cost submitted by the requesting agency. The Leasing Section and/or spending unit may negotiate a rental agreement with the selected bidder. If a negotiated rental agreement cannot be reached within fifteen (15) days of initiating of said negotiations, the Leasing Section and/or spending unit shall enter into negotiations with one of the remaining top three bidders. The successful bid shall not exceed 5% of any remaining bid.

4.3.b. Any escalation clauses during the negotiation shall require supporting documentation as evidence of the escalation prior to issuance of a rental increase based on the escalation. Escalation clauses shall be limited to real property taxes and building utilities.

4.3.c. A letter of intent shall be issued to the successful bidder within thirty (30) days of the selection. All bids shall remain confidential until the issuance of a letter of intent.

4.4. Notification.

The Leasing Office Section shall provide written notification of its site selection recommendation to the spending unit and all bidders within thirty (30) days of the evaluation of the spending unit's request for space which includes the review of bids, evaluation of bids by the Leasing Office Section and any negotiations conducted by the Leasing Office pursuant to Subsection 4.3 of this rule prior to final location selection.

4.5 Preparation Inspection and Award

~~Preparation and improvements to a prospective location shall be the responsibility of the lessor, unless otherwise agreed. When the prospective location is to be newly constructed or renovated office space, the layout and specifications shall generally be in accordance with~~

~~Section 5 of these regulations, as determined by the Leasing Officer:~~

~~———— The Leasing Officer may request the representative of the requesting agency to coordinate preparation of the space and report when the space complies with the spending unit's specifications and is suitable for occupancy.~~

Prior to the award of a contract the Leasing Section shall inspect the potential site to insure that all bid specifications have been met. If the site does not meet bid specifications the bidder shall correct said deficiencies at bidder's sole expense. If said deficiencies are not corrected, negotiation may begin with another vendor as described in section 4.3. Once all deficiencies, if any, are corrected, execution of a lease may proceed.

~~4.6. Occupancy.~~

~~One of the requirements issued to the prospective lessor during negotiation will be to prepare the space for occupancy, allowing approximately two (2) weeks for the agency to establish the offices and make final adjustments prior to formal opening. The spending unit will not occupy the leased premises until authorized to do so by the Leasing Officer. The Leasing Office shall provide written notification to the spending unit regarding the agency's authorization to occupy the space within thirty (30) days of an evaluation period.~~

~~§148-2-5. Office Space Layout and Specifications. Protests~~

~~5.1. When a requisition for new office space is submitted, it shall specify the types of offices needed, including layout and specifications. Prior to space being renovated, detailed scale drawings shall be submitted to the Leasing Officer, and prior to space being newly constructed, detailed scale drawings or architectural and/or engineering specifications shall be submitted to the Leasing Officer for approval. Leased premises must~~

~~comply with all state and local laws and regulations. The Leasing Section shall establish a process by which a vendor/lessor may protest the selection of a lease. Protests must be made, in writing, to the Leasing Section, within ten (10) days of the award of a lease. The Leasing Section shall consider the protest but may deny the protest as determined by the Leasing Section. Should the protestor so choose, they may request an administrative hearing on the protest.~~

~~5.2 The Leasing Officer shall establish a uniform standard of measurement for all leased property.~~

§148-2-6. Lease.

6.1. General.

A lease shall be prepared by the Leasing Officer Section. 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 fiscal year, the following terms and conditions, in substance, shall be included in the lease:

6.1.a The Department of Administration shall have the right to cancel the lease without further obligation on the part of the State upon thirty (30) days prior written notice, such notice being given at least thirty (30) days prior to the last day of the succeeding month.

6.1.b The Department of Administration shall have the right to immediately cancel the lease 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.

6.1.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.

6.1.d The lease may be executed in any number of counterparts, as determined by the Leasing Officer Section, 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.

6.2. Execution by the Lessor.

6.2.a When the lessor is a corporation, the lease 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.

6.2.b When the Lessor is a company, the lease shall be executed by the owner thereof.

6.2.c When the lessor is a partnership, any partner authorized to bind the partnership shall execute the lease, and, if possible, all partners should execute. In a limited partnership, the general partner may execute the lease on behalf of the limited partners.

6.2.d When a lessor is an individual, his/her marital status must be stated on the request for space form. If a lessor is married, his/her spouse must also execute the lease, even if the subject property has been deeded to only one of the parties.

6.2.e If an individual or corporation other than the owner of the property is authorized to execute the lease on behalf of the owner and/or receive rentals and notices, written authorization, duly signed by the property owner, shall be filed with the Leasing Officer at the time of execution of the lease by the lessor.

6.3. Execution by Lessee.

The Secretary of Administration or the Director of the Purchasing Division of the Department of Administration shall execute each contract of 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 Secretary of Administration or his/her designee or Director of Purchasing on behalf of a spending unit will in no way make either the Secretary or the Department of Administration 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 Secretary or his/her designee or Director executed the lease.

6.4. Approval as to Form and Distribution.

After execution by the Secretary of Administration or his/her designee or the Director of the Purchasing Division, 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 Leasing ~~Officer~~ Section, with copies being sent to the lessor, office of the Auditor if the term of the lease, including any options, is for more than six months, and the spending unit.

§148-2-7. Cancellation.

7.1 In order to allow sufficient delivery time and to comply with the conditions of the lease, the spending unit requesting cancellation must submit a letter requesting cancellation to the Leasing ~~Officer~~ Officer. The letter must be signed by the chief executive officer of the spending unit or his/her designee. The Secretary of Administration or his/her designee or the Director of the Purchasing Division shall send a certified letter to the lessor at the last known address on file with the Leasing ~~Officer~~ Officer, notifying the lessor of the cancellation and the effective date of the cancellation. This request should be sent to the Leasing ~~Officer~~ Section no later than forty-five (45) days prior to the requested cancellation date.

§148-2-8. Permanent Changes.

8.1 A spending unit shall not order or make permanent changes of any type to space that is leased in accordance with these regulations without the prior approval of the Secretary of Administration. The Secretary of Administration

shall determine that the change is necessary for the proper, efficient and economically sound operation of the spending unit before granting such approval.

8.2 A permanent change means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of State funds for the installation of any tangible thing which cannot be economically removed when the space is vacated by the spending unit.

§148-2-9. Delegation of Authority for Leasing of Temporary Space.

9.1 The Secretary of Administration 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, when the rental and other costs for that space do not exceed two thousand dollars (\$2,000.00) ~~or when necessary to meet bona fide emergencies arising from unforeseen causes~~, unless an agreement or contract must be executed. Such leases shall not have a term exceeding six (6) months. If an agreement or contract must be executed to obtain the space, the agreement or contract must be approved by the Leasing ~~Officer~~ Section. The spending unit shall utilize the form made available by the Leasing ~~Officer~~ Section to process payment.

§148-2-10. Agreements Between State Spending Units.

10.1 Leases between spending units of the State shall be prepared by the Leasing ~~Officer~~ Section, unless otherwise directed by the Leasing ~~Officer~~ Section, and shall be signed by the Secretary of Administration or his/her designee or the Director of the Purchasing Division on behalf of the lessee and by the chief executive officer of the lessor.

§148-2-11 Emergency Situations.

11.1 In the event of a natural disaster or other emergency situation as determined by the Secretary, the Department of Administration shall be exempt from the normal Leasing rules and procedures. In the event of a natural disaster or emergency situation, the Secretary of Administration 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.

11.2 The spending unit shall notify the Leasing ~~Officer~~ Section at the earliest possible date of any emergency situation and need to lease space or to relocate from an existing lease. This notice will allow the Leasing ~~Officer~~ Section to better assist the spending unit and determine space that may be available in a given area if necessary.

11.3 The spending unit does not have the authority to negotiate with a prospective lessor on behalf of the State without the consent of the Leasing ~~Office~~ Section or the Secretary of the Department of Administration.

11.4 When possible, the Department of Administration, with assistance of the spending unit, will obtain three proposals in writing prior to entering into lease agreements.

11.5 When possible, the Department of Administration will put a Class II legal advertisement in the newspaper soliciting proposals for space over 10,000 square foot prior to entering into lease agreements.

§148-2-12. Compliance.

12.1 The Leasing Section shall develop compliance standards for office space and shall monitor all leased properties on a systematic and regular basis to insure that all properties continue to conform to these standards. All non-typical space, such as warehouse, storage, laboratory, or classroom space shall be exempt from these compliance standards. The compliance standards will be included as part of bid selections. A procedure for processing violations shall be

developed by the Leasing Section and shall include: penalties up to and including an amount not to exceed the amount of the monthly rental (or the ability to withhold that amount); cancellation of the lease agreement; and relocation of the spending unit at the discretion of the Secretary of Administration.

12.2 The compliance standards shall include, at a minimum:

A. Codes and Standards

1. Facilities shall conform to the requirements of the State Building Code, which incorporates the following:

a. The International Building Code*, First Edition, 2000.

b. The International Plumbing Code, First Edition, 2000.

c. The International Mechanical Code, First Edition, 2000.

d. The International Fuel Gas Code*, First Edition, 2000.

e. The International Property Maintenance Code, First Edition, 2000.

f. The International Energy Conservation Code, First Edition, 2000.

*See the State Building Code for exceptions.

2. Facilities shall conform to the requirements of the WV State Fire Code (effective May 1, 1998).

3. Changes in the State Building Code or State Fire Code will be automatically adopted as new leasing standards.

B. Quality and Appearance

1. The building must be well maintained and should project a professional and aesthetically pleasing appearance, including adequate landscaping and grounds maintenance if applicable.

C. Minimum Heating, Ventilating and Air Conditioning Requirements

1. All occupied spaces shall meet the following design conditions:

a. Winter Design Conditions - 75 deg F DB at an outside temperature of 7 deg F DB. Those areas to be heated and ventilated, or heated only, to be maintained at 68 deg F DB.

b. Summer Design Conditions - 75 deg F DB at 50% RH at outside temperature of 94 deg F DB and 78 deg F WB.

2. Minimum Indoor Air Quality Requirements (IAQ)

The lessor shall control contaminants at the source and/or operate the leased space in such a manner that the indicator levels for Carbon monoxide (CO), carbon dioxide (CO₂), and formaldehyde (HCHO) are not exceeded. The indicator levels for office areas are as follows: CO- 9 parts per million (PPM) time weighted average (TWA-8-hour sample); CO₂-1,000 PPM (TWA); HCHP-0.1 PPM (TWA). The Lessor shall promptly investigate IAQ complaints and shall implement controls including alteration of building operating procedures (e.g. adjusting fresh air intakes, adjusting air distribution, cleaning and maintaining HVAC equipment etc.). The Leasing Section reserves the right to conduct independent IAQ assessments and detailed studies in space it occupies, as well as in space serving the leased space (e.g. common use areas, mechanical rooms, HVAC systems, etc.). The lessor shall assist the Leasing Section in making said assessments by making available information on building operations and Lessor activities, and by providing access to space for assessment and testing, if required, and by implementing corrective measures when needed.

D. Lighting

1. The following light levels shall be provided: Interior Offices-50 footcandles at working surface height throughout. Exterior Spaces-2.5 footcandles (average) at five feet above grade in all parking and pedestrian areas.

2. Lighting Fixtures: General Office fixtures shall be 2' x 2' and/or 2' x 4' recessed parabolic fluorescent fixtures and recessed downlights on dimmers at Conference Rooms (preferred).

E. Fire Protection

The building shall provide a complete, automatic fire protection system including fire sprinklers and alarms, standpipe and fire department connections where required by the State Fire Code. A Certificate of Occupancy and any subsequent inspection reports from the office of the

State Fire Marshal shall be available for review by the agency prior to occupancy. At the spending unit's request, an inspection by the State Fire Marshal may be required prior to occupancy and the expense shall be borne by the lessor.

12.3 The Secretary of Administration or his designee shall disbar the lessor from entering into any other lease with the State of West Virginia for failing to meet the standards set forth herein or failing to comply with all applicable rules and regulations.

12.4 All lessors shall comply with the Purchasing Division vendor registration requirements, workers compensation requirements, and all other applicable statutes and regulations.

12.5 The Leasing Section shall send a report to the Secretary of Administration or his/her designee providing compliance information regarding all lessors on an annual basis.

148-2-13 Existing Leases

All existing leases which do not meet the compliance standards established by the Leasing Section, must submit a timetable for compliance at least 6 months prior to the expiration of an existing lease or by July 1, 2008 whichever comes first. This timetable must be approved by the Leasing Section prior to execution of a new lease agreement with an existing lessor. All existing lease holders will be notified by the Leasing Section of compliance criteria prior to implementation of the standards.