

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

2007 JUN 25 AM 10:25

OFFICE OF THE
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 5A-10-11

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 19

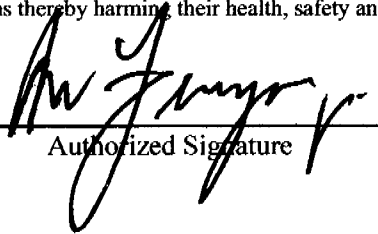
TITLE OF RULE BEING PROPOSED: Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The passage of Senate Bill 582 created a Real Estate Division within the Department of Administration. The proposed emergency rules are necessary in order for the Real Estate Division to carry out their responsibilities and to implement the provisions of the code. Without having the emergency rules in place, it will cause substantial harm to the public interest as no one will know the proper procedures that should be followed in order to lease space or acquire property. If the procedures established in the rules are not followed then spending units may be required to remain in unsatisfactory space or spend additional funds unnecessarily. The emergency rules are necessary to preserve the public peace, health, safety, and welfare of the citizens of the state of West Virginia as the spending of funds unnecessarily could result in taking away funding for other much needed projects and programs needed for our citizens thereby harming their health, safety and welfare as critical programs may be cut due to the lack of funding.

Use additional sheets if necessary


Authorized Signature

Agency: Department of Administration
Rule Type: Legislative

Title Number: 148
Cite Authority: 5A-10-11

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The Department of Administration proposes emergency rules for Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units. During the 2007 regular session of the legislature, Senate Bill 582 passed which added a new article in the WV Code for the creation of a Real Estate Division within the Department of Administration. The proposed rules are necessary in order for the Real Estate Division to carry out their responsibilities and implement the provisions established in the Code.

The proposed rules provide for methods to request space; to determine the fair market values; negotiation, inspection and award; cancellation; permanent changes; delegation of authority; agreements between spending units; emergency situations; compliance; acquisition of real property; and accounting and recording keeping. The rules are new, therefore, strike throughs and inserts are not included.

The passage of SB 582 during the 2007 session made major statutory changes in the Code as it relates acquiring of space and real property and the rules must be modified to address those changes so they are consistent with the current law. Without having the emergency rules in place, it will cause substantial harm to the public interest as the current rules are inconsistent with the new statute and Leasing Coordinators for the State and Lessors of Real Estate who do business with the state may inadvertently follow the wrong process in submitting their requests for space and property. This could result in confusion, requests being thrown out and perhaps resulting lawsuits against the state for failure to follow the appropriate processes fairly for all Lessors of Real Estate. If a request for space is thrown out then the state could be required to enter into a lease or purchase contract to a higher priced Lessor. Additionally, SB 582 gave authority for emergency rules as it relates the Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units. Emergency rules are necessary in order for the Department of Administration to be authorized to carry out the requirements now set forth in the Statute and to preserve the public

peace, health, safety and welfare of the citizens of the State of West Virginia. Without the emergency rules the State could be required to expend public funds unnecessarily for possible defending of lawsuits and to pay higher costs for space and real property which could result in taking away funding for other much needed projects for our citizens thereby harming their health, safety and welfare as critical programs may be cut due to the lack of funding.



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

JOE MANCHIN III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

July 12, 2007

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

OFFICE OF THE
SECRETARY OF STATE

2007 JUL 12 PM 4:04

FILED

Re: Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units, 148CSR19

Dear Secretary Ireland,

Please allow this correspondence to serve as the Department of Administration's response to your request for additional information explaining why the Department of Administration believes that the need for the proposed emergency rules referenced above constitute an emergency.

The prior rules setting forth the practices and procedures for leasing real property are now invalid as the statutory authority for said was repealed on July 1, 2007. Consequently, if the proposed rules are not adopted as emergency rules, then the Real Estate Division will have no rules in place to govern the procedures to be followed until the agency approved legislative rules are passed during the 2008 legislative session. A chief concern of the Department of Administration is a potential perception of inconsistency, accountability or unfairness that may result when dealing with lessors and the agencies for whom the Division is leasing real property if no rules are in place. Accordingly, the Department of Administration believes that substantial harm to the public interest may result from a lack of rules necessary to assure the citizens of West Virginia that the Real Estate Division has procedures which will be followed, and that all lessors and tenants of real estate will be treated in a fair and consistent manner.

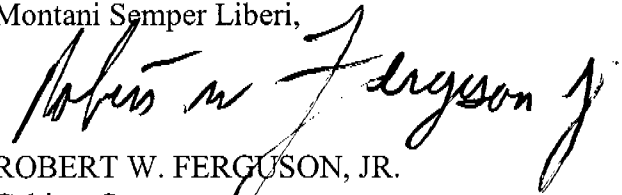
The Real Estate Division was created by the legislature to not only eliminate duplication and save the State administrative costs, but also to establish standards, procedures and processes to ensure that the State is getting the best space and property for the lowest cost possible. To fulfill this mission, there are certain items included in the proposed emergency rules which we believe must be in effect prior to the adoption of the proposed legislative rules during the 2008 legislative session. The proposed emergency rules elaborate on what is required in the agency's request for space so that the Executive Director of the Real Estate Division can efficiently locate adequate space for the agency. Without adequate information

from the agencies as required by the proposed emergency rule, the Executive Director will not be able to properly perform his or her functions as required by statute.

Another area of immediate need set forth in the proposed emergency rule identifies the method by which the Executive Director determines the "fair rental value" of potential rental space, which by statute, the rental cannot exceed. Without the proposed emergency rule to specify how the Executive Director determines such value, which includes the ability to conduct an appraisal, there may be a perceived subjectivity in the fulfillment of this legislatively-created duty. Furthermore, the proposed emergency rule sets forth time-sensitive deadlines for the various agencies to follow when requesting leased space. Those deadlines are critical as the Executive Director needs adequate notice from the agencies to locate the requested space and to negotiate with the lessors as required by statute.

Thank you very much for your consideration of the proposed emergency rules. If you have any questions, please do not hesitate to contact my Assistant General Counsel, William Hicks, at 558-4331.

Montani Semper Liberi,

A handwritten signature in black ink that reads "Robert W. Ferguson, Jr." The signature is written in a cursive style with a large, stylized initial 'R'.

ROBERT W. FERGUSON, JR.
Cabinet Secretary

TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION
REAL ESTATE DIVISION

2007 JUN 25 AM 10: 20

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

SECRETARY OF STATE

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

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

1.3. Filing Date. --

1.4. Effective Date. --

§148-2-2. Request for Leased Space.

2.1. Generally.

2.1.a. A spending unit desiring to lease any ground, building, office space or other space shall submit to the Real Estate Division of the Department of Administration a completed

Requisition for Leased Space on the form provided by the Real Estate Division, signed by the chief executive officer of the spending unit or his or her designee, no later than six (6) months prior the date the space is required.

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

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

§148-2-3. Authority, Lease Acquisition, Negotiation, Inspection and Notification.

3.1. Authority.

The Executive Director has the sole authority to select and to acquire by lease, in the name of the State, all grounds, buildings, office

space or other space for and on behalf of any spending unit except those spending units exempted under W. Va. Code §5A-10-2.

3.2. Lease Acquisition and Lessor Registration.

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

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

3.2.c. Following approval of a spending unit's request for leased space, the Executive Director shall find and select appropriate space for the spending unit by the manner in which he or she determines to be most efficient and effective for the spending unit's request. The Executive Director may issue a Solicitation of Interest in the State Purchasing Bulletin in order to elicit the largest number of responses from lessors registered as vendors with the Purchasing Division as set forth in Subsection 3.2.f. of this Rule. The Executive Director may further

advertize the Solicitation of Interest by whatever other means he or she chooses in order to elicit the largest number of responses from potential bidders.

3.2.d. Where a Solicitation of Interest is issued, the Executive Director shall provide bid specifications to all bidders. The Executive Director shall require that each bid clearly disclose the Usable Square Feet offered to the spending unit and the corresponding Rentable Square Feet, as those terms are defined in the then current Building Owners and Managers Association Method for Measuring Floor Area and Office Buildings. Bid specifications may include, at the Executive Director's discretion, special considerations, including but not limited to, consideration for revitalization of downtown areas and historical areas, and facilities that are on the National Register of Historic Places.

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

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

3.3. Lease Negotiation.

The Executive Director shall negotiate

with one or more potential lessors following the approval of a spending unit's requisition. Where a Solicitation of Interest has been issued, the Executive Director shall negotiate with the selected bidder as set forth in Subsection 3.2.e of this Rule, and if a negotiated lease cannot be reached within fifteen (15) business days of the initiation of negotiations, the Executive Director may enter into simultaneous negotiations with any of the remaining bidders. All recommendations and bids shall remain confidential until execution of the lease.

3.4. Lease Notification.

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

§148-2-4. Fair Rental Value.

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

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

§148-2-5. Lease Terms and Execution.

5.1. General.

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

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

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

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

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

5.2. Execution by the Lessor.

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

5.2.b. 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. The corporate seal shall be affixed, when available.

5.2.c. When the lessor is a company, the lease shall be executed by the owner thereof.

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

5.2.e. When the lessor is married, his or her spouse must also execute the lease, even if the subject property has been deeded to only one of the parties.

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

5.3. Execution by the Lessee.

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

5.4. Approval as to Form.

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

§148-2-6. Lease Cancellation.

6.1. In order to allow sufficient delivery time and to comply with the conditions of the lease, a spending unit desiring to cancel a lease must submit a letter requesting cancellation to the Executive Director no later than sixty (60) days prior to the requested cancellation date. The letter must be signed by the chief executive officer of

the spending unit or his or her designee. The Executive Director shall immediately forward a copy of the letter requesting cancellation to the Secretary of the Department of Administration or his or her designee, and may assist the Secretary of the Department of Administration or his or her designee in determining whether the request for cancellation will be granted. If the spending unit's request for cancellation is granted, the Secretary of the Department of Administration or his or her designee shall send written notice to the lessor at the last known address on file with the Real Estate Division, notifying the lessor of the cancellation and the effective date of the cancellation.

§148-2-7. Delegation of Authority for Leasing of Temporary Space.

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

§148-2-8. Leases Between State Spending Units for Space.

8.1. Leases between spending units of the State for space shall be prepared by the Executive Director, unless otherwise directed by the Executive Director, and shall be signed by the Executive Director on behalf of the lessee and by the chief executive officer of the lessor or his or her designee.

§148-2-9. Real Property Acquisition.

9.1. Authority.

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

9.2. Applicability.

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

9.3. Request to Purchase Real Property.

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

9.3.b. Upon receipt of the spending unit's request, the Executive Director may require further justification or may approve the request as

written. If the spending unit has requested a sole source, it may be approved by the Executive Director with written justification made by the spending unit explaining in detail why the real property is being requested as a sole source. The Executive Director may make any further inquiry or investigation, and may require any further certification from the spending unit that he or she deems necessary to determine whether an approval of the sole source request is in the best interests of the State.

9.4. Selection.

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

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

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

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

committee shall complete and sign a non-conflict of interest form, as provided by the Executive Director, with regard to the bids to be evaluated.

9.4.e. Where bids are received pursuant to a Solicitation of Interest, the Executive Director shall select any bidder from the top three ranked bidders as determined by the evaluation committee. The Executive Director will initiate negotiations with the selected bidder pursuant to Subsection 9.5 of this Rule.

9.5. Negotiation.

The Executive Director shall negotiate with a sole source property owner or, if applicable, a selected bidder. When negotiating with a selected bidder, if a negotiated contract cannot be reached within fifteen (15) business days of the initiation of said negotiations, the Executive Director may enter into simultaneous negotiations with any of the remaining bidders. All recommendations and bids shall remain confidential until execution of the contract.

9.6. Fair Market Value.

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

9.7. Preparation of Contract to Purchase Real Property.

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

Executive Director shall inform the office of the Auditor of the impending real property acquisition, and of the funds which will be applied to the purchase price of the real property.

9.8. Execution by the Seller.

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

9.8.b. When the seller is a company, the contract shall be executed by the owner thereof.

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

9.8.d. When the seller is married, his or her spouse must also execute the contract, even if the subject property has been deeded to only one of the parties.

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

9.9. Execution by the Executive Director.

The Executive Director shall execute each contract in the name of the State for and on behalf of the spending unit requesting the real property after execution by the seller. Execution of a contract by the Executive Director on behalf of a spending unit will in no way make the Executive Director, the Secretary or the Department of Administration, or any party other than the spending that provided the Executive Director with a certification of funding pursuant to Subsection 9.7 of this Rule, responsible for the payment of any sums contemplated by the contract.

9.10. Approval as to Form

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

§148-2-10. Real Property Accounting and Records.

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

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

10.3. Each spending unit shall establish and maintain a record of each item of real property it owns, leases, or possesses, and shall annually provide, on or before December 30, its records to the Real Estate Division in a format that is approved by the Real Estate Division. Said reporting shall include:

10.3.a. A description of the real property with the deed book and page number, or a description of the subject lease, and the county where the property is located.

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

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

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

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

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

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

10.4. The Executive Director shall review the inventory of real property for each state spending unit to verify the accuracy of the inventory records.

10.5. The Executive Director shall perform an analysis of the use of inventoried real property to determine the best use for the real property and report his findings to the Governor and the Secretary of the Department of Administration.

§148-2-11 Emergency Situations.

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

11.2. In the event of a natural disaster or other emergency situation as determined by the Secretary of the Department of Administration, the Real Estate Division shall be exempt from the normal leasing and real property acquisition rules and procedures. In the event of a natural disaster or emergency situation, the Executive Director shall continue to have the authority to select and to acquire by contract or lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit.

11.3. The spending unit shall notify the Real

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

EMERGENCY RULE QUESTIONNAIRE

DATE: June 12, 2007

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

EMERGENCY RULE TITLE: Department of Administration, Real Estate Division

1. Date of filing June 12, 2007
2. Statutory authority for promulgating emergency rule:
WV Code § 5A-10-11
3. Date of filing of proposed legislative rule: June 12, 2007
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopts new language
5. Has the same or similar emergency rule previously been filed and expired?
Yes. 148-CSR-2 was previously filed which is being repealed this year as a result of the passage of Senate Bill 582 during the 2007 regular session of the Legislature.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

The passage of SB 582 during the 2007 session made major statutory changes in the Code as it relates acquiring of space and real property and the rules must be modified to address those changes so they are consistent with the current law. Without having the emergency rules in place, it will cause substantial harm to the public interest as the current rules are inconsistent with the new statute and Leasing Coordinators for the State and Lessors of Real Estate who do

business with the state may inadvertently follow the wrong process in submitting their requests for space and property. This could result in confusion, requests being thrown out and perhaps resulting lawsuits against the state for failure to follow the appropriate processes fairly for all Lessors of Real Estate. If a request for space is thrown out then the state could be required to enter into a lease or purchase contract to a higher priced Lessor. Additionally, SB 582 gave authority for emergency rules as it relates the Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units. Emergency rules are necessary in order for the Department of Administration to be authorized to carry out the requirements now set forth in the Statute and to preserve the public peace, health, safety and welfare of the citizens of the State of West Virginia. Without the emergency rules the State could be required to expend public funds unnecessarily for possible defending of lawsuits and to pay higher costs for space and real property which could result in taking away funding for other much needed projects for our citizens thereby harming their health, safety and welfare as critical programs may be cut due to the lack of funding.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not applicable

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See response to number 6 above which outlines the need for these emergency rules.

FISCAL NOTE FOR PROPOSED EMERGENCY RULES

Rule Title: 148 - CSR - 19, Leasing of Space and Acquisition of Real Property on
Behalf of State Spending Units

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East
Capitol Building, Room E-119
Charleston, WV 25305

Phone Number: 304-558-4331 Email: dlipscomb@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The promulgation of the attached emergency rules in regard to leasing of space and acquisition of real property on behalf of state spending units will have no fiscal impact on the State of West Virginia. During the 2007 legislative session Senate Bill 582 passed which created a Real Estate Division within the Department of Administration. The rules are necessary in order for the Real Estate Division to carry out their responsibilities and implement the provisions established in the Code. The Statute already sets forth the requirements and the rules simply provide the processes and procedures that state spending units must go through in order to secure space or property. Therefore, there is no fiscal impact as a result of the promulgation of the proposed emergency rules.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2007 Increase/Decrease (use "--")	2008 Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			

2. Estimated Total Revenues			
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Rule Title: 148-CSR-19, Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

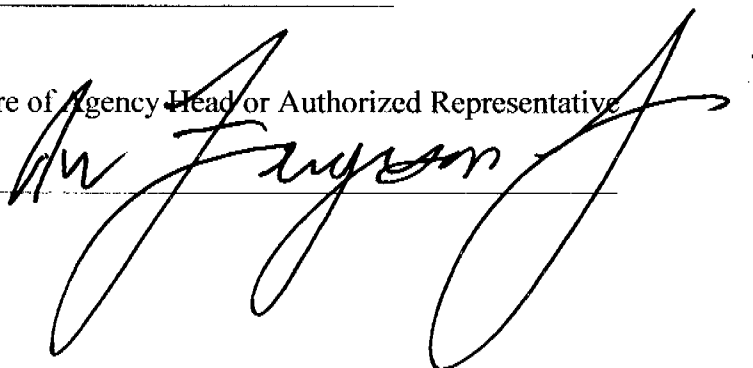
There will be no fiscal impact as a result of the proposed emergency rules.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative





JOE MANCHIN III
GOVERNOR

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

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

June 22, 2007

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Emergency Legislative Rules

Dear Secretary Ireland,

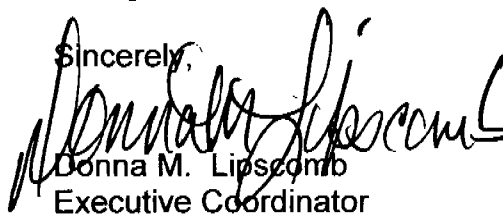
I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed emergency rules are being filed in regard to Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units.

The documents enclosed consist of the following:

1. Notice of an Emergency Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules,
4. Emergency Rule Questionnaire, and
5. Fiscal Note for Proposed Rules.

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,



Donna M. Lipscomb
Executive Coordinator

Enclosures