



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

July 18, 2007

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Administration

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

DATE FILED AS AN EMERGENCY RULE: June 25 2007

DECISION NO. 6-07

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Betty Ireland".

BETTY IRELAND
Secretary of State

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EMERGENCY RULE DECISION
(ERD 6-07)

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- par. 1 The Department of Administration has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department of Administration filed this emergency rule with supporting documents with the Secretary of State June 25, 2007 and with the LRMRC June 25, 2007.
- par. 7 It is the determination of the Secretary of State that the Department of Administration has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §5A-10-11 reads:

The executive director shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and enforce the provisions of this article.

par. 9 It is the determination of the Secretary of State that the Department of Administration has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department of Administration are as follows:

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 record 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.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 6-07 or ERD 6-07 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Administration, the Attorney General and the Legislative Rule Making Review Committee.



BETTY IRELAND
Secretary of State

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