

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

Form #3

Do Not Mark In This Box

**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-10-11

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: Series 19

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

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

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 new 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 acquisition of leased space; cancellation; permanent changes; delegation of authority; agreements between spending units; emergency situations; acquisition of real property; and accounting and recording keeping. The rules are new, therefore, strike throughs and inserts are not included.

**BRIEF SUMMARY OF COMMENTS RECEIVED;
AGENCY RESPONSE; AND AMENDMENTS**

Approximately 680 letters were mailed to individuals who currently have a lease with the State of West Virginia or who are leasing coordinators in order to advise them of the proposed rule changes. The only comments received were from Albert Summers, commercial real estate developer, and the Executive Director of the Real Estate Division. The comments and our responses thereto are reflected below:

Albert Summers Comments:

Comment 1: The definition of “sole source” that is in the prior leasing rules should be maintained and included in section 3.2.a of the proposed real estate rules.

Agency Response 1: The Department of Administration does not agree that “sole source” should be defined in the rule. Moreover, the prior definition was unhelpful in that it stated, in part, that a “sole source” is “space that is unique,” when essentially all real property is in fact, unique. The Executive Director must use his or her discretion based upon the written justification made by the requesting agency head and the particular facts of each situation in order to determine when a sole source lease is in the best interest of the State.

Amendment 1: No amendment is being made as a result of this comment.

Comment 2: Section 3.2.c should be modified so that all significant leases of office space, above 10,000 square feet net, would be procured using a Solicitation of Interest published in the State Purchasing Bulletin as currently required by law. I see no reason why the procedure should be abandoned. Utilization of a bid procedure ensures wide dissemination of information among prospective lessors/bidders and would benefit the State due to increased competition.

Agency Response 2: The Department of Administration agrees that wide dissemination of information among prospective lessors would benefit the State as it will help to assure the Executive Director has knowledge of what space is available. The Real Estate Division intends to post on the Purchasing Bulletin and on their own web site when they are looking for space.

Amendment 2: The Department of Administration will modify the rules to require that the Real Estate Division post in the Purchasing Bulletin when they are seeking space in excess of 10,000 square feet net.

Comment 3: Section 3.2.d should require that when a prospective lessor/bidder is a legal entity such as a corporation, limited liability company, etc, the names of their respective owners should be disclosed. This would increase the transparency of the process and increase public confidence by ensuring that the Department of Administration is aware of all parties who may potentially benefit from the award of the contract or lease.

Agency Response 3: The Department of Administration agrees that the identity of the owners and officers must be disclosed, and this is mandated by statute when a lessor registers as a vendor, as they must disclose ownership information at that time.

Amendment 3: The Department of Administration will modify the rules to reflect the substance of this comment so that all potential lessors, whether they are registered vendors or not-yet registered potential lessors, disclose their corporate/company ownership to the Real Estate Division prior to the Executive Director beginning negotiations for leased space with such entities.

Comment 4: With respect to section 3.2.e, the requirement that an evaluation committee evaluate all bids received in response to the Solicitation of Interest should not be eliminated. It is important to retain certain checks and balances in the bid process.

Agency Response 4: We acknowledge the need for "checks and balances", however we feel that internal processes and the marketplace itself will provide the desired results. Therefore, the Department of Administration does not agree with this comment. However, the Executive Director can achieve the same results more efficiently without going through a bid solicitation process which includes a formal bid evaluation committee. The Executive Director and the staff of the Real Estate

Division, in conjunction with the agency seeking the space, have the expertise to acquire the best possible space for the agency. The Executive Director will be held accountable for his decisions, as the leasing process will require posting in the Purchasing Bulletin when seeking space in excess of 10,000 square feet net and all leases are public information. Nonetheless, the Executive Director may negotiate simultaneously with any potential lessors responding to an advertisement or solicitation of interest seeking leased space.

Amendment 4: No amendment is being made as a result of this comment.

Comment 5: The Department of Administration should clarify in section 3.2.f. that all Solicitations of Interest will be published in the State Purchasing Bulletin and distributed to all persons on the list of registered lessors.

Agency Response 5: The Department of Administration agrees with this comment for the purpose of providing further clarity.

Amendment 5: The Department of Administration will modify the rules as a result of this comment.

Comment 6: Section 3.3 should be modified to state that all leases other than leases of office space in excess of 10,000 square feet net shall be negotiated by the Executive Director.

Agency Response 6: The Department of Administration does not agree with this comment. In order to achieve the goal of the Real Estate Division of finding and leasing the best real property for the best price for the State, the Executive Director must have the authority to negotiate simultaneously with multiple potential lessors, regardless of whether a formal bid or other solicitation process has been initiated. The State's bargaining position in the marketplace will be severely compromised if only one preferred potential lessor may be negotiated with at a time, and thus, the need for simultaneous negotiation with multiple potential lessors is at the very heart of the Real Estate Division's mission.

Amendment 6: No amendment is being made as a result of this comment.

Comment 7: In section 5.1.b the Department of Administration should be required to notify an affected landlord in writing that it is terminating a lease, irrespective of the reasoning therefor.

Agency Response 7: The Department of Administration agrees with this comment and would send a formal written notice when a lease is terminated.

Amendment 7: The proposed rules will be modified to incorporate the substance of this comment.

Comment 8: Language should be included in the rules that inspection of a leased property prior to making an award. There is no reason that the inspection requirement from the old leasing rules would be removed from the proposed rule.

Agency Response 8: The Department of Administration does not intend to lease property without first inspecting the property, and the Executive Director must determine the fair rental value of property before it is leased.

Amendment 8: The proposed rules will be modified to insert language to clarify that the Real Estate Division will inspect property prior to entering into a contract or lease agreement.

Comment 9: The proposed rule should include a mechanism by which a prospective lessor may lodge a protest to the selection of a particular lease.

Agency Response 9: The Department of Administration does not agree with this comment as the Executive Director has the sole authority to acquire space or property on behalf of the State and will be held accountable for such acquisitions. Furthermore, leases will be negotiated rather than merely awarded pursuant to a bid, and therefore various factors which may take place during simultaneous negotiations with multiple potential lessors will influence the ultimate choice of the Executive Director in leasing space. The Executive Director has the responsibility by law to acquire the best possible space or property and once the decision is made, the agency must be able to proceed with the contract or lease without unacceptable delays caused by protests resulting from the outcome of simultaneous negotiations with multiple potential lessors. The Executive Director's decision would have been made based upon the needs of the agency and the best interest of the State.

Amendment 9: No amendment is being made as a result of this comment.

Comment 10: It is imperative that the Real Estate Division continue to ensure that the office space that it leases meets certain minimum requirements. Such requirements could be compliance with State Building Code and all applicable federal, state and local regulations.

Agency Response 10: The Department of Administration agrees with this comment but does not want to include the language in the rules as it could adversely affect the State if a chosen property meets all but one requirement that could be fixed as a contingency in the contract or lease agreement. Additionally, certain areas of the State may not have facilities available that would meet all requirements set forth in the rule proposed by this comment. Potential properties will be inspected prior to being leased. The Real Estate Division will continue to ensure that leased space meets the necessary codes as the Executive Director is responsible for acquiring the best possible space for the agency and its employees.

Amendment 10: No amendment is being made as a result of this comment.

Charles Lawrence Comments:

Comment 11: Recommend that the 15 day period of time during which the Executive Director is permitted to negotiate with only one potential lessor so that simultaneous negotiations can be undertaken in order to get the best space for the State. Additionally, recommend that other changes which are linked to this 15 day requirement be made throughout the proposed rules.

Agency Response 11: The Department of Administration agrees with this comment and will modify the rules so that the Director can negotiate simultaneously with all selected potential lessors or property owners.

Amendment 11: The rules will be modified as a result of this comment.

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

FILED
2007 JUL 27 PM 3:29

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

OFFICE WEST VIRGINIA
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, inspect and select appropriate space for the spending unit. For all leases of office space in excess of 10,000 square feet net, the Executive Director shall issue a Solicitation of Interest in the State Purchasing Bulletin in order to elicit responses from the largest number of lessors registered as vendors with the Purchasing Division as set forth in subsection 3.2.f. of this Rule. For all leases of office space less than 10,000 square feet net, the Executive Director

shall not be required to issue a Solicitation of Interest, but shall find and select the appropriate space for the spending unit by the manner in which he or she determines to be most efficient and effective for the spending unit's request, which may include issuing a Solicitation of Interest. The Executive Director may further advertise the Solicitation of Interest by whatever other means he or she chooses in order to elicit the largest number of responses from potential bidders.

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

3.2.e. Where bid proposals are received by the Real Estate Division pursuant to a Solicitation of Interest, the Executive Director will evaluate and rate all qualifying bid proposals, and may, at any time during the evaluation process, utilize any persons who possess expertise or knowledge associated with the proposed lease to review bids and recommend an award. Such

persons shall complete and sign a non-conflict of interest form, as provided by the Executive Director, with regard to any of the bids to be evaluated. The Executive Director shall not utilize any person who, as determined by the Executive Director, has an existing conflict of interest with regard to any of the bids to be evaluated. The Executive Director shall select one or more bidders, if any, and initiate negotiations with the selected bidder(s) pursuant to Subsection 3.3 of this Rule. All non-selected bidders shall be promptly notified by the Executive Director. The Executive Director reserves the right to cancel a Solicitation of Interest at any time.

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

3.3. Lease Negotiation.

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

3.4. Lease Notification.

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

§148-2-4. 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, and the Department of Administration shall promptly give written notice of such cancellation to the applicable lessor.

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

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

9.2. Applicability.

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

9.3. Request to Purchase Real Property.

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

9.3.b. Upon receipt of the spending unit's request, the Executive Director may require further justification or may approve the request as written. If the spending unit has requested a 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 one or more bidders ranked by the evaluation committee, if any, and initiate negotiations with the bidder(s) pursuant to Subsection 9.5 of this Rule. All non-selected bidders shall be promptly notified by the Executive Director. The Executive Director reserves the right to cancel a Solicitation of Interest at any time.

9.5. Negotiation.

The Executive Director shall negotiate with a sole source property owner or, if applicable, one or more selected bidders pursuant to Subsection 9.4.e of this Rule. The Executive Director may

enter into simultaneous negotiations with any of the selected bidders. All recommendations and bids shall remain confidential until execution of the contract.

9.6. Fair Market Value.

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

9.7. Preparation of Contract to Purchase Real Property.

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

FISCAL NOTE FOR PROPOSED 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 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 legislative 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			

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.

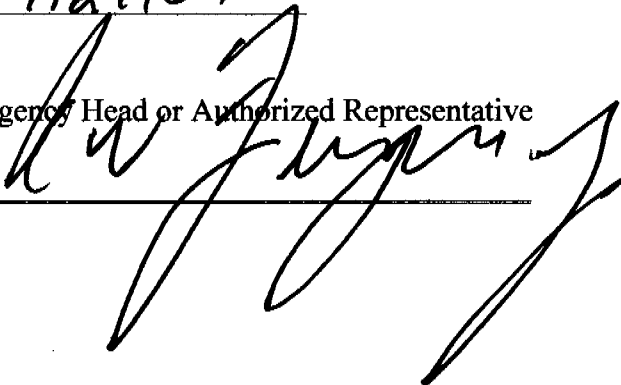
There will be no fiscal impact as a result of the proposed legislative rules.

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: 7/27/09

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

DATE: July 27, 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

LEGISLATIVE RULE TITLE: 148, Series 19

1. Authorizing statute(s) citation W.Va. Code 5A-10-11

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

June 22, 2007

b. What other notice, including advertising, did you give of the hearing?

Approximately 680 letters were sent out to lessors of real estate who have leases with the State as well as to the leasing coordinators in each agency.

c. Date of Public Hearing(s) or Public Comment Period Ended:

July 21, 2007

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)

July 27, 2007

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)

Chuck Lawrence, Director of Real Estate Division

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305 304-558-3062

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:

June 22, 2005 - July 21, 2007

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 Attached

Albert T. Summers
COMMERCIAL REAL ESTATE DEVELOPER
Post Office Box 2388
Charleston, WV 25328

Voice: 304-345-8700
Fax: 304-345-8704

July 19, 2007

State of West Virginia
Department of Administration
Office of the Cabinet Secretary
Attn: Donna Lipscomb,
Executive Coordinator

Re: Comments Regarding Proposed Legislative Rule (Title 148, Series 2 of the W. Va. Code of State Rules) Relating to the Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units

Dear Ms. Lipscomb:

Pursuant to your letter dated June 22, 2007, in which the Department of Administration solicited public comments regarding its proposed Legislative Rule governing the leasing of space and acquisition of real property on behalf of state spending units (the "Proposed Rule"), I submit the following written comments.

First, with respect to section 3.2.a. of the Proposed Rule, I believe it is important to maintain the definition of the term "sole source" that appears in section 4.2.g. of the current legislative rule governing the leasing of space on behalf of state spending units (the "Current Rule"). Accordingly, section 3.2.a. of the Proposed Rule be modified as illustrated in redline form in Exhibit A attached hereto ("Exhibit A").

With respect to section 3.2.c. of the Proposed Rule, it is my position that all significant leases of office should be procured using a Solicitation of Interest published in the State Purchasing Bulletin, as currently required by law. A mandatory bid procedure is contained in section 4.2.c. of the Current Rule for all leases of office space in excess of 7,000 square feet net, and I see no reason why the procedure should be abandoned. Utilization of a mandatory bid procedure for significant leases of office space, which I believe include all leases of office space in excess of 10,000 square feet net, ensures a wide dissemination of information to prospective lessors/bidders thereby increasing competition among prospective lessors/bidders for state leases. Certainly the state benefits from the increased competition. Accordingly, section 3.2.c. of the Proposed Rule should be modified as illustrated in Exhibit A.

With respect to section 3.2.d. of the Proposed Rule, when a prospective lessor/bidder is legal entity such as a corporation, limited liability company, etc., it is my

position that those prospective lessor/bidders for state leases should be required to disclose the names of their respective owners. This requirement would increase the transparency of the process of awarding lucrative government contracts, thereby increasing public confidence in the process and ensuring that the Department of Administration is aware of all parties who may potentially benefit from the award of a government contract. Accordingly, section 3.2.d of the Proposed Rule should be modified as illustrated in Exhibit A.

With respect to section 3.2.e. of the Proposed Rule, the Department of Administration should not eliminate the requirement that an evaluation committee evaluate all bids received in response to a Solicitation of Interest. Section 4.2.e. of the Current Rule requires that an evaluation committee shall be appointed to evaluate all bids submitted. While I agree that removing certain functions from the spending unit and consolidating them in the Real Estate Division can achieve certain efficiencies, it is important to retain certain checks and balances in the bid evaluation process. The mandatory review of all bids submitted in response to a Solicitation of Interest by an evaluation committee is an important feature of the Current Rule and should not be omitted from the Proposed Rule. Accordingly, section 3.2.e. of the Proposed Rule should be modified as illustrated in Exhibit A.

With respect to section 3.2.f. of the Proposed Rule, the Department of Administration should clarify that all Solicitations of Interest will be published in the State Purchasing Bulletin and be distributed to all persons included on the list of registered lessors. Accordingly, section 3.2.f. of the Proposed Rule should be modified as illustrated in Exhibit A.

With respect to section 3.3. of the Proposed Rule, the first sentence should be revised to recognize that all leases of office space in excess of 10,000 square feet net are required to be let following a mandatory Solicitation of Interest, committee bid review process, and ultimate selection by the Executive Director. Accordingly, section 3.3. of the Proposed Rule should be modified as illustrated in Exhibit A.

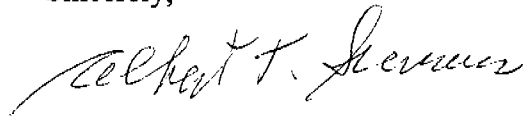
With respect to section 5.1.b. of the Proposed Rule, the Department of Administration should be required to notify an affected landlord in writing that it is terminating a lease, irrespective of the reasoning therefor. Accordingly, section 5.1.b. of the Proposed Rule should be modified, as illustrated in Exhibit A, to include the requirement that the Department of Administration notify the applicable lessor of termination of a lease based on the state or federal government's failure to appropriate sufficient funds to make required payments under a lease or other action set forth therein.

Additionally, I submit that, in addition to the foregoing, sections 4.5 and 5.1 of the Current Rule should be included, in their entirety, in the Proposed Rule. Section 4.5 of the Current Rule requires that, prior to awarding a lease, the leased space be inspected to ensure that all bid specifications have been met and also provides the bidder an opportunity to correct any deficiencies at its sole expense. Inspection of a leased property prior to making an award of the lease is simply good business. In addition, the Current Rule requires it. There is no good reason that the inspection requirement should be removed from the Proposed Rule. Thus, I believe that section 4.5 of the Current Rule

should be included, where appropriate, in the Proposed Rule. Secondly, section 5.1 of the Current Rule provides a mechanism by which a prospective lessor may lodge a protest to the selection of a particular lease. Given the due process concerns raised by the omission from the Proposed Rule of a provision similar in substance to section 5.1 of the Current Rule, I recommend that section 5.1 of the Current Rule be included, where appropriate, in the Proposed Rule.

Lastly, section 12 of the Current Rule has been omitted in its entirety from the Proposed Rule. It is imperative that the Real Estate Division continues to ensure that the office space that it leases on behalf of state spending units meets certain minimum requirements, which are objectively defined for all lessors. Such requirements could be compliance with the State Building Code and all applicable federal, state and local regulations. Moreover, in the Current Rule, the Department of Administration championed the inclusion of a process for ensuring that lessors maintained certain minimum standards for office space leased on behalf of state spending units. The current process ensures that state employees have a safe and acceptable place to perform their work each day and that unscrupulous landlords may not embark upon a pattern providing substandard office space to state spending units. Accordingly, sections 12.1, 12.3, 12.4, 12.5 and 12.6 of the Current Rule should be included, where appropriate, in the Proposed Rule.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert T. Summers".

Albert T. Summers

EXHIBIT A

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~~ it is already leasing space, the additional space may be considered a sole source and the existing lease may be amended accordingly. The term "sole source," for purposes of this legislative rule, shall mean space that is unique and cannot be reasonably obtained from any other source.

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. For all leases of office space in excess of 10,000 square feet net, the Executive Director shall issue a Solicitation of Interest in the State Purchasing Bulletin in order to elicit responses from the largest number of lessors registered as vendors with the Purchasing Division as set forth in subsection 3.2.f. of this Rule. For all leases of less than 10,000 square feet net of office space, the Executive Director shall not be required to issue a Solicitation of Interest, but shall find and select the appropriate space for the spending unit by the manner in which he or she determines to be most efficient and effective for the spending unit's request, which may include ~~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, which shall include a requirement that any office space offered for lease to a state spending unit comply in all material respects with the State Building Code and all applicable federal, state and local regulations. The Executive Director shall require that each bid for office space: (i) clearly disclose (a) 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 in Office Buildings,~~ and (ii) the names of the owner(s) of the property offered for lease. If the property offered for lease is owned by a legal entity as opposed to an individual, eg. a corporation, limited liability company, limited partnership, partnership, etc., then the Executive Director shall also require that the bid disclose the names of all of the respective owners thereof; (ii) include a complete and accurate description of the building in which the office space offered for lease is housed and the mechanical equipment installed therein on a form provided by the Real Estate Division; and (iii) photographs of the office space offered for lease, including the building in which the office space is housed. Bid specifications may include, at the Executive Director's discretion, special 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.c. Where bid proposals are received by the Real Estate Division pursuant to a Solicitation of Interest, an evaluation committee appointed by 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. Members of the evaluation committee and all such persons with whom the evaluation committee consults regarding a particular lease shall complete and sign a non-conflict of interest form, as provided by the Executive Director, with regard to all any of the bids to be evaluated. The Executive Director shall not appoint to the evaluation committee or 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. After considering the recommendation of the evaluation committee, ~~the~~ Executive Director shall select a bidder, and initiate negotiations with the selected bidder pursuant to Subsection 3.3 of this Rule. The successful bid shall not exceed the low bid by more than 5%.

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

3.3. Lease Negotiation.

For all leases other than leases of office space in excess of 10,000 square feet net, ~~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.

5.1.b. The Department of Administration shall have the right to immediately cancel a lease by written notice to the applicable lessor 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.

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
REAL ESTATE DIVISION
State Capitol
Charleston, West Virginia 25305

Joe Manchin III
Governor

Robert W. Ferguson, Jr.
Cabinet Secretary

Charles Lawrence
Executive Director

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Blvd., East
Bldg. #1, Room E-119
Charleston, WV 25305

Re: Real Estate Division Legislative Rules

Dear Donna,

Regarding 148-2-3 Authority, Lease Acquisition, Negotiation, Inspection and Notification (Sections 3.2.e and 3.3) and 148-2-9 Real Property Acquisition (Sections 9.4.e and 9.5) of the proposed Rules.

These Sections, which address either the Lease or Purchase of Real Property, require that negotiations be limited to only the preferred location/landlord for a period of 15 days.

I am requesting the elimination of the 15 day period of time during which the Executive Director is permitted to negotiate with only one preferred location/landlord, and appropriate changes where referenced throughout the Rules. I believe approaching the marketplace in series rather than in parallel compromises the State's negotiating position in the marketplace whether it is for leasing or purchasing real property.

It is not unusual for the marketplace to be aware of just whom the State is negotiating with, and if these negotiations are not successful, those in positions 2, 3, 4 etc. are in better positions to take a firmer stand, especially if the marketplace knows the State must do something to satisfy its requirements.

This also prevents the marketplace from knowing our preferred option, and is especially true if there are only two space options, and we disengage from negotiations with the first. The location/landlord in position 2 would then be in a very powerful position from a negotiating standpoint.

Furthermore, I am requesting section 3.2.e include that non-selected bidders will be promptly notified by the Executive Director and that the Executive Director reserves the right to cancel a Solicitation of Interest at any time.

Therefore I recommend and request that the previously submitted Rules be changed to eliminate the 15 day period wherever referenced throughout the Rules, so as to permit simultaneous negotiations critically necessary to obtain the best space at the best price for the State of West Virginia.

Sincerely,

Charles D. Lawrence Jr. / CLJ

Charles D. Lawrence Jr.
Executive Director
Real Estate Division



JOE MANCHIN III
GOVERNOR

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

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

July 27, 2007

Via Hand-Delivery

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

Re: Legislative Rules

Dear Secretary Ireland,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are in regard to Leasing of Space and Acquisition of Real Property 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,
7. Disc containing 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,

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

Enclosures