

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

Form #2

Do Not Mark In This Box

2007 JUN 25 AM 10:27

SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: 5A-10-11

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 20

TITLE OF RULE BEING PROPOSED: Controlling the Public Land Corporation's Sale, Lease, Exchange or Transfer of  
Lands and Minerals

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 24, 2007 AT 10:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Executive Coordinator  
Department of Administration  
1900 Kanawha Boulevard, East  
Building 1, Room E-119  
Charleston, WV 25305  
304-558-3392

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

Robert W Ferguson Jr. (d)  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL.

**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 Controlling the Public Land Corporation's Sale, Lease, Exchange or Transfer of Lands or Minerals. 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 and transferred the Public Land Corporation into the Department of Administration. The proposed rules are necessary in order for the Public Land Corporation to carry out their responsibilities and implement the provisions established in the Code.

The proposed rules provide for the sale, exchange or transfer of land or minerals; bidding procedures for land sales; and competitive bidding and notice procedures for the lease of minerals. The rules are new, therefore, strike throughs and inserts are not included.

**TITLE 148  
LEGISLATIVE RULES  
DEPARTMENT OF ADMINISTRATION, REAL ESTATE DIVISION**

**SERIES 20  
RULES CONTROLLING THE PUBLIC LAND CORPORATION'S  
SALE, LEASE, EXCHANGE OR TRANSFER OF LANDS**

2007 JUN 25 AM 10:21  
OFFICE OF THE  
SECRETARY OF STATE

**§148-20-1. General.**

1.1. Scope and Purpose. -- This rule provides information and guidance for the sale or lease of lands or minerals by the Public Land Corporation.

1.2. Authority. -- W. Va. Code §§5A-11-1 through 5A-11-8.

1.3. Filing Date. --

1.4. Effective Date. --

**§58-2-2. Definitions.**

2.1. "Public Land Corporation" means a unit of the Department of Administration vested with the title of the State of West Virginia in certain public lands.

2.2. "Board of Directors" means the governing body of the Public Land Corporation.

2.3. "Secretary" means the Executive Secretary of the Public Land Corporation who shall be the Director of the Real Estate Division of the Department of Administration or his/her designee.

2.4. "Competitive Sale" means a sale to the highest responsible bidder at a public offering utilizing sealed bids.

2.5. "Modified Competitive Sale" means a sale to a government entity or adjoining landowner who meets the highest bid at a public offering.

2.6. "Direct Sale" means a sale without competitive bidding to an adjoining landowner who offers to pay the "fair market value" or a sale to a government entity at less than "fair market value".

2.7. "Fair market value" means the value determined by an appraisal made by an independent person or firm chosen by the Secretary of the Public Land Corporation.

2.8. "Independent Appraisal" means an appraisal performed by a West Virginia certified general appraiser using the principles contained in the current issue of "Uniform Standards of Professional Appraisal Practice" published by The Appraisal Foundation.

**§58-2-3. Rules for Sale, Exchange or Transfer of Land or Minerals.**

3.1. The Secretary of the Public Land Corporation shall present to the Board of Directors of the Public Land Corporation any proposed land sale, exchange, transfer or lease of land or minerals. If the Board of Directors authorizes consideration of the project, then the Secretary will have one year to gather the information needed and present it to the Board of Directors to make a final decision as follows:

3.1.a. Determine the "fair market value" of the land or minerals through an independent appraisal or assistance from an independent mineral consultant;

3.1.b. The agency that is proposing the sale or lease must prepare and reduce to writing the reasons and supporting data regarding the sale, lease, exchange or transfer of land or minerals. The written reasons required under this section shall be available for public inspection at the office of county clerk at the county courthouse of each county in which the affected lands or minerals are located during the two successive weeks before the date of the required public hearing;

3.1.c. Provide for a public hearing to be

held at a reasonable time and place within each county in which the affected lands or minerals are located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the corporation's representative;

3.1.d. At least thirty days before the public hearing, provide notice to all members of the Legislature, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands or minerals are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands or minerals are located;

3.1.e. Publish a notice of the required public hearing. The notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the West Virginia Code and the publication area shall be each county in which the affected lands or minerals are located. The public hearing will not be held until at least 14 days after the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected lands or minerals;

3.1.f. Post the copy of the required notice in a conspicuous place at the affected land for members of the public to observe. The notice (8½" x 11") shall remain posted for two successive weeks prior to the date of the public hearing;

3.1.g. Appoint a representative of the Public Land Corporation to conduct the public hearing. The representative shall be knowledgeable of all the facts and circumstances surrounding the proposed sale, lease, exchange or transfer. The representative conducting the public hearing shall make the results of the hearing available to the Public Land Corporation for its consideration at least five days prior to the Board of Directors making final decisions regarding the affected lands or minerals. The representative shall make a report of the public hearing available for inspection by the public, or, upon written

request of any interested parties. A written copy will be provided to the president of the county commission, county clerk, and any municipality in which the effected lands may be located; and any individual requesting a copy of same within thirty days following the public hearing; and

3.1.h. If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (a) of section 3.1 of this rule does not reflect the true, fair market value, the Public Land Corporation shall have another appraisal completed.

3.1.i. If the evidence at the public hearing establishes by a preponderance that the sale or exchange of land does not meet any of the criteria set forth below, the Public Land Corporation may not proceed with the sale or exchange of the land without judicial approval.

### 3.2 Disposal Criteria

3.2.1 The tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose;

3.2.2 Disposal of the tract serves important public objectives including, but not limited to, expansion of communities and economic development which cannot be achieved on lands other than public lands and which clearly outweigh other public objectives and values including, but not limited to, recreation and scenic values which would be served by maintaining the tract in state ownership; or

3.2.3 The tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another state department or agency;

3.2.4 The Public Land Corporation may not sell, lease as lessor, exchange or transfer lands or minerals for at least 30 days following the public hearing or fifteen days after the report of the public hearings are made available to the public in general whichever is later.

3.2.5 With the approval of the Board of Directors, the Chairman shall sign the contract, lease, or deed.

#### **§58-2-4. Bidding Procedures for Land Sales.**

4.1. Sales, exchanges or transfers of public lands by the Public Land Corporation will generally be conducted under competitive bidding procedures. The Secretary may sell lands by modified competitive bidding or by direct sale when it furthers public policies including a preference for users. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers: local government entities which are in the vicinity of the lands, and/or adjacent landowners as a potential purchaser.

4.2. Competitive bid sales will be used:

4.2.1. Where the lands are assessable and usable regardless of land ownership.

4.2.2. The lands are within a developing or urbanizing area and land values are increasing due to the location of the land and interest on the competitive market.

4.3. Modified competitive sales and direct sales:

4.3.1. Adjoining landowners or local government entities may use the modified competitive sales to meet the high bid at the public sale. Lands otherwise offered under this procedure would normally be public lands not located near urban expansion area, or not located near areas with rapidly increasing land values, and where existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

4.3.2. Direct sale may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by local governments.

4.3.3. Lands will not be offered for sale by "modified competitive sales" or "direct sale" unless the Public Land Corporation makes a written finding of justification for use of an alternative bidding procedure.

4.4. Subject to the bidding procedures set forth herein, the Public Land Corporation is

authorized, at its discretion, to sell public lands subject to rights-of-way, restrictive covenants or easements retained by the Public Land Corporation, limiting the use of such lands to purposes consistent with the use of adjoining or nearby lands owned by the Public Land Corporation.

4.5. If lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale. However, if the provisions of the rules are complied with and no bid equal to or in excess of the fair market value is received, the Public Land Corporation may, at any time during a period of six months after the opening of the bids, sell the property, but the contract price may not be less than the fair market value.

4.6. Public lands may be sold, exchanged or transferred to any federal agency or to the state or any of its political subdivisions for less than fair market value if, upon a specific written finding of fact, the corporation determines that such a transfer would be in the best interests of the Public Land Corporation and the state.

#### **§58-2-5. Competitive Bidding and Notice Procedures for the Lease of Minerals.**

5.1. The leasing of minerals under public lands will be conducted under competitive bid procedures and leased for no less than fair market value. If no bid equal to or in excess of the fair market value is received, the Public Land Corporation may, at any time during a period of six months after the opening of the bids, lease or contract for the development of the minerals, but the lease or contract price may not be less than the fair market value.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 148 - CSR - 20, Controlling the Public Land Corporation's Sale, Lease, Exchange or Transfer of Lands and Minerals.

Type of Rule:  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 controlling the Public Land Corporation's sale, lease, exchange or transfer of lands and minerals 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 bill also transferred the Public Land Corporation from the Division of Natural Resources to the newly created Real Estate Division. 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.

<b>FISCAL YEAR</b>			
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-20, Controlling the Public Land Corporation's Sale, Lease, Exchange or Transfer of Lands and Minerals.

**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: June 25, 2007

Signature of Agency Head or Authorized Representative  
Robert W. Ferguson Jr. Ill



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

JOE MANCHIN III  
GOVERNOR

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: Legislative Rules**

Dear Secretary Ireland,


I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to Controlling the Public Land Corporation's Sale, Lease, Exchange or Transfer of Lands or Minerals. I will provide a copy 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 Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. 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