WEST VIRGINIA CODE CHAPTER 5a ARTICLE 10

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§5A-10-1. Division created; purpose; director.

(a) There is hereby created the Real Estate Division within the Department of Administration for the purpose of establishing a centralized office to provide leasing, appraisal and other real estate services to the Secretary of the Department of Administration.

(b) The division shall be under the supervision and control of an executive director, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

(c) Candidates for the position of executive director shall:

(1) Have at least a bachelor of arts or science degree from an accredited four-year college or university; and

(2)(A) Be a licensed real estate broker, pursuant to the provisions of article forty, chapter thirty of this code; or

(B) Be a licensed or certified real estate appraiser pursuant to the provisions of article thirty-eight, chapter thirty of this code; or

(3)(A) Be considered based on their demonstrated education, knowledge and a minimum of ten years' experience in the areas of commercial real estate leasing, commercial real estate appraisal; or

(B) Any relevant experience of a minimum of ten years which demonstrates an ability to effectively accomplish the purposes of this article.

(d) The Real Estate Division is authorized to employ such employees, including, but not limited to, real estate appraisers licensed in accordance with the provisions of article thirty-eight, chapter thirty of this code, as may be necessary to discharge the duties of the division.

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§5A-10-2. Leases for space to be made in accordance with article; exceptions.

(a) Notwithstanding any other provision of this code, no department, agency or institution of state government may lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with the provisions of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

(1) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

(2) The Higher Education Policy Commission;

(3) The West Virginia Council for Community and Technical College Education;

(4) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;

(5) The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations;

(6) The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations; or

(7) The Adjutant General's Department and the West Virginia National Guard, including all real property, acquisitions, leases, easements, armories, armory projects, appurtenances and operating revenue funds for those operations.

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§5A-10-3. Powers and duties of Real Estate Division.

The Real Estate Division has the following powers and duties:

(1) To provide leasing, appraisal and other real estate services to state spending units;

(2) To ensure that the purchase of real estate and all contracts for lease are based on established real estate standards and fair market price;

(3) To develop and implement minimum lease space standards for the lease of any grounds, buildings, office or other space required by any spending unit of state government;

(4) To develop and implement minimum standards for the selection and acquisition, by contract or lease, of all grounds, buildings, office space or other space by a spending unit of state government except as otherwise provided in this article;

(5) To establish and maintain a comprehensive database of all state real estate contracts and leases;

(6) To develop policies and procedures for statewide real property management;

(7) To maintain a statewide real property management system that has consolidated real property, building and lease information for all departments, agencies and institutions of state government;

(8) To develop and maintain a centralized repository of comprehensive space needs for all state departments, agencies and institutions of state government, including up-to-date space and resource utilization, anticipated needs and recommended options;

(9) To provide statewide policy leadership and coordinate master planning to guide and organize capital asset management; and

(10) To provide assistance to all state departments, agencies or institutions in acquiring, leasing and disposing of real property.

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§5A-10-3a. Regulation of parking on state-owned or leased property in Charleston; creation of fund.

(a) The Real Estate Division may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East;

(2) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

(3) The state-owned or leased grounds upon which state office buildings number one through twenty and the Laidley Field Complex are located; and

(4) Any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the State Capitol or any state office buildings.

(b) The Real Estate Division is authorized to collect fees for parking pursuant to subsection (a) of this section. The fees shall be deposited into a special revenue fund to be known as the Parking Lots Operating Fund within the State Treasury. Expenditures from the fund are authorized from collections. The fund may only be used in a manner consistent with this article and in accordance with the provisions of article three, chapter twelve and article two, chapter eleven-b of this code. Any balance remaining in the Special Revenue Fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund. All costs and expenses incurred pursuant to this section, including administrative, shall be paid from those funds.

(c) The secretary shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code relating to parking and to allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (a) of this section: Provided, That notwithstanding this or any other provision of law to the contrary, during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, and any other times designated by the Speaker of the House of Delegates and the President of the Senate, parking on the east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East, in the Culture Center parking lot, on the north side of Kanawha Boulevard between Greenbrier Street and California Avenue, on the west side of California Avenue between Kanawha Boulevard and Washington Street, East, in the parking lot on the east side of California Avenue across from the loading dock entrance and any other areas designated by a joint policy of the Speaker of the House of Delegates and the President of the Senate shall be managed and controlled by the Legislature. Any person parking any vehicle contrary to this section or the rules promulgated under authority of this subsection is subject to a fine as established by rule of the secretary. In addition, a designee

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of the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules or the joint policy between the Speaker of the House of Delegates and the President of the Senate. Magistrates in Kanawha County have jurisdiction over all the offenses under this section.

(d) The secretary, the Speaker of the House of Delegates and the President of the Senate may employ persons as may be necessary to enforce the parking rules as provided for under the provisions of this section.

(e) The Parking Garage Fund, created in the former section five, article four of this chapter, is continued in the Department of Administration as a special fund consisting of funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on the State Capitol Complex.

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§5A-10-4. Leasing of space by executive director; delegation of authority.

(a) The executive director is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency, or institution of state government: Provided, That the executive director may expressly delegate, in writing, the authority granted to him or her by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum specified by regulation in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.

(b) Any state agency that is authorized to enter into lease agreements must seek the advice and approval of the executive director before entering into any lease of grounds, buildings, office and other space. The executive director shall submit approval of any lease by signing the lease in conjunction with the state agency. The state agencies referenced in §5A-10-2 of this code are exempt from this requirement.

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§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

(a) The executive director has sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer or his or her designee of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state: Provided, That any such contract or lease of office space which provides that the landlord or owner of the office space be responsible for providing for, or the contracting for, cleaning or janitorial services shall not also require the owner or landlord of the premises to use any particular person, firm or company to provide the cleaning or janitorial services.

(b) The executive director shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

(c) The executive director may enter into long-term agreements for buildings, land and space for periods longer than one fiscal year: Provided, That such long-term lease agreements are not for periods in excess of forty years, except that the secretary may, in the case of the Adjutant General's department, enter into lease agreements for a term of fifty years or a specific term of more than fifty years so as to comply with federal regulatory requirements and shall contain, in substance, all the following provisions:

(1) That the Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

(2) That the lease shall be considered canceled without further obligation on the part of the lessee if the State Legislature or the federal government should fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and

(3) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Department of Administration before the end of the then current fiscal year.

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§5A-10-6. Long-term leases of public lands for wireless communication towers.

(a) Notwithstanding any provision of law to the contrary, the executive director has sole authority to negotiate and enter into long-term lease agreements for lease of public lands to be used for placement of wireless communication towers: Provided, That such long-term lease agreements may not be for periods in excess of thirty years: Provided, however, That for the governmental units named in subsection (d) of this section, any lease proposed by the executive director may only be entered into upon approval in writing of the ranking administrator of the respective governmental unit described in said subsection.

(b) All revenues derived from leases established upon the enactment of this section shall be deposited into the General Revenue Fund except as provided in subsections (c) and (d) of this section.

(c) Revenues from leases initiated prior to the enactment of this section or subsequently renewed shall continue to be treated as they were prior to the enactment of this section.

(d) Revenues derived from the lease of property under the control of the Department of Transportation shall be deposited into the State Road Fund. Revenues derived from the lease of property under the control of the Division of Natural Resources shall be retained by the Division of Natural Resources and deposited into the appropriate fund. Revenues derived from the lease of property under the control of the Department of Agriculture shall be deposited into the Agriculture Fees Fund. Revenues derived from the lease of property under the control of the Division of Forestry shall be deposited into the Division of Forestry Fund. Revenues derived from the lease of property under the control of institutions of higher education shall be deposited into the institution's education and general capital fees fund. Revenues derived from the lease of property under the control of the Higher Education Policy Commission shall be deposited into the commission's State Gifts Grants and Contracts Fund. Revenues derived from the lease of property under the control of the West Virginia Council for Community and Technical College Education shall be deposited into the council's Tuition and Required Educational and General Fees Fund. Revenues derived from the lease of property, towers or tower space owned, operated or controlled by the West Virginia Division of Homeland Security and Emergency Management or any other state agency managed as part of the West Virginia Statewide Interoperable Radio Network shall be deposited in the Statewide Interoperable Radio Network Account created in section nine, article fourteen, chapter fifteen of this code.

(e) Any long-term lease agreement entered into pursuant to this section shall contain provisions allowing for the nonexclusive use of the public lands and allowance for use of the same public space for additional towers by competing persons or corporations.

(f) The executive director is further authorized to enter into long-term lease agreements for additional wireless communication towers by other persons or corporations upon the same public lands in which there already exists a lease and tower provided for under this section.

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(g) Any long-term lease agreement entered into pursuant to this section shall be recorded in the office of the county clerk where public land which is the subject of the lease agreement is located.

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§5A-10-7. Leases and other instruments for space signed by executive director; approval as to form; filing.

Leases and other instruments for grounds, buildings, office or other space shall be signed by the Executive Director of the Real Estate Division in the name of the state. They shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

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§5A-10-8. Inspection of leased property; requiring approval of executive director for permanent changes.

(a) The Executive Director of the Real Estate Division shall inspect as necessary any property which may be under a lease or rental agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used and operated in accordance with the terms and conditions of the lease or rental agreement. The executive director is authorized to take such action necessary to correct any violation of the terms and conditions of the lease or rental agreement.

(b) A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with the provisions of this article may not order or make permanent changes of any type thereto, unless the Executive Director of the Real Estate Division has first determined that the change is necessary for the proper, efficient and economically sound operation of the spending unit.

(c) For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible effect which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the spending unit.

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§5A-10-9. Real property accounting and records.

(a) All real property owned or leased by the state shall be accounted for by the state spending unit that owns, leases or is in the possession of the real property.

(b) Each state spending unit shall establish and maintain a record of each item of real property it owns and/or leases and annually furnish its records to the Real Estate Division.

(c) Beginning July 1, 2019, and every year thereafter, the Real Estate Division shall report to the Governor and Joint Committee on Government and Finance those agencies that have not provided a complete annual record pursuant to subsection (b).

(d) With regard to public lands, rivers or streams, that may be by law specifically allocated to and used by any state agency, institution, division or department, such agency, institution, division or department shall provide an inventory of such public land(s), rivers or streams, to the Public Land Corporation in accordance with the provisions of §5A-11-1, et seq. of this code.

(e) The records furnished to the Real Estate Division shall include a description of each item of real property including address, lot number, and if available, the following identifying information:

(1) The date of purchase and the purchase price of the real property;

(2) If the state is leasing real property, the date of lease and the rental costs of the real property;

(3) The name of the state spending unit holding title to the real property for the state;

(4) A description of the current uses of the real property and the projected future use of the real property; and

(5) A description of each building or other improvement located on the real property.

(f) The records furnished to the Real Estate Division regarding rivers and streams shall include a description of each river or stream, including the applicable county, tax district, and if the interest or property is under the Ohio River, the applicable mile post.

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§5A-10-10. Real property review.

(a) At least once every four years, the Real Estate Division shall review the inventory of real property for each state spending unit submitted pursuant to this article to verify the accuracy of the inventory records.

(b) Based on the review of the inventory of real property, the Real Estate Division shall:

(1) Identify any real property owned or leased by the state that is not being used or that is being substantially underused as designated by the department, agency, or institution of state government that reports the property as required by §5A-10-9 of this code;

(2) Make recommendations to the Governor and the Secretary of the Department of Administration regarding the use of real property, which shall include:

(A) An analysis of the highest and best use to which the real property may legally be placed; and

(B) An analysis of alternative uses of the real property addressing the potential for any other transaction or use that the Real Estate Division determines to be in the best interest of the state; and

(3) Submit to the Governor and the Secretary of the Department of Administration any information pertinent to the evaluation of a potential transaction involving the real property, including an evaluation of any proposals received from private parties that would be of significant benefit to the state.

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§5A-10-11. Rulemaking.

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.

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§5A-10-12. Lease of state properties to nongovernmental entities.

(a) All state agencies, except for those listed in §5A-10-2 of this code, intending to lease grounds, buildings, office and other space to nongovernmental entities shall seek the advice and approval of the Real Estate Division to review any lease and ensure the provisions are in the best interest of the state.

(b) The Real Estate Division will review the lease and will submit to the state agency:

(1) Written approval of the lease; or,

(2) Written objections to proposed terms of the lease and suggestions to ensure the lease is in the best interest of the state.

The state agency may rebut any objections as circumstances may require, however, the Real Estate Division must approve any objections before the lease can be signed.

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