

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 414**

4 (By Senators McCabe and Snyder)

5 _____
6 [Originating in the Committee on Government Organization;
7 reported February 23, 2011.]

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9
10 A BILL to amend and reenact §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-5,
11 §5A-10-6 and §5A-10-9 of the Code of West Virginia, 1931, as
12 amended; and to amend said code by adding thereto two new
13 sections, designated §5A-10-12 and §5A-10-13, all relating to
14 the Real Estate Division; permitting acquisition of real
15 property; authorizing third-party contracts for real estate
16 services; permitting spending units to be billed for real
17 estate services; creating the Real Property Fund; establishing
18 what revenues are to be deposited into that fund; establishing
19 how moneys from the fund may be expended; and clarifying that
20 property owned by the Department of Agriculture and the West
21 Virginia State Conservation Committee are exempt from the
22 requirements of this article.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-5, §5A-10-6 and §5A-
25 10-9 of the Code of West Virginia, 1931, as amended, be amended and
26 reenacted; and that said code be amended by adding thereto two new

1 sections, designated §5A-10-12 and §5A-10-13, all to read as
2 follows:

3 **ARTICLE 10. REAL ESTATE DIVISION.**

4 **§5A-10-1. Division created; purpose; director.**

5 (a) ~~There is hereby created~~ The Real Estate Division is
6 continued within the Department of Administration for the purpose
7 of establishing a centralized office to provide real property
8 acquisition, leasing, appraisal and other real estate services to
9 the Secretary of the Department of Administration and to state
10 spending units.

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

14 (c) ~~Candidates for the position of~~ The executive director
15 shall:

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

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

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

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

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

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

9 **§5A-10-2. Leases for space to be made in accordance with article;**
10 **exceptions.**

11 (a) Notwithstanding any other provision of this code, no
12 department, agency, spending unit or institution of state
13 government may acquire, lease, or offer to lease, as lessee, any
14 real property, grounds, buildings, office or other space except in
15 accordance with the provisions of this article and article three of
16 this chapter.

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

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

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

26 (2) The Higher Education Policy Commission;

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

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

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

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

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

17 **§5A-10-3. Powers and duties of Real Estate Division.**

18 The Real Estate Division has the following powers and duties:

19 (1) To provide real property acquisition, leasing, appraisal
20 and other real estate services to the Secretary of the Department
21 of Administration and to state spending units;

22 (2) To contract for any necessary third-party real estate
23 services to effectuate the provisions of this article, including,
24 but not limited to, appraisals, surveys, property legal
25 descriptions, title searches and opinions, and space planning, and
26 may invoice spending units for the spending unit's actual costs and

1 expenses associated with necessary third-party real estate
2 services;

3 (3) Before July 30 of each year, to charge each spending unit
4 for the costs and services related to the Real Estate Division
5 providing acquisition, leasing, appraisal, and other real estate
6 services to the spending units, except those spending units that
7 are exempt under section two of this article:

8 (A) For fiscal year 2012, the Real Estate Division shall be
9 primarily funded through general revenue in an amount up to, but
10 not to exceed, the amount requested by the Real Estate Division for
11 that fiscal year. For any additional budgetary needs, the Real
12 Estate Division may charge a flat fee on a per square foot basis
13 for each of the spending units' leases, whether for the occupancy
14 of space from a private party or state-owned property; and

15 (B) For every fiscal year thereafter, the Real Estate Division
16 shall be solely funded through special revenue and may charge a
17 flat fee on a per square foot basis for each of the spending units'
18 leases, whether for the occupancy of space from a private party or
19 state-owned property. The Real Estate Division shall re-evaluate
20 its budgetary needs, determine its flat fee charge, and submit its
21 new budgetary request to the State Budget Office by August 30 of
22 each year for the applicable fiscal year;

23 (4) For those spending units that are exempt under section two
24 of this article and who request the assistance of the Real Estate
25 Division, to charge and invoice the exempt spending units on a fee-
26 for-service basis for all real estate services and costs incurred

1 by the Real Estate Division;

2 (5) To bill spending units for real property costs, expenses
3 and services in accordance with sections twelve and thirteen of
4 this article;

5 ~~(2)~~ (6) To ensure that the purchase of real estate and all
6 contracts for lease are based on established real estate standards
7 and fair market price;

8 ~~(3)~~ (7) To develop and implement minimum lease space standards
9 for the lease of any grounds, buildings, office or other space
10 required by any spending unit of state government;

11 ~~(4)~~ (8) To develop and implement minimum standards for the
12 selection and acquisition, by contract or lease, of all grounds,
13 buildings, office space or other space by a spending unit of state
14 government except as otherwise provided in this article;

15 ~~(5)~~ (9) To establish and maintain a comprehensive database of
16 all state real estate contracts and leases;

17 ~~(6)~~ (10) To develop policies and procedures for statewide real
18 property management;

19 ~~(7)~~ (11) To maintain a statewide real property management
20 system that has consolidated real property, building and lease
21 information for all departments, agencies and institutions of state
22 government;

23 ~~(8)~~ (12) To develop and maintain a centralized repository of
24 comprehensive space needs for all state departments, agencies and
25 institutions of state government, including up-to-date space and
26 resource utilization, anticipated needs and recommended options;

1 ~~(9)~~ (13) To provide statewide policy leadership and coordinate
2 master planning to guide and organize capital asset management; and

3 ~~(10)~~ (14) To provide assistance to all state departments,
4 agencies or institutions in acquiring, leasing and disposing of
5 real property.

6 **§5A-10-5. Selection of grounds, etc.; leasing; long-term leases.**

7 (a) The executive director has sole authority to select and to
8 ~~acquire by~~ contract or lease, in the name of the state, all
9 grounds, buildings, office space or other space, the rental of
10 which is necessarily required by any spending unit, upon a
11 certificate from the chief executive officer or his or her designee
12 of said spending unit, that the grounds, buildings, office space or
13 other space requested is necessarily required for the proper
14 function of said spending unit, that the spending unit will be
15 responsible for all rent and other necessary payments in connection
16 with the contract or lease and that satisfactory grounds,
17 buildings, office space or other space is not available on grounds
18 and in buildings now owned or leased by the state.

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

25 (c) The executive director may enter into long-term agreements
26 for buildings, land and space for periods longer than one fiscal

1 year: *Provided*, That such long-term lease agreements are not for
2 periods in excess of forty years, except that the secretary may, in
3 the case of the Adjutant General's department, enter into lease
4 agreements for a term of fifty years or a specific term of more
5 than fifty years so as to comply with federal regulatory
6 requirements and shall contain, in substance, all the following
7 provisions:

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

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

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

22 **§5A-10-6. Long-term leases of public lands for wireless**
23 **communication towers.**

24 (a) Notwithstanding any provision of law to the contrary, the
25 executive director has sole authority to negotiate and enter into
26 long-term lease agreements for lease of public lands to be used for

1 placement of wireless communication towers: *Provided*, That such
2 long-term lease agreements may not be for periods in excess of
3 thirty years: *Provided, however*, That for the governmental units
4 named in subsection (d) of this section, any lease proposed by the
5 executive director may only be entered into upon approval in
6 writing of the ranking administrator of the respective governmental
7 unit described in said subsection.

8 (b) All revenues derived from leases ~~established upon the~~
9 ~~enactment of this section~~ shall be deposited into the ~~General~~
10 ~~Revenue~~ Real Property Fund, unless the property is subject to a
11 pledge of its revenues in connection with a preexisting revenue
12 bond issue, and except as provided in subsections (c) and (d) of
13 this section.

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

17 (d) Revenues derived from the lease of property under the
18 control of the Department of Transportation shall be deposited into
19 the State Road Fund. Revenues derived from the lease of property
20 under the control of the Division of Natural Resources shall be
21 retained by the Division of Natural Resources and deposited into
22 the appropriate fund. Revenues derived from the lease of property
23 under the control of the Department of Agriculture shall be
24 deposited into the Agriculture Fees Fund. Revenues derived from
25 the lease of property under the control of the Division of Forestry
26 shall be deposited into the Division of Forestry Fund. Revenues

1 derived from the lease of property under the control of
2 institutions of higher education shall be deposited into the
3 institution's education and general capital fees fund. Revenues
4 derived from the lease of property under the control of the Higher
5 Education Policy Commission shall be deposited into the
6 commission's State Gifts Grants and Contracts Fund. Revenues
7 derived from the lease of property under the control of the West
8 Virginia Council for Community and Technical College Education
9 shall be deposited into the council's Tuition and Required
10 Educational and General Fees Fund.

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

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

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

24 **§5A-10-9. Real property accounting and records.**

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

1 the possession of the real property.

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

5 (c) The accounting and reporting requirements of this section,
6 except as to office space, do not apply to:

7 (1) The Division of Highways of the Department of
8 Transportation;

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

14 (3) The Higher Education Policy Commission;

15 (4) The West Virginia Council for Community and Technical
16 College Education;

17 (5) The institutional boards of Governors in accordance with
18 the provisions of subsection (v), section four, article five,
19 chapter eighteen-b of this code; ~~or~~

20 (6) The Adjutant General's Department and the West Virginia
21 National Guard;

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

1 (8) The real property held by the West Virginia State
2 Conservation Committee, including all easements, mineral rights,
3 appurtenances and operating revenue funds for those operations.

4 (d) With regard to public lands that may be by law
5 specifically allocated to and used by any state agency,
6 institution, division or department, such agency, institution,
7 division or department shall provide an inventory of such public
8 land(s) to the Public Land Corporation in accordance with the
9 provisions of article eleven of this chapter.

10 (e) The records furnished to the Real Estate Division shall
11 include the following information, if applicable:

12 (1) A description of each item of real property including:

13 (A) A reference to a book, page and/or image number from the
14 county records in a particular county; or

15 (B) A legal description;

16 (2) The date of purchase and the purchase price of the real
17 property;

18 (3) The date of lease and the rental costs of the real
19 property;

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

22 (5) A description of the current uses of the real property and
23 the projected future use of the real property; and

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

26 (f) If the description of real property required under this

1 section is excessively voluminous, the Real Estate Division may
2 direct the spending unit in possession of the real property to
3 furnish the description only in summary form, as agreed to by the
4 division and the spending unit.

5 **§5A-10-12. Real Property Fund.**

6 (a) There is created in the State Treasury a special revenue
7 fund to be known as the "Real Property Fund". The Real Property
8 Fund may be given appropriations as determined by the Governor and
9 the Legislature, but shall operate as a special revenue fund. This
10 fund consists of moneys deposited into it pursuant to this article
11 and interest earned on investments made from moneys in the fund.

12 (b) Moneys from the Real Property Fund shall be expended by
13 the executive director for real property acquisition, leasing,
14 appraisal and other real estate services provided pursuant to the
15 provisions of this article, and to pay costs, expenses, and
16 services associated with acquisition, leasing, appraisal and other
17 real estate services provided by the Real Estate Division to the
18 Secretary of Administration on behalf of the State of West Virginia
19 and other spending units subject to the discretion of both the
20 Secretary of the Department of Administration and the Governor.

21 **§5A-10-13. Authority to bill for services.**

22 (a) Each spending unit served by the Real Estate Division is
23 authorized and directed to transfer to the Real Estate Division for
24 deposit into the Real Property Fund the charges, as invoiced by the
25 Real Estate Division, for that spending unit's actual costs and
26 expenses associated with the real estate services provided, as

1 approved by the Secretary of Administration.

2 (b) Each spending unit served by the Real Estate Division is
3 authorized and directed to transmit to the Real Estate Division,
4 upon receipt of an annual invoice from the Real Estate Division and
5 for deposit into the Real Property Fund, the flat fee on a per
6 square foot basis for each of the spending units' leases, whether
7 for the occupancy of space from a private party or state-owned
8 property pursuant to paragraphs (A) and (B), subdivision three,
9 section three of this article, except for those spending units that
10 are exempt under section two of this article.

11 (c) Those spending units that are exempt under section two of
12 this article, and who request the assistance of the Real Estate
13 Division are authorized and directed to transfer to the Real Estate
14 Division for deposit into the Real Property Fund the charges, as
15 invoiced by the Real Estate Division, for all real estate services
16 and costs expended and incurred by the Real Estate Division.

17 (d) The executive director shall maintain accurate records
18 reflecting the cost of administering the provisions of this
19 article.