

Effective 5/12/2020

Part 8
Acquisitions of Real Property Interests

63A-5b-801 Definitions.

As used in this part:

- (1) "Agency optional term" means an option that is exclusively exercisable by a leasing agency to extend the lease term.
- (2) "High-cost lease" means a real property lease that:
 - (a) has an initial term including any agency optional term of 10 years or more; or
 - (b) will require lease payments of more than \$5,000,000 over the term of the lease, including any agency optional term.
- (3)
 - (a) "Leasing agency" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
 - (b) "Leasing agency" does not include:
 - (i) the legislative branch;
 - (ii) the judicial branch; and
 - (iii) an institution of higher education.
- (4) "Significant lease terms" includes the duration of the lease, the frequency of the periodic payments, a renewal clause, a purchase option, a cancellation clause, a repair and maintenance clause, and a restriction on use of the property.

Enacted by Chapter 152, 2020 General Session

63A-5b-802 Leasing responsibilities of the director.

- (1) The director shall:
 - (a) prepare and submit a yearly request to the governor and Legislature for a designated amount of square footage by type of space to be leased by the division for that fiscal year;
 - (b) lease, in the name of the division, all real property space to be occupied by a leasing agency;
 - (c) in leasing space:
 - (i) use a process consistent with the best interest of the state, the requirements of the leasing agency, and the anticipated use of the property; and
 - (ii) comply with any legislative mandates contained in the appropriations act or other legislation;
 - (d) apply the criteria contained in Subsection (1)(f) to prepare a report evaluating each high-cost lease at least 12 months before the lease expires;
 - (e) evaluate each lease under the division's control and apply the criteria contained in Subsection (1)(f), as applicable, to evaluate the lease;
 - (f) in evaluating leases:
 - (i) determine whether the lease is cost-effective when the needs of the leasing agency to be housed in the leased facilities are considered;
 - (ii) determine whether another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;
 - (iii) determine whether the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;

- (iv) compare the proposed lease payments to the current market rates, and evaluate whether the proposed lease payments are reasonable under current market conditions;
 - (v) compare proposed significant lease terms to the current market, and recommend whether these proposed terms are reasonable under current market conditions; and
 - (vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;
 - (g) based upon the evaluation, include in the report recommendations that identify viable alternatives to:
 - (i) make the lease cost-effective; or
 - (ii) meet the leasing agency's needs when the lease expires; and
 - (h) upon request, provide the information included in the report to:
 - (i) the leasing agency benefitted by the lease; and
 - (ii) the Office of the Legislative Fiscal Analyst.
- (2) The director may:
- (a) subject to legislative appropriation, enter into a facility lease with a term of up to 10 years if the length of the lease's term is economically advantageous to the state; and
 - (b) subject to legislative appropriation, enter into a facility lease with a term of more than 10 years if the length of the lease's term is economically advantageous to the state.

Amended by Chapter 421, 2022 General Session

63A-5b-803 Reporting of leasing activity.

- (1) The director shall:
- (a) prepare a standard form upon which a leasing agency and another state institution or entity can report the current and proposed lease activity of the leasing agency, institution, or entity, including any lease renewal; and
 - (b) develop procedures and mechanisms within the division to:
 - (i) obtain and share information about each leasing agency's real property needs; and
 - (ii) provide oversight and review of lessors and lessees during the term of each lease.
- (2) Each leasing agency, the Administrative Office of the Courts, and the board of trustees for each institution of higher education, shall report all current and proposed lease activity on the standard form prepared by the division to:
- (a) the division; and
 - (b) the Office of the Legislative Fiscal Analyst.

Amended by Chapter 421, 2022 General Session

63A-5b-804 Leasing by the Administrative Office of the Courts -- Judicial Council approval required for high-cost lease -- Director's responsibilities.

- (1) Before executing a high-cost lease or a modification to a lease that results in a high-cost lease, the Administrative Office of the Courts shall submit a draft of the new lease or modification to:
- (a) the Judicial Council; and
 - (b) the director.
- (2) The director shall:
- (a) review the draft submitted by the Administrative Office of the Courts; and
 - (b) within 30 days after receiving the draft, submit a report on the draft to:
 - (i) the Judicial Council; and
 - (ii) the Office of the Legislative Fiscal Analyst.

- (3) A report under Subsection (2)(b) shall contain:
 - (a) the director's opinion about:
 - (i) whether the lease or modification is cost-effective when the needs of the entity to be housed in the leased facility are considered;
 - (ii) whether another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing; and
 - (iii) whether the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
 - (b) a comparison of the proposed lease payments to the current market rates, and a recommendation as to whether the proposed lease payments are reasonable under current market conditions;
 - (c) a comparison of proposed significant lease terms to the current market, and a recommendation as to whether the proposed terms are reasonable under current market conditions; and
 - (d) a recommendation from the director that the lease or modification to a lease be approved or disapproved.
- (4)
 - (a) The Administrative Office of the Courts may not execute a new high-cost lease or modification to an existing lease that will result in a high-cost lease unless the lease or modification is approved by a majority vote of the Judicial Council.
 - (b) The Judicial Council shall consider the recommendations of the director in determining whether to approve a high-cost lease or modification resulting in a high-cost lease.

Renumbered and Amended by Chapter 152, 2020 General Session

63A-5b-805 Leasing by higher education institutions.

- (1) The Utah Board of Higher Education shall establish written policies and procedures governing leasing by an institution of higher education.
- (2) Except as provided in Section 53B-2a-113, an institution of higher education shall comply with the procedures and requirements of the Utah Board of Higher Education policies before signing or renewing a lease.

Renumbered and Amended by Chapter 152, 2020 General Session

Amended by Chapter 360, 2020 General Session

Amended by Chapter 365, 2020 General Session

63A-5b-806 Division rules on the value of property bought or exchanged -- Exception.

- (1) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to ensure that, if the division buys or exchanges real property, the value of the real property is congruent with the proposed price and other terms of the purchase or exchange.
- (2) The rules:
 - (a) shall establish procedures for determining the value of the real property;
 - (b) may provide that an appraisal, as defined in Section 61-2g-102, demonstrates the real property's value; and
 - (c) may require that the appraisal be completed by a state-certified general appraiser, as defined in Section 61-2g-102.

(3) The rules adopted under Subsection (1) do not apply to the purchase or exchange of real property, or an interest in real property, with a value of less than \$500,000, as estimated by the division.

Amended by Chapter 421, 2022 General Session