

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY TITLE NUMBER: 94CSR4

RULE TYPE: LEGISLATIVE: EMERGENCY; CITE AUTHORITY § 25-5-10(a)

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 NEW RULE BEING PROPOSED: 94 SCR 4

TITLE OF RULE BEING PROPOSED: Regulations relating to Public Hearings
and Site Selection for Private Prisons

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 August 17, 1990 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mr. Billy B. Burke

Executive Director

Regional Jail & Correctional Facility
Authority

307 Jefferson Street

Charleston, West Virginia 25305

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



Billy B. Burke, Executive Director

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

DATE: July 13, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Billy B. Burke, Executive Director
Regional Jail & Correctional Facility Authority

LEGISLATIVE RULE TITLE: Regulations relating to Public Hearings and
Site Selection for Private Prisons.

1. Authorizing statute(s) citation W.Va. Code § 25-5-10(a)

2. a. Date filed in State Register with Notice of Hearing:

July 20, 1990

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

None

c. Date of hearing (s): Public comment period established to end
on August 9, 1990.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

Filed as Emergency Rule on July 13, 1990

f. Name and phone number of agency person to contact for additional information;

Billy B. Burke, Executive Director

Regional Jail & Correctional Facility Authority
307 Jefferson Street
Charleston, West Virginia 25305
304-348-2110

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.

Not Applicable

b. Date of hearing: Not Applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not Applicable

d. Attach findings and determinations and reasons:

Attached - Not Applicable

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulations Relating to Public Hearing and Site Selection for Private Prisons

Type of Rule: X Legislative Interpretive Procedural

Agency Regional Jail & Correctional Facility Authority Address 307 Jefferson Street
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 500.00	\$ -0-	\$500.00	\$ 1000.00	\$ 1000.00
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	500.00	-0-	500.00	1000.00	1000.00
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

Estimates of cost include an allowance for Legal Advertisement and Travel Expense for conducting Public Hearings. No estimates are given for personnel and employee benefit costs for Staff involved.

3. Objectives of these rules:

The objective of these rules is to provide a means by which public comment may be obtained related to the establishment of Private Prisons.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Although some positive economic impact may occur through collection of business taxes from Private Prison Operators and the creation of jobs, precise determination cannot be made.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Creation of additional jobs may reduce unemployment rates.

C. Economic Impact on Citizens/Public at Large.

Positive economic impact is anticipated.

Date: July 13, 1990

Signature of Agency Head or Authorized Representative



Billy B. Burke, Executive Director

TITLE 94

LEGISLATIVE RULES

WEST VIRGINIA REGIONAL JAIL & CORRECTIONAL

FACILITY AUTHORITY

SERIES 4

REGULATIONS ESTABLISHING CRITERIA FOR IDENTIFYING AND
EVALUATING POTENTIAL SITES FOR PRIVATE PRISONS AND
PROVIDING FOR PUBLIC HEARING TO ALLOW REASONABLE
PARTICIPATION IN THE SELECTION PROCESS BY THE
CITIZENS OF THE AREA TO BE AFFECTED BY THE
CONSTRUCTION AND OPERATION OF A PRIVATE PRISON

94-4-1. General.

1.1. Scope. The enactment of section ten(a), article five, chapter twenty-five of the West Virginia code requires the Regional Jail and Correctional Facility Authority to promulgate legislative rules for the conduct of public hearings prior to the establishment of private prisons in the State of West Virginia. Provisions of related sections of article five, namely, sections five and seven, require the approval of the Authority prior to the construction, modification, lease or alteration of a private prison.

1.2. Authority. West Virginia Code: 25-5-10(a).

1.3. Filing Date: July 13, 1990

1.4. Effective Date: July 13, 1990

1.5. Repeal of Former Rule: No former rule is repealed by this filing; the legislation authorizing these rules and regulations was enacted on March 7, 1990, effective from passage.

94-4-2. Application and Enforcement

2.1. Application and Enforcement. These legislative rules and regulations shall apply to the West Virginia Regional Jail and Correctional Facility Authority, its board, and person, individual or corporation desiring to establish or operate a private prison in West Virginia and any and all persons desiring to participate in a public hearing conducted concerning the establishment or operation of a private prison in West Virginia. The enforcement of these regulations shall be vested with the Chairman of the West Virginia Regional Jail and Correctional Facility Authority and its Executive Director.

2.2. Application by individual, partnership, corporation, unincorporated association or other nongovernmental entity for public hearing. Any individual, partnership, corporation, unincorporated association or other nongovernmental entity, who has applied to the Secretary of Public Safety for approval to

operate a private prison as a private prison vendor, as defined in section four, article five, chapter twenty-five of the code of West Virginia, may petition the Authority for a public hearing on the selection of a site for a private prison. The Authority may, if satisfied that the holding of a public hearing is in the best interests of the State, schedule such public hearing. The Authority shall give credence to the following factors in reaching its decision on the question of holding a public hearing and may consider such other factors as may be deemed relevant to the specific petition:

- a. the prior experience of the petitioner in the field of corrections;
- b. the financial stability of the petitioner;
- c. the status of contracts or contract negotiations with contracting agencies, whether foreign or domestic, for the housing of inmates in the proposed private prison; and,
- d. the demonstrated viability of the proposed private prison.

94-4-3. Definition.

3.1. Definitions generally. Terms used in these regulations shall be considered to have the same meaning as they are defined in article five, chapter twenty-five of the code of West Virginia.

3.2. Authority. Authority shall mean the West Virginia Regional Jail and Correctional Facility Authority, its Board and its staff.

3.3. Private Prison Facility. Private Prison Facility shall mean any facility, institution or program operated by any individual, partnership, corporation, unincorporated association or any other nongovernmental entity for the confinement of adult persons charged with or guilty of the commission of a criminal offense under the laws of United States of America, the state of West Virginia, or any other state of the United States.

94-4-4. Public Hearing.

4.1. Public Hearings. Before granting the approvals required by sections five and seven of article five of chapter twenty-five of the code, the Regional Jail and Correctional Facility Authority shall hold a public hearing and shall receive comment upon the establishment and operation of such private prison facility. Provided, that the private prison to be established at the former Spencer state hospital has been granted legislative exemption from the requirements for public hearings.

94-4-5. Notice.

5.1. The Authority shall give notice to the public of the date, time and place of any public hearing to be held under these rules and regulations by publication of a Class II Legal Advertisement in a newspaper of general circulation in the county proposed as the location of the private prison facility. The Authority shall have the notice first published at least ten (10) days in advance of the hearing. The notice shall contain the following information:

- a. A statement of the date, time and place of the public hearing;
- b. A physical description of the proposed private prison facility;
- c. A description of the information to be provided by the private prison at the public hearing; and,
- d. The location of drawings, plats, or additional information concerning the proposed private prison facility.

The Authority shall also issue a Press Release giving the date, time, place and purpose of any public hearing to be held under these regulations. The Press Release shall be distributed to the Secretary of State for publication in the state register and to radio, television stations and newspapers serving the county in which the proposed private prison facility is to be located.

94-4-6. Conduct of Public Hearings.

6.1. The Public Hearing shall be moderated by a member of the Authority or its staff. The private contractor applying for approval shall prepare and present such information as may be necessary to explain the proposed facility, the intended use of such facility and the impact of the facility upon the community in which the facility is to be located.

6.2. The Public Hearing shall begin with a presentation by the applicant. The presentation shall include, but not be limited to, the following information:

- a. A description of the project;
- b. A description of the social, economic and environmental effects of the project;
- c. Maps, drawings, plats or renderings of the proposed physical plant;
- d. Detailed description of the programs to be offered and persons to be served by the project; and,

- e. A description of the alternative courses of action considered by the applicant.

6.3. The moderator shall then allow for comment and questions from those in attendance. The moderator shall give wide latitude to the making of comment and the proposing of questions; however, the moderator may impose reasonable limits upon those in attendance to insure the orderly conduct of the hearing. Such limits may include considerations of both time and decorum.

6.4. The moderator shall announce that written comments will be accepted by the Authority for a period of ten (10) days following the Public Hearing.

6.5. A verbatim transcript of the Public Hearing shall be made and maintained at the Authority's office. Copies of the verbatim transcript shall be made available to any person requesting same at the cost of twenty-five cents (\$.25) per page copied.

94-4-7. Criteria for Identifying and Evaluating Potential Sites for Private Prisons.

7.1. The Authority shall, in the approval of sites for private prisons, review proposals from private providers and give consideration to the following factors:

- a. adequacy of size and configuration of the proposed site for the intended use;
- b. economic impact of the proposed use of the site;
- c. accessibility of the site to services, personnel and visitors necessary to operate a correctional program in compliance with current standards;
- d. community acceptance of the intended use;
- e. availability of utilities and the impact of the proposed use upon the availability of utilities to the community; and,
- f. consistency of the proposed project with the applicable sections of the current edition of the West Virginia Minimum Standards for the Construction, Maintenance and Operation of Prisons, Jails or Holding Facilities and the specific requirements of section nine, article five, chapter twenty-five of the code of West Virginia.