

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

FILED

1991 APR 17 AM 9:10

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Regional Jail & Correctional Facility Authority TITLE NUMBER: 94-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 94 CSR4 4

TITLE OF RULE BEING PROPOSED: Regulations establishing criteria for
identifying and evaluating potential sites for private prisons.

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 637

SECTION 64-6-5, PASSED ON March 9, 1991

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 17, 1991


Executive Director

FILED



Joseph J. Skaff
SECRETARY
(304) 348-2930

State of West Virginia
OFFICE OF THE SECRETARY
Department of Public Safety
State Capitol Building
Box 2930
---1900 Kanawha Boulevard
Charleston, West Virginia 25305-0001

1990 DEC 20

OFFICE OF WEST
SECRETARY OF

Secretary of
Department of Public Safety and
Comm. on Drunk Driving Prevention
Department of Corrections
Adj. Gen'l's Department
Office of Emergency Services and
Emergency Services Advisory Council
Armory Board
Military Awards Board
Sheriff's Bureau
Fire Commission & State Fire Admin.
Regional Jail and Prison Authority
Board of Probation and Parole

July 16, 1990

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
State Capitol Complex
Charleston, WV 25305

Dear Mr. Hechler:

I hereby approve the filing of the attached Legislative Rules by the West Virginia Regional Jail and Correctional Facility Authority as require by Chapter 25, Article 5, Section 10 and the provisions of Chapter 5-F of the Code of West Virginia.

Please accept this filing under the emergency filing provisions and direct any further questions or comments to Mr. Billy Burke, Executive Director of the Authority at 307 Jefferson Street, Charleston, WV 25305.

Thank you for your assistance in this matter.

Sincerely,

Joseph J. Skaff
Secretary
Department of Public Safety

S/b

Attachments

(1-16-91)

94 CSR 4

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 FACILITY

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 facility.

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

1.3. Filing Date:

1.4. Effective Date:

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 facility 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 facility 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 facility 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 facility. 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 facility; and,
- d. the demonstrated viability of the proposed private prison facility.

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 proposer of the private prison facility 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 private prison facility, the intended use of such private prison facility and the impact of the private prison facility upon the community in which the private prison 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 facilities, 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.