

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2005 JUN 27 P 3:39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: 5A-3-42

AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Leasing Space on Behalf of State Spending Units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:     

TITLE OF RULE BEING PROPOSED:     

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 July 27, 2005 AT 10:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb

Department of Administration

1900 Kanawha Boulevard, East

Room E-119

Charleston, WV 25305

304-558-3392

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Agency:** Department of Administration  
**Rule Type:** Legislative

**Title Number:** 148  
**Cite Authority:** 5A-3-42

## **STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY**

The Department of Administration proposes revising its Legislative Rules on Leasing Space on Behalf of State Spending Units in order to allow state spending units to acquire additional space in the same building they are already leasing without having to go through the bid process and to allow exceptions to the compliance standards in certain circumstances.

**TITLE 148  
LEGISLATIVE RULE  
DEPARTMENT OF ADMINISTRATION  
LEASING SECTION**

**FILED**

2005 JUN 27 P 3:39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 2  
LEASING SPACE ON BEHALF OF STATE SPENDING UNITS**

**§148-2-1. General.**

1.1. Scope. -- This Legislative Rule provides for the selection, negotiation and acquisition by contract or lease of all grounds, buildings, office space or other space required by any spending unit of the executive branch of State government, except for the division of highways, the higher education policy commission, the lottery commission, or a spending unit of the state with independent leasing authority pursuant to the code of West Virginia. This exemption does not apply to the office space of spending units of the executive branch.

1.2. Authority. -- W. Va. Code §5A-3-42.

1.3. Filing Date. -- May 23, 2005

1.4. Effective Date. -- July 1, 2005

**§148-2-2. Request for Space.**

2.1. Generally.

2.1.a A spending unit desirous of leasing any ground, building, office space or other space shall submit to the Leasing Section of the Department of Administration a completed Requisition for Space on the form provided by the Leasing Section, signed by the chief executive officer of the spending unit or his/her designee, no later than six (6) months prior the date the space is required.

2.1.b The requisition shall contain a certification by the chief executive officer of the spending unit or his/her designee that the space is

necessarily required for the proper function of the 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 space is not available on grounds or in buildings now owned or leased by the State.

2.1.c A request to renew an existing lease with or without changes shall be submitted by requisition no later than six (6) months prior to expiration of the existing lease. The Leasing Section shall determine if it is necessary to seek proposals for new leases within thirty (30) days of such submission. The current landlord will be simultaneously notified upon the determination of the necessity to seek proposals for new leases. Spending units seeking a new lease must give the Leasing Section six (6) months notice.

**§148-2-3. Fair Market Value and Appraisals.**

3.1 Before executing any rental contract or lease, the Secretary of Administration shall determine the fair market value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist. To determine the fair market value of the space requested, the Leasing Section shall conduct market surveys prior to award. If a market survey of the area is impracticable, an appraisal shall be conducted by a licensed real estate appraiser. If an appraisal is conducted, the Leasing Section may require the spending unit to pay for the cost of the appraisal.

3.2 No contract or lease shall be entered into if the rental exceeds the fair market value of the space requested, unless approved by the Secretary

of Administration with proper written justification, such justification may include, but is not limited to, the specifications outlined in section 4.2.d.

#### **§148-2-4. Authority, Acquisition, Negotiation, Inspection and Award.**

##### **4.1. Authority.**

The Secretary of Administration shall have the 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 for and on behalf of any spending unit except those spending units that are exempt by West Virginia State Code.

##### **4.2. Acquisition**

4.2.a The spending unit shall provide the Leasing Section with a request on a form provided by the Leasing Section to justify their request. The Leasing Section may require further justification or may approve the request as written.

4.2.b If the request is approved, the spending unit may submit criteria for rental space. The Leasing Section shall review criteria and may include this criteria in the bid specifications requirements.

4.2.c The Leasing Section shall issue a solicitation of interest in the State Purchasing Bulletin and by whatever other means it so chooses in order to elicit responses from the largest number of qualified bidders for office space in excess of 7,000 square feet net. Renting space under 7,000 square feet net does not have to be bid but must meet all specifications and other requirements. The spending unit must also provide a detailed list of at least three (3) other sites considered along with a letter of justification for the site selected.

4.2.d. The Leasing Section shall provide bid specifications to all bidders. Specifications may include consideration for revitalization of downtown areas and historical areas. Special consideration may also be given to facilities that are on the National Register of Historic Places. The Leasing Section will evaluate and rate all bid

proposals . If the spending unit has requested a sole source, it must be approved by the Secretary of Administration with written justification.. The spending unit may request to participate in this process.

4.2.e. The spending unit may select any bidder from the top three rated bidders, provided that the bid selected shall not exceed the low bid by more than 5%. If the spending unit elects not to select a bidder, the Leasing Section shall make the selection on behalf of the spending unit.

4.2.f. Agencies that are acquiring additional space in the same building in which they are already leasing are not required to advertise. The additional space will be considered a sole source and the existing lease will be amended accordingly.

##### **4.3. Negotiation.**

4.3.a. The Leasing Section and/or spending unit may negotiate a rental agreement with the selected bidder. If a negotiated rental agreement cannot be reached within fifteen (15) days of initiating of said negotiations, the Leasing Section and/or spending unit shall enter into negotiations with one of the remaining top three bidders. The successful bid shall not exceed 5% of any remaining bid.

4.3.b. Any escalation clauses during the negotiation shall require supporting documentation as evidence of the escalation prior to issuance of a rental increase based on the escalation. Escalation clauses shall be limited to real property taxes and building utilities.

4.3.c. A letter of intent shall be issued to the successful bidder within thirty (30) days of the selection. All bids shall remain confidential until the issuance of a letter of intent.

##### **4.4. Notification.**

The Leasing Section shall provide written notification of its site selection recommendation to the spending unit and all bidders within thirty (30)

days of the evaluation of the spending unit's request for space which includes the review of bids, evaluation of bids by the Leasing Section and any negotiations conducted by the Leasing Office pursuant to Subsection 4.3 of this rule prior to final location selection.

#### 4.5 Inspection and Award

Prior to the award of a contract the Leasing Section shall inspect the potential site to insure that all bid specifications have been met. If the site does not meet bid specifications the bidder shall correct said deficiencies at bidder's sole expense. If said deficiencies are not corrected, negotiation may begin with another vendor as described in section 4.3. Once all deficiencies, if any, are corrected, execution of a lease may proceed.

#### §148-2-5. Protests

5.1. a. The Leasing Section shall establish a process by which a vendor/lessor may protest the selection of a lease. Protests must be made, in writing, to the Leasing Section, within ten (10) days of the award of a lease and may include a request for an administrative hearing in accordance with Article 5, Chapter 29A (State Administrative Procedures Act) of the W.Va. Code.

5.1 b. If the protestor does not request an administrative hearing the Leasing Section shall, within 15 days of receipt of the request, review any evidence submitted with the protest and the action of the Leasing Section and shall determine whether or not the Leasing Section's action was proper and justified, and is in accordance with applicable laws and these rules. The Leasing Section shall prepare a written decision and mail a copy to the protesting party within 25 days of receipt of the protest. This review does not constitute a hearing; is not a prerequisite to a hearing request; or is a final order appealable under the provision of W.Va. Code § 29A-5-4.

#### §148-2-6. Lease.

##### 6.1. General.

A lease shall be prepared by the Leasing Section. The term of the lease shall not exceed forty (40) years. Leases for a term of more than six (6) months, including any options, shall be filed with the State Auditor. If the term of the lease is for a period longer than one fiscal year, the following terms and conditions, in substance, shall be included in the lease:

6.1.a The Department of Administration shall have the right to cancel the lease without further obligation on the part of the State upon thirty (30) days prior written notice, such notice being given at least thirty (30) days prior to the last day of the succeeding month.

6.1.b The Department of Administration shall have the right to immediately cancel the lease without further obligation on the part of the State in the event the West Virginia Legislature or the federal government fails to appropriate sufficient funds with which to pay the rentals and other sums reserved in the lease, or otherwise acts to impair the lease or causes it to be canceled.

6.1.c The lease shall be considered renewed for each fiscal year during the term of the lease unless canceled by the Department of Administration before the end of the then current fiscal year.

6.1.d The lease may be executed in any number of counterparts, as determined by the Leasing Section, each of which shall constitute an original and which taken together shall constitute one and the same lease. All leases shall be acknowledged before a notary public by each signatory.

##### 6.2. Execution by the Lessor.

6.2.a When the lessor is a corporation, the lease shall be executed by its president or vice president and duly attested to by another officer of the corporation, usually the secretary. The corporate seal shall be affixed, when available.

6.2.b When the Lessor is a company, the lease shall be executed by the owner thereof.

6.2.c When the lessor is a partnership, any partner authorized to bind the partnership shall execute the lease, and, if possible, all partners should execute. In a limited partnership, the general partner may execute the lease on behalf of the limited partners.

6.2.d When a lessor is an individual, his/her marital status must be stated on the request for space form. If a lessor is married, his/her spouse must also execute the lease, even if the subject property has been deeded to only one of the parties.

6.2.e If an individual or corporation other than the owner of the property is authorized to execute the lease on behalf of the owner and/or receive rentals and notices, written authorization, duly signed by the property owner, shall be filed with the Leasing Officer at the time of execution of the lease by the lessor.

### 6.3. Execution by Lessee.

The Secretary of Administration or the Director of the Purchasing Division of the Department of Administration shall execute each contract of lease in the name of the State for and on behalf of the spending unit requesting the space after execution by the lessor. Execution of a lease by the Secretary of Administration or his/her designee or Director of Purchasing on behalf of a spending unit will in no way make either the Secretary or the Department of Administration responsible for the payment of any rentals or other sums contemplated by the lease. All rentals and other sums shall be paid by the spending unit on whose behalf the Secretary or his/her designee or Director executed the lease.

### 6.4. Approval as to Form

After execution by the Secretary of Administration or his/her designee or the Director of the Purchasing Division, the lease shall be transmitted to the office of the Attorney General for approval as to form. Leases that have been approved as to form by the Attorney General shall be filed with the Leasing Section, with copies being sent to the lessor, office of the Auditor if the term

of the lease, including any options, is for more than six months, and the spending unit.

### §148-2-7. Cancellation.

7.1 In order to allow sufficient delivery time and to comply with the conditions of the lease, the spending unit requesting cancellation must submit a letter requesting cancellation to the Leasing Section. The letter must be signed by the chief executive officer of the spending unit or his/her designee. The Secretary of Administration or his/her designee or the Director of the Purchasing Division shall send a certified letter to the lessor at the last known address on file with the Leasing Section, notifying the lessor of the cancellation and the effective date of the cancellation. This request should be sent to the Leasing Section no later than forty-five (45) days prior to the requested cancellation date.

### §148-2-8. Permanent Changes.

8.1 A spending unit shall not order or make permanent changes of any type to space that is leased in accordance with these regulations without the prior approval of the Secretary of Administration. The Secretary of Administration shall determine that the change is necessary for the proper, efficient and economically sound operation of the spending unit before granting such approval.

8.2 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 thing which cannot be economically removed when the space is vacated by the spending unit.

### §148-2-9. Delegation of Authority for Leasing of Temporary Space.

9.1 The Secretary of Administration may authorize spending units to lease temporary space, other than office space, including conference meeting rooms, as well as for athletic events, seminars or other educational, recreational or social events, when the rental and other costs for

that space do not exceed two thousand dollars (\$2,000.00), unless an agreement or contract must be executed. Such leases shall not have a term exceeding six (6) months. If an agreement or contract must be executed to obtain the space, the agreement or contract must be approved by the Leasing Section. The spending unit shall utilize the form made available by the Leasing Section to process payment.

#### **§148-2-10. Agreements Between State Spending Units.**

10.1 Leases between spending units of the State shall be prepared by the Leasing Section, unless otherwise directed by the Leasing Section, and shall be signed by the Secretary of Administration or his/her designee or the Director of the Purchasing Division on behalf of the lessee and by the chief executive officer of the lessor.

#### **§148-2-11 Emergency Situations.**

11.1 In the event of a natural disaster or other emergency situation as determined by the Secretary, the Department of Administration shall be exempt from the normal Leasing rules and procedures. In the event of a natural disaster or emergency situation, the Secretary of Administration shall continue to have the authority to select and to acquire by contract or lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit.

11.2 The spending unit shall notify the Leasing Section at the earliest possible date of any emergency situation and need to lease space or to relocate from an existing lease. This notice will allow the Leasing Section to better assist the spending unit and determine space that may be available in a given area if necessary.

11.3 The spending unit does not have the authority to negotiate with a prospective lessor on behalf of the State without the consent of the Leasing Section or the Secretary of the Department of Administration.

11.4 When possible, the Department of Administration, with assistance of the spending unit, will obtain three proposals in writing prior to entering into lease agreements.

11.5 When possible, the Department of Administration will put a Class II legal advertisement in the newspaper soliciting proposals for space over 10,000 square foot prior to entering into lease agreements.

#### **§148-2-12. Compliance.**

12.1 The Leasing Section shall develop compliance standards for office space and shall monitor all leased properties on a systematic and regular basis to insure that all properties continue to conform to these standards. All non-typical space, such as warehouse, storage, laboratory, or classroom space shall be exempt from these compliance standards. The compliance standards will be included as part of bid selections. A procedure for processing violations shall be developed by the Leasing Section and shall include; penalties up to and including an amount not to exceed the amount of the monthly rental (or the ability to withhold that amount); cancellation of the lease agreement; and relocation of the spending unit at the discretion of the Secretary of Administration.

12.2 The compliance standards shall include, at a minimum:

##### **B. Codes and Standards**

1. Facilities shall conform to the requirements of the State Building Code, which incorporates the following:

- a. The International Building Code\*, First Edition, 2000.
- b. The International Plumbing Code, First Edition, 2000.
- c. The International Mechanical Code, First Edition, 2000.
- d. The International Fuel Gas Code\*, First Edition, 2000.
- e. The International Property Maintenance Code, First Edition, 2000.
- f. The International Energy

Conservation Code, First Edition, 2000.

\*See the State Building Code for exceptions.

2. Facilities shall conform to the requirements of the WV State Fire Code (effective May 1, 1998).

3. Changes in the State Building Code or State Fire Code will be automatically adopted as new leasing standards.

#### C. Quality and Appearance

1. The building must be well maintained and should project a professional and aesthetically pleasing appearance, including adequate landscaping and grounds maintenance if applicable.

#### D. Minimum Heating, Ventilating and Air Conditioning Requirements

1. All occupied spaces shall meet the following design conditions:

a. Winter Design Conditions - 75 deg F DB at an outside temperature of 7 deg F DB. Those areas to be heated and ventilated, or heated only, to be maintained at 68 deg F DB.

b. Summer Design Conditions - 75 deg F DB at 50% RH at outside temperature of 94 deg F DB and 78 deg F WB.

#### 2. Minimum Indoor Air Quality Requirements (IAQ)

The lessor shall control contaminants at the source and/or operate the leased space in such a manner that the indicator levels for Carbon monoxide (CO), carbon dioxide (CO<sub>2</sub>), and formaldehyde (HCHO) are not exceeded. The indicator levels for office areas are as follows: CO-9 parts per million (PPM) time weighted average (TWA-8-hour sample); CO<sub>2</sub>-1,000 PPM (TWA); HCHO-0.1 PPM (TWA). The Lessor shall promptly investigate IAQ complaints and shall implement controls including alteration of building operating procedures (e.g. adjusting fresh air intakes, adjusting air distribution, cleaning and maintaining HVAC equipment etc.). The Leasing Section reserves the right to conduct independent IAQ assessments and detailed studies in space it occupies, as well as in space serving the leased space (e.g. common use areas, mechanical rooms, HVAC systems, etc.). The lessor shall assist the Leasing Section in making said assessments by making available information on building

operations and Lessor activities, and by providing access to space for assessment and testing, if required, and by implementing corrective measures when needed.

#### D. Lighting

1. The following light levels shall be provided: Interior Offices-50 footcandles at working surface height throughout. Exterior Spaces-2.5 footcandles (average) at five feet above grade in all parking and pedestrian areas.

2. Lighting Fixtures: General Office fixtures shall be 2' x 2' and/or 2' x 4' recessed parabolic fluorescent fixtures and recessed downlights on dimmers at Conference Rooms (preferred).

#### E. Fire Protection

The building shall provide a complete, automatic fire protection system including fire sprinklers and alarms, standpipe and fire department connections where required by the State Fire Code. A Certificate of Occupancy and any subsequent inspection reports from the office of the State Fire Marshal shall be available for review by the agency prior to occupancy. At the spending unit's request, an inspection by the State Fire Marshal may be required prior to occupancy and the expense shall be borne by the lessor.

#### 12.3 The following exemptions are made to the compliance standards as herein provided in 148-2-12:

1) buildings owned by the State;

2) buildings located in rural areas where buildings meeting the compliance standards do not exist;

3) leased facilities in which meeting the compliance standards would so adversely affect the budget of the state agency to the point that they would be forced to cease operation in that area;

4) leased facilities that are in the process of being replaced by the construction of a new State office building; provided, however, that the new building process has been initiated; and

5) leased facilities in which the lessor is diligently trying to become compliant, in which event, the Leasing Section shall establish a reasonable compliance deadline at its discretion.

12.34 The Secretary of Administration or his designee shall disbar the lessor from entering into any other lease with the State of West Virginia for failing to meet the standards set forth herein or failing to comply with all applicable rules and regulations.

12.45 All lessors shall comply with the Purchasing Division vendor registration requirements, workers compensation requirements, and all other applicable statutes and regulations.

12.56 The Leasing Section shall send a report to the Secretary of Administration or his/her designee providing compliance information regarding all lessors on an annual basis.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 148 - CSR - 2, Leasing Space on Behalf of State Spending Units

Type of Rule: X Legislative        Interpretive        Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East  
Capitol Building, Room E-119  
Charleston, WV 25305

Phone Number: 304-558-4331 Email: dlipscomb@wvadmin.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rule modifications allows state spending units to acquire additional space in the same building they are already leasing without having to go through the bid process and makes exemptions to the compliance standards in certain necessary circumstances. Past fiscal note did not accurately reflect cost of compliance standards implementation. Passage of the proposed modifications will result in savings to the state.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: 148-CSR-2, Leasing Space on Behalf of State Spending Units

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The modification that allows agencies to acquire additional space in the same buildings they are currently leasing logically consolidates and maximizes agency space and efficiency at cost savings to the state by saving staff time, advertising costs and related expenses.

The proposed modifications that allow for exemptions to the compliance standards will have a savings to the State. Without the exemption in rural areas it could be cost prohibitive to have state offices located in those areas resulting in agency closure. Also, major savings comes from the exemption allowing state owned buildings and leased facilities that are in the process of being replaced with new construction. Without such exemptions the State could be required to expend funds in excess of \$1 million annually to update the facilities and for staff time to inspect and repair the facilities.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

While the proposed exemptions allow for exemptions to the compliance standards, the Department of Administration and the Leasing Section will work to meet all compliance standards as funding will allow. It is not the goal of the Department of Administration to force all landlords to meet the standards and then allow our own buildings to become substandard. However, the proposed modifications will allow for the state owned buildings to be brought up to standard gradually without being required to have all buildings meet all standards by the effective deadline of the rules.

Date: 27 June 05

Signature of Agency Head or Authorized Representative

Deborah A. Connolly



JOE MANCHIN III  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE CABINET SECRETARY

ROBERT W. FERGUSON, JR.  
CABINET SECRETARY

June 27, 2005

***Via Hand-Delivery***

The Honorable Betty Ireland  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Re: Legislative Rules**

Dear Secretary Ireland,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to Leasing Space on Behalf of State Spending Units. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. Lipscomb".  
Donna M. Lipscomb  
Executive Coordinator

Enclosures