

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2003 JUL -1 P 3:04

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 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 31, 2003 AT 10:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Prunty, Executive Coordinator

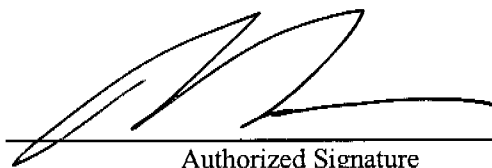
Department of Administration

1900 Kanawha Boulevard, East

Room E-119

Charleston, WV 25305

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 update the rules to exempt those agencies that no longer have to adhere to the Leasing rules. The proposed rules also provides for additional requirements by the Department of Administration prior to entering into leases and removes the wording relative to the Director of the Division of Purchasing having signature authority. The proposed rules also add a section relative to emergency situations.

TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION
~~PURCHASING DIVISION~~
LEASING SECTION

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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 of the Department of Transportation. As to the Division of Highways, this rule applies only to office space: those spending units who are exempt or who have independent leasing authority.~~

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

1.3. Filing Date. -- ~~April 3, 1991.~~

1.4. Effective Date. -- ~~April 3, 1991.~~

§148-2-2. Request for Space.

2.1. Generally.

A spending unit desirous of leasing any ground, building, office space or other space shall submit to the Leasing Officer ~~of the Purchasing Division~~ of the Department of Administration a completed Requisition for Space on the form provided by the Leasing Office, signed by the chief executive officer or his/her designee, no later than two (2) months prior the date the space is required, except as provided in Section 8 of these regulations. Whenever possible, alternate space should be listed on the requisition.

The requisition shall contain a certification by the chief executive officer 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.

2.2. New Leases.

A request for new space shall include a floor plan, specifications and any other available information describing the space, and a letter of justification.

2.3. Renewal of Existing Leases.

A request to renew an existing lease with or without changes shall be submitted by requisition no later than two (2) months prior to expiration of the existing lease.

§148-2-3. Fair Rental Value and Appraisals.

3.1 Before executing any rental contract or lease, the Secretary of Administration shall determine the fair rental 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 rental value of the space requested, the Secretary of Administration may appoint a real estate appraiser to make such determination. The cost of the appraisal shall be borne by the spending unit requesting the space and the appraisal shall be based on the condition in which the space exists and any improvements required by the spending unit.

3.2 No contract or lease shall be entered into if the rental exceeds the fair rental value of the space requested.

§148-2-4. Authority, Selection, Negotiation, Preparation and Occupancy.

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.

4.2. Selection.

4.2.a The spending unit shall notify the Leasing Officer at the earliest possible date of any interest to lease space or to relocate from an existing lease. This notice will allow the Leasing Officer to better assist the spending unit and determine space that may be available in a given area.

4.2.b The Leasing Officer ~~may~~ shall solicit proposals on any space to be leased when considered in the best interest of the State.

4.2.c The Leasing Officer shall put a legal advertisement in the newspaper soliciting proposals for any office space that is 10,000 square foot or more prior to entering into any lease agreements.

4.3. Negotiation.

The Leasing Officer shall have full authority to negotiate with a prospective lessor for a price that does not exceed the fair rental value of the space or the estimated cost submitted by the requesting agency.

4.4. Preparation

Preparation and improvements to a prospective location shall be the responsibility of the lessor, unless otherwise agreed. When the prospective location is to be newly constructed or renovated office space, the layout and specifications shall generally be in accordance with Section 5 of these regulations, as determined by the Leasing Officer.

The Leasing Officer may request the representative of the requesting agency to coordinate preparation of the space and report when the space complies with the spending unit's

specifications and is suitable for occupancy.

4.5. Occupancy.

One of the requirements issued to the prospective lessor during negotiation will be to prepare the space for occupancy, allowing approximately two (2) weeks for the agency to establish the offices and make final adjustments prior to formal opening. The spending unit will not occupy the leased premises until authorized to do so by the Leasing Officer.

§148-2-5. Office Space Layout and Specifications.

5.1. ~~(a)~~ When a requisition for new office space is submitted, it shall specify the types of offices needed, including layout and specifications. Prior to space being renovated, detailed scale drawings shall be submitted to the Leasing Officer; and prior to space being newly constructed, detailed scale drawings or architectural and/or engineering specifications shall be submitted to the Leasing Officer for approval. Leased premises must comply with all state and local laws and regulations.

5.2 ~~(b)~~ The Leasing Officer shall establish a uniform standard of measurement for all leased property.

§148-2-6. Lease.

6.1. General.

A lease shall be prepared by the Leasing Officer. 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 ~~(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 (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 (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 (d) The lease may be executed in any number of counterparts, as determined by the Leasing Officer, 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 (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 (b) When the Lessor is a company, the lease shall be executed by the owner thereof.

6.2.c (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 (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 (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.

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 Director of Purchasing~~ on behalf of a spending unit will in no way make either the Secretary, ~~the Director~~ 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 Director~~ executed the lease.

6.4. Approval as to Form and Distribution.

After execution by the Secretary of Administration ~~or the Director of purchasing~~, 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 Officer, 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 Officer. The letter must be signed by the chief executive officer of the spending unit or his/her designee. The Secretary of Administration ~~or the Director of Purchasing~~ shall send a certified letter to the lessor at the last known address on file with the Leasing Officer, notifying the lessor of the cancellation and the effective date of the

cancellation. This request should be sent to the Leasing Officer no later than forty-five (45) days prior to the requested cancellation date.

§148-2-8. Permanent Changes.

8.1 (a) 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 (b) 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) or when necessary to meet bona fide emergencies arising from unforeseen causes, 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 Officer. The spending unit shall utilize the form made available by the Leasing Officer 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 Officer,

unless otherwise directed by the Leasing Officer, and shall be signed by the Secretary of Administration ~~or the Director of Purchasing~~ 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 the Department of Administration shall be exempt from the normal Leasing rules and procedures.

11.2 When an emergency situation, as determined by the Secretary of Administration, arises 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.

11.3 The spending unit shall notify the Leasing Officer 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 Officer to better assist the spending unit and determine space that may be available in a given area if necessary.

11.4 At no time does the spending unit have the authority to negotiate with a prospective lessor on behalf of the State without the consent of the Leasing Office or the Secretary of the Department of Administration.

11.5 To the degree possible, the Department of Administration, with assistance of the spending unit, shall get three proposals in writing prior to entering into lease agreements.

11.6 To the degree possible, the Department of Administration will put a legal advertisement in the newspaper soliciting proposals for space prior to entering into lease agreements.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 148, Series 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

Building 1, Room E-119

Charleston, WV 25305

1. Effect of Proposed Rule:

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

No costs will be associated with the passage of the proposed rule changes as the Department of Administration already implements the items addressed in the proposed rules.

3. Objectives of These Rules:

To update the agencies who are exempt to the rules, to provide for additional requirements by the Department of Administration, to remove signature authority by the Director of Purchasing, and to address natural disasters and emergency situations.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date:

July 1, 2003

Signature of Agency Head or Authorized Representative:

Tammy King

Tammy King, Leasing Coordinator

Tom Susman
Tom Susman, Acting Cabinet Secretary
Department of Administration



BOB WISE
GOVERNOR

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

TOM SUSMAN
ACTING CABINET SECRETARY

July 1, 2003

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Manchin,

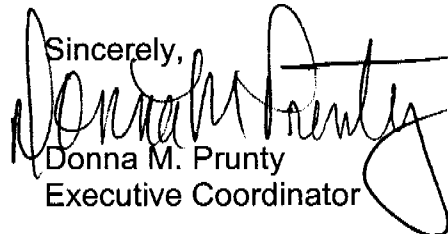
I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to Leasing. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

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,


Donna M. Prunty
Executive Coordinator

DMP:dp
Enclosures