

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

Form #3

Do Not Mark In This Box

**FILED**

2003 AUG -1 P 4: 52

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 5A-3-42

AMENDMENT TO AN EXISTING RULE: YES  NO

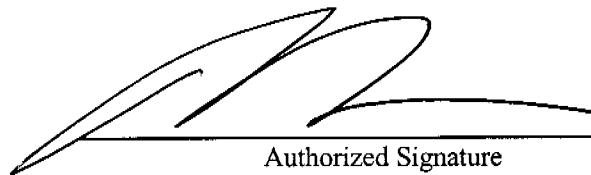
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

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: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**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

FILED

2003 AUG -1 P 4: 52

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 over 10,000 square foot prior to entering into lease agreements.

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

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

## **BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS**

### **Comment 1:**

Division of Rehabilitation Services requested that section 2.2 be eliminated as they felt that their Director's approval was sufficient.

**Agency Response 1:** The Department of Administration believes that this is important and that an agency should provide a letter of justification as to why they believe that new space is required. The Department of Administration has the responsibility to assure that public funds are spent wisely.

**Amendment 1:** No amendment

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### **Comment 2:**

The Treasurer's office suggested that in section 11.6 that the requirement for a legal advertisement include for space over 10,000 sq. ft. to be consistent with the requirement for office space when not an emergency.

### **Agency Response 2:**

The Department of Administration agrees with their suggestion.

**Amendment 2:** Wording to include the 10,000 sq foot has been added.

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**Comment 3:**

The Bureau of Employment Programs would like the (2) months requirement deleted as they do not feel it give them time to order furniture, etc.

**Agency Response 3:**

The Department of Administration believes that this time frame is needed as we can not get a landowner to hold property available for the State without generating revenue from the property and we believe that the time frame is more than adequate as this is how it has been done for years and works nicely.

**Amendment 3:** No amendments

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**Comment 4:**

The WV Board of Physical Therapy would like all professional licensing boards to be exempted from the Rules

**Agency Response 4:**

The Department of Administration strongly disagrees with this suggestion. Although professional licensing boards are funded with special revenue the revenue is still public funds and they need to be held to the same standards to assure that public funds are spent wisely.

**Amendment 4:** No amendment

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**Comment 5:**

The WV Department of Environmental Protection would like to have section 11.1 eliminated.

**Agency Response 5:**

The Department of Administration believes that this section is needed in order to take care of leasing space in the event of an emergency when time is critical without having to go through all the normal requirements.

**Amendment 5:** No amendment



Administrative Services  
10 McJunkin Road  
Nitro, WV 25143  
304-759-0505  
304-759-0531

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## West Virginia Department of Environmental Protection

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Bob Wise  
Governor

Stephanie R. Timmermeyer  
Cabinet Secretary

July 21, 2003

Ms. Donna M. Prunty  
Executive Coordinator  
1900 Kanawha Boulevard East  
Building 1, Room E-119  
Charleston, WV 25305

Dear Ms. Prunty:

In response to your letter of July 8, 2003, regarding the modified Legislative Rules for Leasing Space on Behalf of the State Spending Units, I offer the following suggestion:

148-2-11 Emergency Situations.

Section 11.1 states DOA shall be exempt from the normal Leasing rules and procedures. In section 11.6 it states that the DOA will advertise to the degree possible. In an emergency situation, the advertising should be eliminated. By obtaining three proposals, this should be sufficient documentation to prove that the agency attempted to establish a fair market price. In emergency situations such as this, the Division of Purchasing waives the advertising as long as you have three bids and have received their approval in advance. Since this procedure is approved for auditing purposes for the Division of Purchasing, then this procedure should be sufficient for leasing purposes also. The agency would spend at least a week on the advertising in the newspaper and that time could be crucial to the operation of a State agency. During that week of advertising the agency could have looked at all the available space in a city and could have selected a site. Therefore, I suggest the elimination of 11.6 all together.

I appreciate the opportunity to comment and should you have any questions, please call me at 759-0505.

Sincerely,

June A. Casto  
Assistant Chief



West Virginia Department  
of Environmental Protection

"Promoting a healthy environment."

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WEST VIRGINIA DEPARTMENT OF EDUCATION AND THE ARTS  
**DIVISION OF REHABILITATION SERVICES**

State Capitol • P. O. Box 50890 • Charleston, West Virginia 25305-0890  
Telephone: (304) 766-4600 • Fax: (304) 766-4671 • Toll-free: 1-800-642-8207  
Web Page: www.wvdrs.org

Janice A. Holland, Interim Director

DATE: July 10, 2003

FAX COVER SHEET

COMPANY: Dept. of Administration

ATTN: Ms. Donna M. Prunty, Executive Coordinator

FAX #: 558-2999

FROM: Division of Rehabilitation Services  
Procurement Office - David Gardner *DWS*  
Institute, WV 25112

FAX # (304) 766-4622

PHONE # (304) 766-4621

COMMENTS: I would like to make one brief response to the proposed change in the Leasing procedures. I would like the required letter of justification in 2.2 be eliminated. Our Director will only approve requests for offices after she is thoroughly convinced that this is the best thing for the Agency. Since she signs off on the request for space, I feel that should be justification enough. By her signature she is saying that this lease is a wise and prudent expenditure. Thank you for allowing me to respond to these changes.

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**State of West Virginia**  
OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

JOHN D. PERDUE  
STATE TREASURER

JERRY SIMPSON  
ASSISTANT STATE TREASURER

July 15, 2003

1-800-422-7498  
304-558-5000  
FAX 304-558-4097  
WWW.WVTREASURY.COM

Donna M. Prunty  
Executive Coordinator  
Department of Administration  
Building 1, Room E-119  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0120

Re: Proposed Legislative Rules – Leasing

Dear Donna:

The State Treasurer's Office has no problems with the content of your proposed legislative rules for the Leasing Section. There is, however, one thought you might want to consider. Section 148-2-4.2.c. appears to contemplate placing legal advertisements when leasing large amounts of space, i.e., 10,000 square feet or more. Section 148-2-11.6. requires placing legal advertisements for emergency situations, "to the degree possible." It doesn't appear practical to place legal advertisements for all emergency leasing needs. You may want to consider adding the 10,000 square feet requirement or something similar to Section 148-2-11.6.

Thank you for the opportunity to provide comments on your proposed legislative rule.

Sincerely,

A handwritten signature in cursive script that reads "Diana Stout, J.C.".

Diana Stout  
General Counsel

DS/wlt

cc: Blair Taylor, Deputy Treasurer

**From:** "RANDY BARE" <RBARE@wvbep.org>  
**To:** <DPRUNTY@GWMAIL.STATE.WV.US>  
**Date:** 7/10/03 2:49PM  
**Subject:** Proposed Legislative Rules (leasing)

Donna,

I have been involved with my agency's leases for the 14 years that I've work for the state. The biggest problem facing the leasing rep is the delay after submitting the paperwork for space. It seems as though no one wants to approve it; or they want us to look elsewhere; or perhaps they have another site they would prefer we use. Normally, they (approving authority) don't take into consideration, our wants, needs or desires (for better service to the public). The powers-to-be don't take into consideration the availability of public transportation, accessibility issues or the availability of parking for employees and clients. It seems as though approval comes when they feel like approving the request. That's why I am making the following suggestion.

The only comments that I have concerning the leasing of space falls under 148-2-2 Request for Space (2.1 Generally).

The biggest problem facing spending units today is the approval time. The requisition for space should be submitted to DOA no later than four (4) months in advance. Two (2) months does not give the spending unit enough time to properly follow guidelines for ordering furniture, telephones, computer equipment and movers. It takes 6 weeks for ordering modular equipment; you have go through a bid process for movers; solicit approval from IS & C for purchasing computer equipment; and write or request an RAP/R.Q. for a phone system. All of this contingent upon approval of the request for space. Should it be denied, then our process starts over. Modular design etc.. depends on approval of a particular building. I really think six (6) months would be better for submitting a request for space.

Randall L. Bare  
558-0260



SALLY B. OXLEY  
Board Chair

WEST VIRGINIA  
BOARD OF PHYSICAL THERAPY

FRANKIE S. CAYTON  
Administrator

July 28, 2003

Dept. of Administration  
ATTN: Ms. Donna M. Prunty  
Executive Coordinator  
Charleston, WV 25305

Dear Ms. Prunty:

**COMMENT RE: PROPOSED LEGISLATIVE RULES**

I am writing in regards to the Proposed Rule Change concerning Leasing Space on behalf of State Spending Units.

In regards to the entirety of the Rule, as the President of the WV Licensing Board Association, I believe that all Professional Licensing Boards should be exempted from this Rule. The justification would be that none of us receives any money from the General Revenue for the operation of our Boards. All Boards of Professional Licensure have separate, autonomous accounts with the State Treasury Office. The only monies that we receive to conduct business come from fees that are charged for licensure, renewal of licenses and various services performed in the Office. Mention is made in the Rule of expenditures that involve State funds - - Professional Boards of Licensure do not have access to any State funds.

**In regards to Page 4, §148-2-11 Emergency Situations, 11.2,** I do not believe that it is logical that someone not associated in a Professional Licensing Boards' daily routine who also does not monitor the Budget for that Professional Licensing Board should have decision-making power in regards to where we are located as that may involve what we can or cannot afford. For nine (9) years, this office was located and operated out of my home. It cost \$40,000 a year to administrate this office from my home; there were no adequate funds to even have a public office. We have only had a public office for the past five years.

We are currently in some lively conversation with Leasing in regards to Temporary/Short Term Space here in the Clarksburg area. It has been determined that the J.W. Davis Building that houses this and some other Agency Offices is slated for demolition. In that light, Office Managers and Administrators were told to find space to move to in March 2003. We complied

Ms. Donna M. Prunty  
July 28, 2003  
Page 2

with that directive and did find respective places to move to. We have not been given permission to relocate to space that we have found that would suit our daily business routine and needs; instead, there is a "push" to get us into an old historical hotel located in downtown Clarksburg. There are problems with this space that has been selected for us:

1. It is not ADA accessible throughout the building.
2. There is no parking.
3. There is no central heating or air conditioning.
4. Heat is provided by radiators. Several people who have toured the building complained of stirred-up allergy problems after being exposed to the mold - including myself.
5. Many people know that the buildings in downtown Clarksburg are bug and roach infested. There is often high absenteeism on the part of employees who have to work exposed to mold, mildew, bugs and bug droppings and chemicals to kill same. A building across the street that housed Toothman and Rice Accounting has recently been vacated for some of these reasons.
6. The building and its facilities are antiquated. (Public bathrooms can only be accessed by climbing steps.)
7. The woodwork is very dark and depressing. It is certainly not a good environment for those suffering from Seasonal Affective Disorder to have to be in on a daily basis. During the winter it would even be worse.
8. There is limited light that comes through narrow windows. If any of the windows would have to be used to accommodate an air conditioning unit, that would even reduce the natural light further. Because the building has historical status, the owners are very restricted in what kinds of renovations can take place - certainly not more windows.
9. Two moving companies have put into writing that this Office's furnishings cannot be moved into that building - not up the stairs, nor up the elevators.

In regards to §148-2-11, 11.4, the Professional Licensing Board should have discretionary authority to find and relocate to space that will suit the administrative needs and fiscal limitations of that particular Board.

Keep in mind that this has already taken place. Administrators and Managers in the J. W. Davis Bldg. did (upon direction) from Leasing search for Temporary Space. In that process, prices and amenities were discussed and agreed upon. In my particular case, I have a Landlord who is not only holding space for me, he has been in the process of cleaning, painting, and making it ready for me to move to since I agreed to take it in March 2003. While no paperwork has been signed, we did have a verbal agreement.

**In Conclusion:** Professional Boards of Licensure do not have access to State funds and should be exempt from this Rule as it is written. No tax dollars fund any service that is provided

Ms. Donna M. Prunty  
July 28, 2003  
Page 3

by this office. We should be granted discretionary authority when the need arises, to be located in modern, suitable quarters that are free of disease and pestilence. The finances and budget of that Professional Board of Licensure are the responsibility of the Administrator and Board Members. For the efficiency of the office and the morale of the employees (of which there are two full time employees, and two part time in this office), the Professional Board of Licensure should have a say in where those needs could best be supplied and met.

Our particular Board has the authority according to §30-20-5.(7) to "Purchase or rent necessary office space, equipment and supplies and employ, direct, discharge and define the duties of an executive secretary and other full-time or part-time professional, clerical or other personnel necessary to effectuate the provisions of this article;"

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Frankie D. Cayton".

Frankie Cayton  
Administrator, WV BOPT

cc: Board Members  
Attorney General's Office  
WV Licensing Board Association

**FAX TO:** Ms. Donna M. Prunty

4 PAGES, INCLUDING THIS COVER SHEET

**FAX #:**

**DATE:** 7-28-2003

### STATE OF WEST VIRGINIA INFORMATION MEMO

**FROM:** Frankie Cayton, Administrator  
**OF:** WEST VIRGINIA BOARD OF PHYSICAL THERAPY  
153 WEST MAIN STREET, SUITE 103  
CLARKSBURG, WV 26301

**TELEPHONE:** (304)627-2251

**FAX:** (304)627-2253

**email:** [wvbopt@wvnet.edu](mailto:wvbopt@wvnet.edu)

**web site:** [www.wvbopt.com](http://www.wvbopt.com)

**RE:**

COMMENT  
Re: PROPOSED LEGISLATIVE RULES

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SALLY B. OXLEY  
Board Chair

WEST VIRGINIA  
BOARD OF PHYSICAL THERAPY

FRANKIE S. CAYTON  
Administrator

July 28, 2003

Dept. of Administration  
ATTN: Ms. Donna M. Prunty  
Executive Coordinator  
Charleston, WV 25305

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I am writing in regards to the Proposed Rule Change concerning Leasing Space on behalf of State Spending Units.

In regards to the entirety of the Rule, as the President of the WV Licensing Board Association, I believe that all Professional Licensing Boards should be exempted from this Rule. The justification would be that none of us receives any money from the General Revenue for the operation of our Boards. All Boards of Professional Licensure have separate, autonomous accounts with the State Treasury Office. The only monies that we receive to conduct business come from fees that are charged for licensure, renewal of licenses and various services performed in the Office. Mention is made in the Rule of expenditures that involve State funds - - Professional Boards of Licensure do not have access to any State funds.

In regards to Page 4, §148-2-11 Emergency Situations, 11.2, I do not believe that it is logical that someone not associated in a Professional Licensing Boards' daily routine who also does not monitor the Budget for that Professional Licensing Board should have decision-making power in regards to where we are located as that may involve what we can or cannot afford. For nine (9) years, this office was located and operated out of my home. It cost \$40,000 a year to administrate this office from my home; there were no adequate funds to even have a public office. We have only had a public office for the past five years.

We are currently in some lively conversation with Leasing in regards to Temporary/Short Term Space here in the Clarksburg area. It has been determined that the J.W. Davis Building that houses this and some other Agency Offices is slated for demolition. In that light, Office Managers and Administrators were told to find space to move to in March 2003. We complied

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with that directive and did find respective places to move to. We have not been given permission to relocate to space that we have found that would suit our daily business routine and needs; instead, there is a "push" to get us into an old historical hotel located in downtown Clarksburg. There are problems with this space that has been selected for us:

1. It is not ADA accessible throughout the building.
2. There is no parking.
3. There is no central heating or air conditioning.
4. Heat is provided by radiators. Several people who have toured the building complained of stirred-up allergy problems after being exposed to the mold - including myself.
5. Many people know that the buildings in downtown Clarksburg are bug and roach infested. There is often high absenteeism on the part of employees who have to work exposed to mold, mildew, bugs and bug droppings and chemicals to kill same. A building across the street that housed Toothman and Rice Accounting has recently been vacated for some of these reasons.
6. The building and its facilities are antiquated. (Public bathrooms can only be accessed by climbing steps.)
7. The woodwork is very dark and depressing. It is certainly not a good environment for those suffering from Seasonal Affective Disorder to have to be in on a daily basis. During the winter it would even be worse.
8. There is limited light that comes through narrow windows. If any of the windows would have to be used to accommodate an air conditioning unit, that would even reduce the natural light further. Because the building has historical status, the owners are very restricted in what kinds of renovations can take place - certainly not more windows.
9. Two moving companies have put into writing that this Office's furnishings cannot be moved into that building - not up the stairs, nor up the elevators.

In regards to §148-2-11, 11.4, the Professional Licensing Board should have discretionary authority to find and relocate to space that will suit the administrative needs and fiscal limitations of that particular Board.

Keep in mind that this has already taken place. Administrators and Managers in the J. W. Davis Bldg. did (upon direction) from Leasing search for Temporary Space. In that process, prices and amenities were discussed and agreed upon. In my particular case, I have a Landlord who is not only holding space for me, he has been in the process of cleaning, painting, and making it ready for me to move to since I agreed to take it in March 2003. While no paperwork has been signed, we did have a verbal agreement.

**In Conclusion:** Professional Boards of Licensure do not have access to State funds and should be exempt from this Rule as it is written. No tax dollars fund any service that is provided

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by this office. We should be granted discretionary authority when the need arises, to be located in modern, suitable quarters that are free of disease and pestilence. The finances and budget of that Professional Board of Licensure are the responsibility of the Administrator and Board Members. For the efficiency of the office and the morale of the employees (of which there are two full time employees, and two part time in this office), the Professional Board of Licensure should have a say in where those needs could best be supplied and met.

Our particular Board has the authority according to §30-20-5.(7) to "Purchase or rent necessary office space, equipment and supplies and employ, direct, discharge and define the duties of an executive secretary and other full-time or part-time professional, clerical or other personnel necessary to effectuate the provisions of this article;"

Respectfully Submitted,



Frankie Cayton  
Administrator, WV BOPT

cc: Board Members  
Attorney General's Office  
WV Licensing Board Association



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise  
Governor

Office of Field Facility Management  
Capitol Complex Building 3, Room 265  
Charleston, West Virginia 25305  
Telephone: (304) 558-2386 Fax: (304) 558-5706

Paul L. Nusbaum  
Secretary

July 29, 2003

Ms. Donna M. Prunty, Executive Coordinator  
Department of Administration  
Building 1, Room E-119  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0120

Re: Proposed Legislative Rules

Dear Ms. Prunty:

On behalf of the Department of Health and Human Resources, I would like to thank you for sharing the proposed legislative rules, regarding leasing space on behalf of state agencies.

The proposed rules have been reviewed and evaluated and DHHR supports the proposed rules outlined under Title 148, Series 2 – Leasing Space on behalf of state spending units.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Boles, Jr.", written over a horizontal line.

John A. Boles, Jr., Director  
Office of Field Facility Management

JAB/pj



f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (please type)

Donna Prunty, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

g. IF DIFFERENT FROM ITEM "f", please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (please type)

Tom Susman, Acting Cabinet Secretary

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

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.

N/A

b. Date of hearing or comment period:

July 1, 2003 through July 31, 2003

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

N/A

d. Attach findings and determinations and reasons:

Attached  X

## 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

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#### 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: 8-1-03

**Signature of Agency Head or Authorized Representative:**



Tom Susman, Acting Cabinet Secretary  
Department of Administration