

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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FBI - CHARLOTTE

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

AGENCY Department of Administration; Leasing TITLE NUMBER: 148

CITE AUTHORITY W.V. code Section 5A-3-42

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Two (2)

TITLE OF RULE BEING PROPOSED: Leasing Space On Behalf Of State Spending
Units

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.

Clara Pol



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Secretary

MEMORANDUM

TO: The Honorable Ken Hechler

FROM: Chuck Polan
Secretary

DATE: September 26, 1990

SUBJECT: Leasing Rules and Regulations

A comment period was held on the proposed rule, ending on September 15, 1990. No comments were received. Therefore, the proposed rule is filed for your review.

CP/lg.

Enclosures

Summary Of Proposed Rule

To provide for the selection, negotiation, and acquisition, by contract or lease, by the Secretary of Administration, of all grounds, buildings, office space, or other space necessarily required by any spending unit of the executive branch of State government, excluding the Division of Highways of the Department of Transportation for other than office space.

DATE: September 26, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Administration : Leasing

LEGISLATIVE RULE TITLE:

Leasing On Behalf Of State Spending units

1. Authorizing statute(s) citation W.V. Code Section 5A-3-42

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

August 7, 1990

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

NONE

c. Date of hearing (s): Comment Period was held from August 7, 1990

to September 15, 1990

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

Attached _____ No comments received X

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

September 26, 1990

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

Ron Riley

348-2309

Purchasing

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: Comment Period held from August 7 to September 15, 1990

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 No comments were received

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Leasing Space On Behalf Of State Spending Units

Type of Rule: X Legislative Interpretive Procedural

Agency Purchasing Division Address Capitol Complex Bldg. 1
Room E-108 Charleston, WV 25305

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

2. Explanation of above estimates: There is no additional cost anticipated by implementing these rules.

3. Objectives of these rules: To provide the procedure by which the Department of Administration will provide leasing space on behalf of State Spending Units.

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: September 26, 1990

Signature of Agency Head or Authorized Representative

Clark Felt

148 CSR 2

TITLE 148
LEGISLATIVE RULES
DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION
LEASING SECTION

SERIES 2

LEASING SPACE ON BEHALF OF STATE SPENDING UNITS

Section 148-2-1. General.

1.1 Scope.--These Legislative Rules provide for the selection, negotiation and acquisition by contract or lease by the Secretary of Administration of all grounds, buildings, office space or other space necessarily required by any spending unit of the executive branch of State government, except the Division of Highways of the Department of Transportation for other than office space.

1.2 Authority.--West Virginia Code Section 5A-3-42.

1.3 Filing Date.--

1.4 Effective Date.--

Section 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 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.

2.3 New Leases.

If the request is for new space, a floor plan, specifications and any other available information should be attached to the requisition.

Section 148-2-3. Fair Rental Value And Appraisals.

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.

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

Section 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.

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.

6.1 General.

A contract of 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:

(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.

(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.

(c) The Contract of 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.

(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.

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

(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.

(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.

(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 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 and the spending unit.

Section 148-2-7. Cancellation.

In order to allow sufficient delivery time and to comply with the conditions of the contract of 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 termination date.

Section 148-2-8. Permanent Changes.

(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.

(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.

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

Spending units shall have the authority 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, without having to seek the approval of the Secretary of Administration 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 agreement 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.

Section 148-2-10. Agreements Between State Spending Units.

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.

The Leasing Officer may solicit proposals on any space to be leased when deemed in the best interest of the State.

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 will 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.

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

(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.

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

Section 148-2-6. Contract of Lease.