

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY West Virginia Code Section 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 NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



148 CSR 2

TITLE 148
LEGISLATIVE RULES
DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION
LEASING SECTION

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.

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

1.3 Filing Date.--

1.4 Effective Date.--

§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.

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.

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.

§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.

The Leasing Officer may solicit proposals on any space to be leased when considered 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 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.

(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.

§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:

(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 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.

(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.

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

§148-2-7. Cancellation.

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.

(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.

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

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.

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.



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-438, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

Senator Lloyd Jackson, Co-Chairman
 Delegate Patrick H. Murphy, Co-Chairman

Debra A. Graham, Counsel
 Michael McThomas, Associate Counsel
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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 10, 1991

FILED
 1991 JAN 23 PM 3:24
 OFFICE OF THE SECRETARY OF STATE
 WEST VIRGINIA

TO: Ken Hechler, Secretary of State, State Register

TO: The Honorable Chuck Polan, Secretary
 Department of Administration
 State Capitol
 Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Leasing Space on Behalf of State Spending Units

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Ron Riley
 Dept. of Administration
 Capitol Complex E-108
 Charleston, WV 25305