

# **BY-LAWS, POLICY AND PROCEDURE**

of the

## **STATE BUILDING COMMISSION**

of

## **TENNESSEE**

Revised ~~June~~March 2012



**BY-LAWS, POLICY AND PROCEDURE**  
of the  
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**7.01 ADVERTISABLE LEASES ~~[T.C.A. 12-2-114 and SBC Meeting Minutes 11/7/85]~~**

- A. Leases entered into by the any State agency, department, institution or office thereof (State) involving annual contract rental payments, except as set forth in F, shall have been made following an advertisement, a formal proposal, and all other requirements of TCA 12-2-114 as amended. Further, in leases involving twenty-five thousand dollars (\$25,000) or less annual rent, except as set forth in F and ~~G~~, the Department of General Services State of Tennessee Real Estate Asset Management Division (STREAM)~~Department of Finance and Administration's Division of Real Property Administration (RPA)~~ shall adopt the procedure of providing public notice of the State's desire to seek space for lease through a notice placed in a newspaper of general circulation either daily or weekly, in the particular county of interest and any two(2) or more of the following four (4) methods:
1. A public notice, conspicuously posted, in some part of the courthouse or central government building of that particular county.
  2. A news release distributed to daily and weekly newspapers and broadcast stations in that particular county.
  3. A letter of notice to members of the legislature, mayors, county executives, etc. in that particular county.
  4. State Procurement Agency (SPA) web site.
- B. The notice will be publicized at the time a decision is made to lease space. The notice shall allow, at least, two weeks for submitting proposals.
- C. The notices shall explain the State's interest in space, generally describe what type is needed and in what location and shall include the name of the proper lease officer to contact for that particular notice. The statement of need will not request formal written proposals as do the advertisements in accordance with T.C.A. 12-2-114 as amended.
- D. Further, ~~STREAM~~RPA shall maintain a file by county of persons who lease, have leased, have offered to lease, or have expressed interest in leasing property to the State. This file shall be consulted by lease officers as they begin personal contacts to negotiate leases.
- E. Exceptions to this policy must be substantiated in writing by the Commissioner of Finance and Administration and submitted to the Commission for approval, in cases of State leases with an effective date of July 1, 1980, or thereafter.

## F. HIGHER EDUCATION LEASE PROPOSAL ACTIONS

1. In accordance with TCA 12-2-115, all proposed leasing actions for real property with consideration more than ~~\$150,000~~~~\$75,000~~ per year, or a term of more than five (5) years by institutions of Higher Education shall be submitted to ~~STREAM~~~~the Department of Finance and Administration~~ and the Tennessee Higher Education Commission for review, analysis, and approval, prior to any action by the institutions of Higher Education to lease real property. Such leases shall then be presented, with appropriate comment or recommendation, to the State Building Commission Executive Sub-Committee for approval prior to any leasing action. Leases approved during the annual budget review process will not require prior approval of the State Building Commission Executive Sub-Committee. All leases and lease amendments, where the State is the lessee with consideration of more than ~~\$150,000~~~~\$75,000~~ per year, or a term of more than five (5) years must also be approved by the Attorney General.
2. Higher Education shall report all leases with a consideration of ~~not~~ more than \$25,000 per year and not more than ~~\$150,000~~~~\$75,000~~ to ~~OSA, STREAM and~~ the Department of Finance and Administration and the Tennessee Higher Education Commission on a quarterly basis.
3. The review and analysis of the lease request by ~~the STREAM~~~~Department of Finance and Administration~~ and the Tennessee Higher Education Commission may include, but shall not be limited to the gathering of comments from various parties regarding the lease action request; the fund implications, and the appropriateness of the lease action request in lieu of a building construction request through the annual capital budget process.
4. It is the expressed intent of the State Building Commission that review and approval of contracts as herein above provided by the Attorney General shall be for form and legality.

G. ~~STATE LEASE PROPOSAL ACTIONS; POSTING Of STATE LEASES~~

- ~~1. In accordance with TCA 12-2-115, all proposed leasing actions for real property with consideration more than \$150,000 per year, or a term of more than five (5) years by the State shall be submitted to STREAM for review, analysis, and approval, prior to any action by the State. Such leases shall then be presented, with appropriate comment or recommendation, to the State Building Commission Executive Sub-Committee for approval prior to any leasing action. Leases approved during the annual budget review process will not require prior approval of the State Building Commission Sub-Committee. All leases and lease amendments, where the State is the lessee with consideration of more than \$150,000 per year, or a term of more than five (5) years must be approved by the Attorney General.~~

~~21.~~ With respect to any lease of property that is not submitted to and approved by the State Building Commission, the Office of the State Architect shall, subject to the exceptions the State Building Commission hereby includes in Section G.32. below, post on its Web site at a minimum the following information, as applicable, and regarding each such lease as provided by STREAM:

- ~~(i)~~ Name(s) of lessor(s) and lessee(s);
- ~~(ii)~~ Lease description and purpose;
- ~~(iii)~~ Lease term;
- ~~(iv)~~ Rental rate, stated as total rent for the lease term, annual rent, and as a rent per square foot;
- ~~(v)~~ Source(s) of funding;
- ~~(vi)~~ Procurement method used to obtain the lease; and
- ~~(vii)~~ Any other information as directed by the commission.

In cases where STREAM is involved with a lease subject to this Section G.1, STREAM shall provide the information required in this Section G.1 to the Office of the State Architect.

In addition to the above, the Office of the State Architect shall post on its Web Site any changes to information provided by STREAM posted in accordance with this Section G.21. as soon as practicable after the change is authorized.

The Office of the State Architect shall ensure that all information posted on its Web site is set forth in a manner and a format consistent with the policies and procedures of the State Building Commission.

~~32.~~ The exception to the above Section G.2. The following leases are excepted from the informational posting requirement set forth in Section G.1 above of the posting of leases on the Office of the State Architect Web site is as follows:

- ~~(i)~~ Leasing actions for real property with a consideration per year of \$0 to \$25,000.
- ~~(i)~~ All leases entered into prior to July 1, 2012 unless amended on or after July 1 2012; and
- ~~(ii)~~ New, succeeding, superseding leases or lease renewals:
  - ~~(A)~~ Where the annual rental will be less \$25,000.00 or where the term of the lease will be one (1) year or less; or
  - ~~(B)~~ Where property is owned by a governmental agency and leased to another governmental agency; Where property is leased from one entity of the State to another entity of the State.
    - ~~Where a supplemental agreement is made to an existing lease for additional space at a negotiated price without modifying the original lease term; or~~

~~Where the space required by the State has special and unique requirements as determined and approved by the State Building Commission; and~~

~~(iii) All other leases excepted by the State Building Commission from the informational posting requirement set forth in Section G.1 above.~~

**HG.** Leases requiring the approval of the Commission, pursuant to TCA 12-2-115, including those for institutions of higher education, shall comply with the requirements of the Policy regarding Advertisable Leases. When institutions of higher education request Commission approval for their leases, the appropriate documentation of the space needs of the institutions, the persons with financial interest in the leased property, and an analysis of lease proposals should be submitted to **STREAMRPA**. Additionally, documentation of advertisement and search for alternate space should be submitted to **RPA-STREAM** for those leases which require Commission approval.

**IH.** In the following cases, neither advertisement nor public notice will be required before **STREAMRPA** negotiates a lease:

1. The space of facility secured is of such a special nature that competing offers would not be available, and the annual contract rent is less than \$25,000. Examples include boat moorings, airport hangars, and specialized storage space for items not generally suited for placement in a general warehouse.
2. Leases for land, where location or the availability of services or facilities precludes alternate sites, and the annual contract rent is less than \$25,000. Examples include lots used for storage of bulk materials such as salt, sand, gravel, etc. needed for highway maintenance, and land leased for hunting rights.
3. Leases for auditoriums, hearing rooms, conference or related space, where the total rent would not exceed \$25,000, and where the term of the lease is less than 30 days and **STREAMRPA** feels there is no suitable alternative location. Before approving any lease for temporary space, the Director of **STREAMRPA** shall make a reasonable determination that no appropriate State-owned space is available.

## **7.02 LEASES WITH TERMS ONE (1) YEAR OR LESS**

**A.** State leases for real property shall be entered into following the procedures set forth in Section 12-2-114 and 12-2-115, Tennessee Code Annotated. State leases, requiring Commission approval, entered into without advertisement under the one (1) year or less term exception set forth in Section 12-2-114 will be approved by the Commission only upon a written statement from the Commissioner of ~~the Department of General Services~~ **Finance and Administration** that such short term lease (less than one year) is clearly in the best interest of the State and that **STREAMRPA** has so documented the file using one of the following standards:

1. The State agency has need for space for one (1) year or less at which time the agency's needs will either terminate or will be fulfilled through State-owned space.
2. Unforeseen situation arises making it impractical to advertise. Such situations must be fully explained and documented in the lease file.

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3. A renewal of an existing lease for one (1) year or less which will likely result in substantial monetary savings and is clearly in the best interest of the State. In such case, the lease file must be documented as to the economic advantage by showing the average State lease rate for the specific geographic area and the proposed rate.
- B. It is also the desire of the Commission that ~~STREAMRPA~~ plan for advertisement of future State leases in accordance with Sections 12-2-114 and 12-2-115, Tennessee Code Annotated.

### 7.03 LEASE AMENDMENTS

- A. Amendments to leases originally submitted to and recommended by the Commission shall receive Commission approval prior to execution of such amendments. Further, any amendment to a lease which was not submitted and approved by the Commission because the term was less than five years or the consideration was less than ~~\$150,000~~~~\$75,000~~, but due to the amendment or the aggregate effect of amendments now exceed those limits, shall be submitted to the Commission for approval prior to the execution of the lease amendment. It is further the policy of the Commission that the Executive Sub-Committee shall have authority to approve such lease amendments and that lease amendments so approved be reported to the State Building Commission at its next regularly scheduled meeting.

### 7.04 CANCELLATION PROVISION

- A. State leases entered into pursuant to TCA Sections 12-2-114 and 12-2-115 should contain a provision allowing termination by the State upon written notice of termination to the Lessor 90 days prior to the date when such termination becomes effective. Any deviation from the 90 day cancellation provision shall be noted and reported to the Commission along with written justification for such deviation by the Commissioner of ~~General Services~~~~Finance and Administration~~ when Commission approval is required. Those leases not requiring Commission approval shall state the cancellation provision within the information furnished the Commissioner of ~~General Services~~~~Finance and Administration~~ who shall have authority to approve the cancellation provision.

### 7.05 DISPOSAL OF INTEREST IN LAND BY LEASING OF SURPLUS STATE REAL PROPERTY FOR CROP LEASE

- A. In accordance with TCA 12-2-112(d) the Tennessee Wildlife Resources Agency is responsible for leasing of surplus State real property for crop leases, as well as being responsible for the administration of all crop leases and such leasing and administration shall be through procedures reviewed and approved by the State Building Commission. Crop lease procedures adopted by Tennessee Wildlife Resources Agency that have been approved by the State Building Commission are contained in Attachment 4.
- B. The Tennessee Wildlife Resources Agency is required to provide an annual report of crop leases entered into for the previous calendar year. Report on crop leases is to be submitted to State Building Commission by the following March 31<sup>st</sup> and is to include information identifying the Lessee, amount of bid (percentage of crop income, acres of crops left standing, cash per acre rent, etc.), and compliance with bidding requirements.

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### 7.06 POLICY ON CERTIFICATION OF FUNDS FOR LEASES

Pursuant to T.C.A. 12-2-115(e), funds for leases of property by any State agency, department, institution or office need not be certified as required by T.C.A. 9-6-113 provided that:

- A. In August of each year, a list of existing leases which will expire during the next fiscal year, ~~except for Higher Education leases~~, shall be provided to the Finance and Administration Budget Office with sufficient information for them to identify the current cost, allotment code and cost center of each expiring lease.
- B. The Finance and Administration Budget Office will return the list to STREAMRPA with a certification that funds will be available for the expiring leases, so long as there is not more than 10% growth in the total cost of each lease. Any exceptions on the list will be clearly noted. The expiring leases shall then be renewed in accordance with other applicable provisions of law.
- C. In the case of a renewal of an existing lease:
  1. If the total cost of the new lease exceeds 110% of the expiring lease cost, a request for certification of funds shall be sent to Budget before the new lease is signed.
  2. In the event circumstances indicate an increase of more than 10% is likely, an estimate of the increase shall be sent to Budget for certification prior to advertisement or negotiation for the new lease.
- D. In the case of a new lease not involving an existing lease, a request for certification of funds shall be sent to Budget prior to advertisement for the lease.
- E. When any new lease is fully executed, Budget shall receive notification of the total annual cost and term of the new lease.
- F. For Higher Education leases, the above procedure shall be followed except that the Certification of Funds will be made by:
  1. In the case of leases for the Board of Regents, the certification shall be made by its Vice Chancellor of Business and Finance; and
  2. In the case of leases for the University of Tennessee, the certification shall be made by its Vice President for Business and Finance.
  3. Item E above shall not apply to Higher Education leases.

### 7.07 EVALUATION OF PROPOSALS

- A. Evaluation of Lowest Average Annual Effective Cost
  1. For the purpose of comparing the cost of proposals for State leases entered into pursuant to TCA Sections 12-2-114 and 12-2-115 the State will evaluate the lease proposal based on the average annual effective cost over the term of the proposed lease using the annual base rent amount proposed and annual cost estimates. Standard cost estimates developed by STREAMRPA and approved by the Commission, will include such items as reconfiguring the current open office work stations; purchasing new open office work stations; cost of moving telephones; cost of moving computers; cost of hiring movers to move existing furniture, fixtures and



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data. Any other annual cost estimates included will be based upon a specific need or requirement of the agency to be located in the space advertised as documented in writing by [STREAMRPA](#).

2. The standard costs or other annual costs to be used in the evaluation as they relate to the needs of the State at the time proposals are requested will be identified in the Invitation for Lease Proposals. The needs and/or requirements of the State may change after the request for proposals is made; however, the estimates for evaluation purposes will remain the same.
3. Standard cost estimates will be reviewed not less than annually by [STREAMRPA](#) and any changes submitted for approval by the Commission.
4. Standard costs estimates will be set out in the Information for Proposers package which is provided to all proposers.

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