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STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption  
of New Rules and Repeal of an Existing  
Rule of the Real Estate Management  
Division Governing the Leasing Out of  
State-owned Property Temporarily Not  
Needed by the State.

Statement of Need  
and Reasonableness

This is a proposed adoption of new rules and the repeal of existing Rule 2 MCAR § 1.5301 governing leasing out of temporarily unneeded state-owned property.

The need to repeal Rule 2 MCAR § 1.5301 and replace it through the adoption of proposed Rules 2 MCAR § 1.5302 through 1.5327 arises from the state's experience in leasing out property in recent years. The intended effect of the new rules is to more fully define the department's actions in those situations wherein the state is requested to lease out property not being used by the state. The rule being repealed as well as the proposed new rules are promulgated pursuant to Minnesota Statutes 16.02, Subdivision 14.

Rule 2 MCAR § 1.5302

This proposed rule cites the authority by which the new rules, if adopted, will be promulgated. The rule is needed to identify the source of the authority for the rules being proposed for adoption.

Rule 2 MCAR § 1.5303

This proposed rule is needed to fully identify the scope and purpose of the proposed rules which follow. The rule reasonably defines the need for the new rules, and excepts the applicability of the proposed new rules from the leasing of such properties as are otherwise provided for by law.

Rule 2 MCAR § 1.5304

This proposed rule is needed to define the terms used in the rules which follow.

Rule 2 MCAR § 1.5305

This proposed rule is needed to fully define the powers and duties of the commissioner of administration. The new rule reasonably eliminates the likelihood of conflict and confusion as to who has authority and responsibility for establishment and enforcement of conditions in a lease of state-owned property.

Rule 2 MCAR § 1.5306

This proposed rule is needed to identify the person who will have authority and responsibility for determining whether a state-owned property will be leased. The rule is reasonable in that it requires the commissioner to base the determination on the findings of a comprehensive evaluation of the circumstances surrounding the proposed lease.

Rule 2 MCAR § 1.5307

The proposed rule is needed to definitively identify the conditions which must exist if a state-owned property is to be leased. The rule is reasonable in that it sets forth six (6) broad conditions which must be answerable in the affirmative before property can be considered for leasing. Each of the six conditions is necessary to protect the state's interest and that of the local community. The rule reasonably involves affected state agencies in the decision-making process.

Rule 2 MCAR § 1.5308

This proposed rule is needed to eliminate a question as to who has responsibility and authority to decide whether a proposed lease has an adverse effect on the community. The rule is reasonable and consistent in that it places the responsibility and authority in the commissioner as is obviously intended in Minnesota Statutes, Section 16.02, Subdivision 14. The rule is made more reasonable by Rules 2 MCAR § 1.5309 and 2 MCAR § 1.5310 which follow.

Rule 2 MCAR § 1.5309

This proposed rule is needed to provide the commissioner with an opportunity to learn more of the effects a proposed lease may have on the neighborhood or community. The rule reasonably recognizes that public input is essential where the effects of a lease on the neighborhood are concerned, and that a public forum (hearing) is needed to assist the commissioner in making a reasonable determination.

Rule 2 MCAR § 1.5310

This proposed rule is needed to set forth the procedure to be used when the commissioner directs that a public hearing be convened as provided in 2 MCAR § 1.5309. The rule consists of paragraphs A through F.

Paragraph A reasonably provides that the hearing shall be informal, and shall allow written as well as oral testimony for or against the lease.

Paragraph B reasonably requires that the hearing be advertised. It defines when the advertisement must appear, and includes a requirement that the advertisement must make public the subject to be discussed at the hearing; and that written testimony may be made by persons unable or unwilling to appear.

Paragraph C informs the persons who wish to testify in writing where to mail such testimony.

Paragraph D requires that the commissioner make findings of fact and reach a decision to lease or not to lease the property within ten (10) working days following the hearing. The time allowed is reasonable in that it is sufficient to allow deliberation, and is short enough to avoid undue delay.

Paragraph E requires that the decision reached by the commissioner, and the reasons for the decision, be published in the State Register, and that it be posted conspicuously in the real estate management division. This is reasonable and consistent with openness in government.

Paragraph F expands on the requirement of Paragraph E in that it requires that each party who has actually expressed a bona fide interest in leasing the property be informed by separate letter of the commissioner's decision and the reasons for the decision. The requirement is reasonable and, again, consistent with the public's right to be apprised of decisions in government.

#### Rule 2 MCAR § 1.5311

This proposed rule places the responsibility for drafting of leases in the real estate management division. The rule is reasonable in that it makes a requirement of that which is past practice; further, it involves the expertise of the attorney general.

#### Rule 2 MCAR § 1.5312

This proposed rule requires defrayment of advertising and other pre-lease costs by the agency which declared the property unneeded. The rule is needed to obviate the misunderstandings and conflicts which may arise in connection with which agency's budget must underwrite those costs. The rule very reasonably places the responsibility for payment of those costs in the agency which, by law, continues to have custodial control of the property.

#### Rule 2 MCAR § 1.5313

This proposed rule contains four (4) sections (A through D), and deals with notice by the state to parties interested in leasing of state-owned properties.

Paragraph A invites parties interested in leasing state-owned properties to make such interest known to the director of real estate management division. It is needed and is reasonable and consistent with the public's right to free and equal access to public properties.

Paragraph B requires the real estate management division to maintain a list of parties having expressed an interest in leasing state-owned properties. It is needed to provide guidelines as to how and where the public's request for information will be maintained.

Paragraph C enlarges on the requirement in Paragraph B. It reasonably places a limit on the length of time a party's name will remain on the list.

Paragraph D requires that a notice be mailed to each interested party when state-owned property is available for leasing. Further, it requires that the notice be mailed at least fifteen (15) calendar days before bidding closes. The rule is needed to insure that interested parties are informed and may have sufficient lead time to deliberate the lease.

Rule 2 MCAR § 1.5314

This proposed rule requires that state-owned property available for lease must, with exceptions as provided in Rule 2 MCAR § 1.5315, be advertised for lease in the State Register. It is needed to insure that the interested public is given fair opportunity to avail itself of the use of state-owned property. The rule is reasonable in that it requires advertisement of the availability of property, but makes reasonable exceptions where such advertisement is clearly not in the best interest of the state or the public.

Rule 2 MCAR § 1.5315

This proposed rule requires that where the commissioner has reason to believe that more than two parties may be interested in leasing the property, he shall advertise the availability of the property in a newspaper in the vicinity of the property. The rule is reasonable in that it provides an exception for those cases wherein there is little interest in leasing of the property; and it is reasonable in that it insures that the property must be advertised for two successive weeks, and that bids may not be opened until at least a week after the last advertisement, thus insuring at least a three week deliberation period for the bidding public.

Rule 2 MCAR § 1.5316

This proposed rule requires that when a decision is made by the commissioner not to lease property, public notice of the decision and the reasons for the decision will be published in the State Register; and the notice will be conspicuously posted in the real estate management division. The rule has the obvious purpose of fulfilling the public's right to know.

Rule 2 MCAR § 1.5317

This rule requires that when a lease of state property has been finalized, a notice of the details will be posted conspicuously in the real estate management division. The rule is needed to insure openness in government.

Rule 2 MCAR § 1.5318

This rule sets forth the state's policy in awarding of leases. With notable exceptions, the rule requires that leases be awarded to highest responsible bidders. It is reasonable in that Section A, B, and C detail the state's policy, but do make provision for those instances where exceptions are necessary to safeguard the state's best interests.

Rule 2 MCAR § 1.5319

This rule is needed to establish guidelines as to when the competitive bidding process will not be used. Sections A, B, C, and D state those instances. The rule is reasonable in that it makes exceptions only where it is necessary in the interest of sound property management.

Rule 2 MCAR § 1.5320

This proposed rule sets forth the order in which unneeded state properties will be made available to entities. It is needed to avoid the likelihood of dispute as to what entity enjoys priority in the use of state property. The rule is reasonable in that it sets forth in logical order the priority which the various entities will have. The rule recognizes and gives priority to entities that perform a public service.

Rule 2 MCAR § 1.5321

This proposed rule recognizes the need for protecting the state's interest when property is leased. The rule states clearly and unmistakably that the state's interests must be held inviolate by the lessee. The rule is reasonable in that it makes clear to prospective lessees that the state will not be liable for perils of any kind.

2 MCAR § 1.5322

This proposed rule is a logical extension of 2 MCAR § 1.5321. Section A reserves to the commissioner the right to require a lessee to purchase liability insurance (naming the state as an additional insured) in the amount needed to protect the state against tort claims in those instances where the commissioner adjudges that the lessee's proposed use or occupancy of the property will seriously jeopardize life or property. The rule is needed to allow greater flexibility to the commissioner in protecting the state's interests. The rule is reasonable in that the absence of such a rule will clearly place the state in the unenviable position of having to purchase insurance or to self-insure. Section B of the rule reasonably requires that the lessee must provide evidence that such insurance has been purchased before taking possession of the property under the lease. Section C of the rule adds another dimension to the need for insurance in that it reasonably allows the commissioner to require a separate policy which names the state as the sole insured in instances where, in the judgement of the commissioner, the lessee's proposed use or occupancy of the property will place life or property in severe jeopardy. It differs from Section A only in that Section A requires a joint policy naming the state as an additional insured, while Section C requires a separate policy naming the state as sole insured.

Rule 2 MCAR § 1.5323

This proposed rule provides that all improvements made to the property by the lessee will become the property of the state. The rule is needed to avoid the possibility of misunderstandings concerning ownership of improvements. The rule is reasonable in that its provisions are standard in the industry; and in that it allows for exceptions as agreed upon in the lease.

Rule 2 MCAR § 1.5324

This proposed rule is needed to insure that the state will not be placed in a position of having to expend funds to render its property usable for a lease. The rule is reasonable in that it allows prospective lessees to understand the state's firm policy concerning costs of remodeling, upgrading, landscaping, retrofitting, etc.

Rule 2 MCAR § 1.5325

This proposed rule is needed in recognition of the likelihood that the proposed lessee will wish to make material changes in the premises. The rule makes clear that such changes must have prior approval of the commissioner. The rule is reasonable in that it is, and has been, a standard requirement in leases.

Rule 2 MCAR § 1.5326

This proposed rule is needed to eliminate questions as to disposition of receipts from the lessee. The rule is reasonable in that it requires that receipts be deposited to the general revenue fund except where existing law directs otherwise. The rule makes another very important exception, i.e., the advertising expenses and other pre-lease costs paid (as required in 2 MCAR § 1.5312) by the agency having had custodial control may be returned to the account from which they were paid.

Repealer

The repealer is needed to eliminate the existing rule in favor of Rules 2 MCAR § 1.5302 through 1.5327.