

## **Policy/Guideline Area**

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Business and Finance Guidelines

## **Applicable Divisions**

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TCATs, Community Colleges, System Office

## **Purpose**

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These guidelines set forth the leasing procedures for all institutions governed by the Tennessee Board of Regents.

## **Policy/Guideline**

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### **I. Approvals Required**

- A. Institution as Lessee and Lessor.
  1. All agreements involving or related to the lease of real property for a term of more than five (5) years or a consideration of more than \$150,000 per year shall be approved by the Chancellor, including any amendment or cancelation (TBR Policy No. 1:03:02:10).
  2. Documents for all leases and lease amendments with consideration of more than \$150,000 per year or a term longer than five (5) years shall be approved by the State Building Commission in accordance with T.C.A. § 12-2-115 and the Tennessee Higher Education Commission.
  3. Signatures required include:
    - a. The Lessor (signature shall be acknowledged by a notary public).
    - b. President of the Institution (signature shall be acknowledged by a notary public).
    - c. Chancellor or designee.

- (1) State Attorney General and Reporter in compliance with T.C.A. § 12-2-115.
- (2) Commissioner of General Services if procured by STREAM.
- (3) Governor (this signature is required for lease-outs).

B. Leases for more than \$150,000 per year or for more than five (5) years.

1. All proposed leasing actions for real property with consideration more than \$150,000 per year or for a term of more than five (5) years shall be submitted to the State Building Commission and the Tennessee Higher Education Commission by the Office of Facilities Development, Tennessee Board of Regents for review and analysis prior to taking action by the institution.
2. Leases approved during the annual budget review process will not require prior approval of the State Building Commission Executive Sub-Committee. (SBC Policy)
3. After review and analysis, the State Building Commission and the Tennessee Higher Education Commission shall provide comments to the Tennessee Board of Regents. (SBC Policy)

C. Leases for \$150,000 or less per year and for five (5) years or less where the institution is the Lessee or Lessor, using one of the following approved forms: the Tennessee Board of Regents Standard Lease Agreement, Mutual Use Agreement, Transient Use Agreement, or Tenant Use Agreement, shall be approved by:

1. President of the institution
2. The Chancellor

D. Leases for which operating funds will be requested or for more than five (5) years.

1. Any lease which is for a term longer than five (5) years or in which the total of the consideration, maintenance costs, utility costs and/or custodial costs are estimated to exceed \$150,000 per year, and funding for same is requested through state appropriations, shall be approved by the Tennessee Higher Education Commission (THEC Policy).

## II. Non-Discrimination

- A. Institutions engaging in a real estate transaction, including sale, rental or lease, shall not discriminate on the basis of race, color, creed, religion, sex or national origin. See T.C.A. § 4-21-601.
- B. No state employee or agent shall enter into a commercial agreement on behalf of the state with a club which denies to a person entry, use of facilities or membership or unreasonably prevents the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability. See T.C.A. § 4-21-803.

## III. Recording of Leases

- A. Leases in which the institution is the Lessee which require State Building Commission approval shall be recorded by the Commissioner of General Services in the county or counties where the property is located (per T.C.A. § 12-2-105).

## IV. Advertising for Leased Space

- A. Where the institution is the lessee, advertising shall be required in all transactions involving new, succeeding, superseding leases or lease renewals except:
  1. Where the annual rent does not exceed \$50,000 or where the term of the lease is one (1) year or less.
  2. Where property is owned by a governmental agency and leased to another governmental agency.

3. Where a supplemental agreement is made to an existing lease for additional space at a negotiated price without modifying the original lease term (Reference T.C.A. § 12-2-114).
4. Where the space required by the entity has special and unique requirements as determined by the Commission.

#### V. Special and Unique Space

- A. The space to be leased has characteristics, such as location, size, or quality which can only be satisfied by one landowner, as determined by a reasonable survey, and will have an annual rent of less than \$50,000.
- B. The space to be leased will be let for less than 30 days; will have a total cost of \$50,000 or less; and is for an auditorium, hearing room, conference or related space.

#### VI. Forms and Documentation Required

- A. Submit to the Chancellor one (1) copy each of the following forms at the appropriate times described above. Copies of all forms are available from the Office of Facilities Development upon request.
  1. Space Action Request Form
    - a. One (1) copy required with initial submittal of request for leased space.
  2. State University and Community College System of Tennessee (Tennessee Board of Regents) standard Lease Agreement Form
    - a. Minimum of three (3) copies required after approval has been given to enter into a lease agreement.
    - b. Use the Tennessee Board of Regents standard Lease Agreement Form unless prior approval has been obtained to use any other form.

- c. There should be no changes or additions to the standard Lease Agreement Form without prior approval.
3. Statement of Financial Interest for Leased Property
  - a. For all leases subject to the State Building Commission approval, when the institution is the Lessee, the Lessor shall identify persons with a financial interest in the leased property on the Statement of Financial Interest for Leased Property when submitting the lease agreement.
4. Conflict of Interest
  - a. No individual, company, or other entity involved in the evaluation or negotiation of proposals should have a financial interest or have the appearance of a conflict of interest unless disclosed and addressed in accordance with SBC Policy, Item 12.
  - b. A written conflict of interest disclosure documenting the independence of each person involved must be completed and retained as part of the procurement file.
5. Space Action Request, Office Space Requirements Analysis, Finance and Administration Form RSM-1A
  - a. Document space needs on this form, adapting as necessary to include classroom and class laboratory space needs and submit with initial submittal of request for leased space.
6. Supplemental Data Questionnaire, Finance and Administration Form RSM-1B
  - a. Document space needs on this form and submit with initial submittal of request for leased space.
7. Certification of Funds Available

- a. For all leases subject to State Building Commission approval, a letter signed by the President of the institution or the Chancellor certifying that funds are available must accompany the lease proposal.
  - b. Institution Certification of Funds shall be acknowledged and certified by Vice Chancellor for Business and Finance.
8. Summary of Analysis of Lease Proposals Received
  - a. If advertising and receipt of lease proposals is performed by the institution, a summary of analysis of lease proposals must accompany the lease proposals including cost analysis.
9. Enrollment Projections and Program Documentation
  - a. Provide historical enrollments and enrollment projections and documentation of programs to be offered at the site of the proposed leased facility shall accompany the lease proposal as justification for the need to lease space.

## VII. State Statutes on State Leases & Disposals of Real Property

- A. The following State Statutes on State leases and disposals of real property are referenced for your information. Copies are available from the Office of Facilities upon request.
  1. T.C.A. § 4-15-102 - State Building Commission - Powers and Duties
  2. T.C.A. § 12-2-112 - Disposal of Surplus Interests in Real Property and Energy Resources
  3. T.C.A. § 12-2-114 - State Leases - Procedure
  4. T.C.A. § 12-2-115 - Approval of Lease Instrument where State is Lessee or Lessor

## 5. T.C.A. § 49-8-111 - Powers Regarding Property

### VIII. Lease Policies of the State Building Commission

A. Item 7, Leases of Real Property as published in By-Laws, Policy and Procedure of the State Building Commission of Tennessee, compiled February 2014 is referenced for your information. Copies are available from the Office of Facilities upon request.

## **Sources**

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### **Authority**

T.C.A. § 49-8-203; All state statutes referenced in this guideline.

### **History**

Presidents Meeting, May 14, 1991; Presidents Meeting November 5, 1997; Presidents Meeting February 13, 2007. Revised at Presidents Meeting November 11, 2015.

## **Related Policies**

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[4.02.01.00 Approvals of Agreements and Contracts \(formerly 1:03:02:10\)](#)