

Title 22. Public Property

Chapter XVII. Building Authority Division, Department of Shared Administrative Services

Subchapter B. Building Authority Minimum Standards and Criteria

Part 114. Real Estate Services

Subpart 1. Generally

22 CAR § 114-101. Purpose.

(a) This part has been compiled to provide every state department, agency, board, or commission with written standards for the most economical and efficient utilization of space and with written procedures to be followed in leasing that space.

(b) Any reference to the words "the section" within this part shall mean the Real Estate Services Section.

Authority. Arkansas Code § 22-2-108.

22 CAR § 114-102. Real Estate Services responsibility.

(a) Pursuant to the Building Authority Division Act, Arkansas Code § 22-2-102 et seq., the Real Estate Services Section of the Building Authority Division is the leasing agency for all state entities (departments, agencies, boards, commissions, and institutions of higher education).

(b) The Real Estate Services Section has the responsibility to act as the leasing agent for all state departments, acting either as lessor or lessee, including space in all private sector and public buildings.

(c)(1) The Real Estate Services Section shall, with input from the department, evaluate, determine, and approve the needs of the department.

(2) The Real Estate Services Section shall locate appropriate rental space and act as the agent for the department in negotiation of the lease for the rental space.

(d) Pursuant to Arkansas Code § 22-2-114(a)(2), all state departments shall execute and enter into leases with the Real Estate Services Section when requested for the leasing or renting of space and facilities in any public buildings.

(e)(1) Any department making a request for lease space shall submit justification to the Real Estate Services Section in written form with the signature of the department secretary or authorized designee thoroughly outlining the following information:

(A) The department and division or divisions to occupy the space, including a list of positions to occupy the space and the functions of each position by state employment grade;

(B) The date of the request and the date the space is needed;

(C) The number and phone number of the department contact person;

(D) The type of space needed and the location desired, including any special location factors;

(E) The terms desired, budgeted amounts for rents, operational costs, and anticipated moving expenses; and

(F) Any alterations or special requirements, including parking and storage requirements, telecommunication room, library, hearing room, conference room, etc., and the function of those requirements.

(2) List any other pertinent information that would affect the planning of the space needs and the efficient operation of the department, including special HVAC requirements, i.e., ventilation for specific areas and desired office-to-cubicle ratio.

(3) This written request shall be submitted at least ninety (90) days prior to the date the space is needed.

(4) Requests not containing this information shall be returned to the department without action.

(5) The Real Estate Services Section shall locate appropriate space and negotiate a lease between the facility owner and the department.

(6) If space is available in a public building, the lease will be negotiated for placement in the public building.

(7) If space is not available in a public building, then the Real Estate Services Section shall obtain adequate space in a privately owned facility.

(8) It is unlawful for departments to enter into any lease negotiations with any building owner or manager without the approval of the Real Estate Services Section (see Arkansas Code § 22-2-114(a)(1)).

(9)(A) If such negotiations take place, the lease shall not be ratified.

(B) If the department requests the lease document be ratified, the department shall be required to provide written justification to the Secretary of the Department of Shared Administrative Services for review.

(f)(1) Standards for the utilization of space and the allocation of space to state departments have been approved by the Building Authority Division and are a part of these standards as found in 22 CAR § 114-105.

(2) These standards shall be used as a basis for all planning, leasing of space, allocation of space, and advising state departments on leasing considerations.

(3) When available, the Design Review Section may assist in space planning services through the Real Estate Services Section.

(g)(1) The Building Authority Division has adopted a standard lease form for leasing of privately owned facilities and a standard form for leasing of Building Authority Division owned properties.

(2) Copies of these forms are located at the end of this subpart.

(h)(1) Preferences to leased property within a central business district shall be granted pursuant to Arkansas Code § 22-2-114(a)(5)(A).

(2) The Real Estate Services Section shall grant preferences in accordance with applicable laws and in the following manner.

(3) Guidelines for consideration of lease properties.

(A) Establish a rating system for evaluation.

5 – Excellent.

As-is condition meets applicable codes and compliance; premises can easily conform to state's need and meets space criteria.

4 – Very good.	Some modifications are necessary for occupancy but are reasonable and achievable; can conform to the state’s need and criteria.
3 – Acceptable.	Numerous modifications and building system replacements or upgrades are necessary to meet codes and compliance, but achievable. Some compromise may be necessary in space planning to satisfy need.
2 – Fair.	Extensive modifications are required to meet criteria; space planning for
1 – Not acceptable.	efficiency of space will be compromised; restricting flexibility. Modifications required far exceed the feasibility to conform. Structurally inferior and not adaptable to meet the space need and criteria.

maximum

(B)(i) Survey area for available properties.

(ii) Upon receipt of space request, the Real Estate Services Section shall research properties available for lease.

(iii) The Real Estate Services Section may choose to advertise the space through the local newspaper or the Building Authority Division website.

(C) Evaluate property:

(i) Survey all properties by visual inspection and assess condition of building systems in consultation with local officials or requesting department;

(ii) Obtain plans or specifications from the property owner, if available;

- (iii) Determine property's ability to conform to space need; and
- (iv) Compile a summary of modifications required to conform to state

needs.

(D) Obtain proposal:

(i) Provide property owner with a summary of observed modifications recognizing additional modifications may be necessary upon a more extensive inspection;

(ii) Provide property owner with a description of the space request, the specifications, and floor plan, if available;

(iii) Obtain a lease proposal inclusive of the initial recommended modifications and lease criteria; and

(iv) Confirm terms with property owner/agent.

(E) Rate properties by categories:

(i) Divide the available properties into one (1) of two (2) categories:

(a) Located within the central business district (CBD); or

(b) Located outside the CBD (nonCBD); and

(ii)(a) Rate the properties according to the established rating system

listed above.

(b) The following factors should be taken into consideration:

(1) Cost-effectiveness by the state to meet the space criteria;

(2) Level of compromise by the state to meet the need;

(3) Specific criteria established by the requesting department; and

(4) Restrictions or impairments in use or access.

(c) Determine the highest rated property for each category (CBD/nonCBD).

(F)(i) Compare proposals.

(ii) The highest rated CBD and nonCBD properties will be compared.

(iii) If the CBD property meets all criteria and does not restrict or impair the services for which the lease is intended or the rental rates are justified in a nonCBD location, the CBD property will be granted the preference.

(iv) Nothing in these guidelines will prevent the state from leasing with a nonCBD property owner in accordance with Arkansas Code § 22-2-114(a)(5)(A).

(i)(1) The Real Estate Services Section may utilize a request for proposal (RFP) selection process when locating lease options in response to a department's request for lease space more than five thousand square feet (5,000 ft²) or for a term up to ten (10) years.

(2) The Real Estate Services Section:

(A) May use a variety of methods to advertise including:

- (i) Local newspapers;
- (ii) The Building Authority Division website;
- (iii) Social media; and
- (iv) Other methods; and

(B) Will provide RFP packages to any property owners or managers interested in submitting a proposal in response to the RFP inquiry.

(3) This procedure awards based on selected criteria evaluation.

(4) Those proposals submitted with the proposed physical address found within the CBD of the requested city shall earn the maximum weighted value for the location criteria of the evaluation portion of the RFP selection process unless otherwise stated.

(5) The lease award shall be given to the proposal which, in the opinion of the Real Estate Services Section and the department, serves the best interests of the state and is in accordance with applicable laws and this subchapter.

(6) Nothing in this section shall prohibit the Real Estate Services Section from negotiating directly with a lessor without utilizing the RFP process if it determines it is in the best interest of the state.

(j)(1) The Real Estate Services Section may utilize a formal bid procedure for the leasing of new construction (contract is between the private lessor and the prime

contractor) when locating lease options in response to a department's request for lease space more than five thousand square feet (5,000 ft²) and for a term of fifteen (15) years.

(2) The bidding and award of contracts under the public works laws do not apply.

(3) The Real Estate Services Section may use a variety of methods to advertise this request for formal bids including local newspapers, the Building Authority Division website, social media, and other methods, and will provide formal bid packages to any interested party.

(4) This is a two-step process:

(A) The site submittal or submittals and approval or approvals; and

(B) Submission of a bid consisting of a price per square foot.

(5) Bidders who obtain an option to purchase the sites they propose shall obtain ownership of the property within the time frame established in the bid criteria upon acceptance of their bid.

(6) The state reserves the right to reject any or all bids and to waive any formalities.

(7) At the public bid opening, the Real Estate Services Section shall open and compare the bids and award the lease to the lowest responsible bidder, but only if it is the opinion of the Real Estate Services Section and the department that the best interests of the state would be served and in accordance with applicable laws and this subchapter.

(8) Nothing in this part shall prohibit the Real Estate Services Section from negotiating directly with a lessor without utilizing the bid process if it determines it is in the best interest of the state.

(k)(1) If determined by the Real Estate Services Section to be in the state's best interest, the Real Estate Services Section may enter into a negotiated lease for a lease term which is longer than any of the terms stated in subsection (i) or subsection (j) of this section should the lessor provide the state or any entities an option to purchase the premises.

(2) While the lessor and the Real Estate Services Section may negotiate additional lease terms and conditions within the lease or subsequent amendments, the standard terms and conditions contained within the approved lease form at the time of execution shall prevail should any conflict arise between any standard terms or conditions and any nonstandard terms or conditions.

Authority. Arkansas Code § 22-2-108.

Codification Notes. "HVAC" means heating, ventilation, and air conditioning.

22 CAR § 114-103. Determination of Building Authority Division of desirability of available space.

(a) Square footage.

(1) A comparison of the square footage required to satisfy department needs with the square footage available in a given facility.

(2) Space leased shall be no more than five-percent less or fifteen-percent greater than the department's stated needs.

(3) Square footage required shall be determined according to 22 CAR § 114-105.

(b) Analysis of building facilities. An analysis of the sustainable and energy-efficiency qualities and condition of building facilities, including:

- (1) Mechanical systems;
- (2) Elevators;
- (3) Toilets;
- (4) Parking;
- (5) Lighting;
- (6) Public/common areas;
- (7) Building envelope (roofs, window wall, windows, and doors);
- (8) Location relative to associated departments;
- (9) Availability of storage; and

(10) Proximity to the other related offices of association.

(c) Operational cost of occupying the space for the term of the lease:

(1) Annual square foot cost of the leased space;

(2) Cost of interior modifications or TI allowance (tenant improvement)

provided by lessor;

(3) The availability of all utility services and their estimated cost if not included in the lease through utility history, if available by the lessor;

(4) Cost of janitorial services if not included in the lease;

(5) Any other factors which would affect the actual cost to the department, i.e., parking, additional electrical requirements, custom furniture and fixtures, etc.; and

(6) The information technology services needed by the requesting department.

(d) Time factors affecting need for space.

(e) Capacity to accommodate future need of the department for space and services.

(f) Handicapped accessibility and special accommodations.

(1) All buildings leased or rented in whole or in part for use by the state under any lease or rental agreement entered into shall be in accordance with the contractual terms and applicable accessibility guidelines.

(2) The lessee shall be required to provide an emergency evacuation auxiliary aid used by those employees who need assistance to safely exit state-owned property during emergency situations.

(3) The lessee is solely responsible for obtaining, maintaining, and training in the use of the auxiliary aid.

(4) Any necessary installation of an auxiliary aid shall be coordinated with the approval of the lessor.

(g)(1) All leases shall be made pursuant to the Governor's Executive Order 98-04 or Acts 1999, No. 34 to the extent applicable.

(2) Completed disclosure forms and all necessary documentation shall be sent to the Real Estate Services Section.

(3) All lessors and lessees shall be required to complete a disclosure certification form regarding their utilization of services of any real estate broker or brokers for all lease negotiations.

Authority. Arkansas Code § 22-2-108.

22 CAR § 114-104. Building Authority Division policy for leasing.

(a)(1) Pursuant to Arkansas Code § 22-2-114(a)(1), the Real Estate Services Section is the responsible leasing agent for all state departments.

(2) No department, agency, board, or commission may renew or negotiate a lease without the approval of the Real Estate Services Section.

(b)(1) Requests for lease action (lease renewals or requests for new or additional space) shall be submitted to the Real Estate Services Section at least ninety (90) days prior to the date the space request or change is needed.

(2) The request shall:

(A) Be submitted to the Real Estate Services Section; and

(B) Include the information indicated in 22 CAR § 114-102(e).

(3) This information should be as complete and accurate as possible since it will be used to determine the space necessary to meet the needs of the department.

(c)(1) All leases for real property, including but not limited to offices, parking, storage, warehouses, land, antenna, and towers must be approved by the Real Estate Services Section and assigned a Building Authority Division lease number.

(2) The approved lease number must be used by all departments.

(3) The only exception shall be for short-term use of facilities where memoranda of understanding or other agreements may be utilized.

(4) Examples of these short-term use facilities that are exempt from Real Estate Services Section approval include:

(A) Classrooms (from one to nine (1 – 9) months);

(B) Per-seat fees;

(C) Per semester;

- (D) School years (nine (9) months);
- (E) Short-term specialty classes;
- (F) Golf, bowling, gyms, spas for classes;
- (G) Conference/meeting rooms (from one to ten (1 – 10) days);
- (H) Workshops/seminars;
- (I) Fair booths;
- (J) Testings;
- (K) Graduations;
- (L) Ball fields (including seasonal rentals);
- (M) Short-term storage (less than one (1) year) including mini-storage

where the lease is considered month-to-month providing there is a thirty-day termination clause; and

(N)(i) Modular units (less than one (1) year).

(ii) Leases of modular units (portable buildings) for a period of one (1) year or more shall be submitted to the Real Estate Services Section in the same manner as a traditional office space and shall require division approval (memorandum of understanding exemption).

(iii) The division recommends the lease of modular units should:

(a) Be planned on a temporary basis; and

(b) Not be utilized as a long-term or permanent use of space.

(iv) Examples of temporary use include:

(a) Utilization for disaster relief while a facility is undergoing a capital improvement;

(b) Temporary classroom space due to over-enrollment; or

(c) Temporary use for a site-specific special program.

(d) Lease space will be provided to or negotiated for departments based on the department's submittal of the completed request for lease space with an authorized signature and the department's justification for the need.

(e)(1) Space in public buildings shall be negotiated pursuant to Arkansas Code § 22-2-114.

(2) The number of moves will be kept to a minimum and efforts will be made so that functional areas remain as contiguous space.

(f) All leases may be terminated on thirty (30) days' written notice to the lessor if state or federal appropriations of funds are insufficient for the department to continue the operations for which the leased premises are being used.

(g)(1) When negotiating rental rates, the state should not exceed the rental rate prevailing in the community for comparable facilities.

(2) Annual square foot price limits will be based on current market conditions in a locality and rental rates will vary from city to city in the state.

(3) State policy for rental rates will reflect the state's position as a prime tenant.

(4) All new lease actions shall be supported by documentation which will reflect the lease rates available for comparable facilities in the market at the time the new lease was negotiated.

(h)(1) It is preferable for the private sector lessor to furnish all utilities except telephone and data services and to furnish janitorial service.

(2) Private sector lessors shall be required to provide maintenance of the building and building systems in all circumstances.

(3) When a lease is negotiated in favor of the state involving special consideration for a public advantage such as a significant reduction in rent or an exchange-for-services arrangement, the private sector lessor may be exempt from providing maintenance for the building and building systems if it determined to be in the best interest of the state.

(i)(1) All state departments must receive invoices submitted by the lessor to process rental vouchers.

(2) While rent may be paid monthly or quarterly, prior division approval:

(A) Is required for annual payment or payments; and

(B) Shall be reflected in the lease.

(j) Rentable area shall be computed by the standard method of floor measurement as adopted by the Building Owners and Managers Association International (BOMA), ANSI/BOMA Z65.1-2010, as amended.

(k) Rental overlap, the time between the beginning date of a new lease for different premises and the last date of occupancy for existing premises, shall be held to a minimum and shall only occur when moving arrangements require an overlap.

(l)(1) The Real Estate Services Section will serve as contact between the department and lessor or as the contact between the department and the tenant when the department is the lessor in all matters pertaining to the lease prior to lease execution.

(2) Departments shall be permitted to contact the lessor for day-to-day issues, including but not limited to:

- (A) Invoices/payments;
- (B) Routine maintenance and repairs; and
- (C) Annual inspections.

(3) Departments shall report all nonroutine maintenance and repair issues to the Real Estate Services Section.

(4) The Real Estate Services Section shall act as the liaison between the two (2) parties should lease interpretation and terms enforcement become necessary.

(m)(1) Whenever possible, the Real Estate Services Section shall lease space requiring only renovations necessary to accommodate the requesting department.

(2) Renovations shall always be held to the absolute minimum necessary to allow the department to function in the leased space.

(3) When renovation is necessary, the cost of the renovation shall be borne by the lessor except when the renovation is to accommodate specific department functions which would be of no use or value to future tenants.

(4) It is the policy of the state to encourage the lessor to provide any alterations and improvements required to make the space suitable for the requesting department and to recapture this expenditure over the term of the lease as part of the rent.

(5) Lump-sum payment by the state for improvements shall require prior approval of the division.

(6) After the initial lease is in place and during the lease term, if the department requests tenant improvements, the department must submit to the Real Estate Services Section a Request for Lease Action form containing the information in 22 CAR § 114-102(e).

(7) Once approved by the Real Estate Services Section, a change amendment for the improvements and additional rents will be negotiated with the lessor.

(8) When a department contracts for improvements directly with a contractor and payment is not made through rent:

(A)(i) If the work is estimated over thirty-five thousand dollars (\$35,000), but less than fifty thousand dollars (\$50,000), a Request for Lease Action must be submitted and approved by the Real Estate Services Section.

(ii) The Request for Lease Action should include a bid tabulation of three (3) competitive bids (all taxes and permit fees are inclusive in the bids), bid specifications and drawings, any disclosure forms required under Governor's Executive Order 98-04 or Acts 1999, No. 34, to the extent applicable, any required bonds, and the purchase order.

(iii) Any required notice of legal advertisement must be made in accordance with Arkansas laws and rules; or

(B)(i) If the work is estimated to be over fifty thousand dollars (\$50,000), the project must be formally bid in accordance with Arkansas laws and rules.

(ii) The information contained in subdivision (m)(10)(A) of this section, above, must be submitted to the Construction Section for review and approval.

(iii) No work may be done until the lease has been amended to allow tenant improvements.

(iv) If the lessor cannot or will not provide for design professional services, the selection of such professionals shall be the responsibility of the department (see 22 CAR § 111-1703).

(v) Plans and specifications shall be made pursuant to Arkansas Code § 22-9-201, which requires observation by registered design professionals for certain levels of expenditures.

(n)(1) Modular office space leased and occupied by state departments for one (1) year or more are considered leased space.

(2) Requests for this type of temporary space should be processed in the same manner as requests for new or additional space.

(3) See subdivision (c)(4)(N) of this section.

(o)(1) Pass-through escalation clauses in which the state agrees to pay all increases in property taxes, services, or utilities shall not be negotiated or approved.

(2) Escalations shall be predetermined and negotiated with the original lease agreement.

(p) Information concerning leases shall be released pursuant to the Freedom of Information Act of 1967, Arkansas Code, § 25-19-101 et seq.

(q)(1) When space has been located which meets the requested criteria, the Real Estate Services Section shall negotiate and prepare for signature the standard state lease agreement.

(2) The agreement shall be signed by the lessor and lessee and approved by the division.

(3) No lease document is valid unless signed by the proper division authorities.

(4) The Real Estate Services Section shall ensure distribution of lease copies to the lessor and lessee.

(r)(1) Departments may enter into leases for residential dwellings or apartment-type facilities for use as living quarters.

(2) Departments shall not enter into a lease for premises located in residential or apartment-type dwellings for any other purpose.

(3) **Example.** A room in a residence cannot be leased as office space.

(s)(1) All leased premises for departments not located within a state-owned building must be identified with a separate address for each defined premises.

(2) Leased premises shall not be shared with any private entity or use other than for official state or public purposes.

(3) The leased premises shall have a separate entrance from any other place of business unless the premises is supported by funding such as grant programs, stipulated by an agreement with other entities which includes but is not limited to agencies and political subdivisions.

(4) All nonstate lessors or sublessors shall state within the lease agreement their ownership or subletting rights of the leased premises.

(t)(1) While lease agreements may reflect that office furnishings or equipment are being utilized or shared, the lease for such commodities may only be made with approval from the Department of Shared Administrative Services.

(2) Such reflections in the lease agreement for the premises must be identified through an itemized inventory and attached as a lease exhibit.

(3) Lease agreements which combine the use of the premises and commodities are discouraged and should only be done if it is in the best interest of the state.

(4) The use of separate lease agreements for such commodities is encouraged.

(u)(1) Departments entering into memoranda of understanding for the purpose of planning temporary space in the event of disasters shall submit the executed agreement to the Real Estate Services Section even though the division is not a party to the agreement.

(2) Departments shall provide immediate notification to the division upon activation of the agreement due for disaster relief.

Authority. Arkansas Code § 22-2-108.

Codification Notes. "ANSI" means American National Standards Institute.

22 CAR § 114-105. Building Authority Division space allocation standards for lease space.

(A) <u>Private Offices</u>	<u>Area</u>
(1) Commissioner or Department Director	240
(2) Deputy Commissioner or Deputy Director	200
(3) Departmental Division Director or Administrator	180
(4) Chief Departmental Fiscal or Personnel Officer	160
(5) Section Head	140
(6) Professional or Technical	120
(7) Line Staff positions requiring private office due to job function	100

(B) <u>Reception and Public Areas</u>	<u>Area</u>
(1) Receptionist + 4 Visitors	120
(2) Receptionist + 6 Visitors	160
(3) Receptionist + 8 Visitors	220
(4) Receptionist + 10 Visitors	240
(5) Public counter per work station	75

(C) <u>Open Area Work Stations</u>	<u>Area</u>
(1) Clerical	48
(2) Clerical with reference	60
(3) Clerical with side chair	64
(4) Clerical with reference and side chair	80

(D) <u>Conference, Meeting and Hearing Rooms</u>	<u>Area</u>
<i>Based on 20 SF per person</i>	
(1) Consultation or Interview (2 – 4 people)	80
(2) 14 to 16 people	300
(3) 18 to 20 people	375

(4) 22 to 24 people	450
(5) 36 to 38 people	600

Area

(E) Auxiliary Space

(1) File Room(per file cabinet)	10
(2) Copier Room (per copier)	175
(3) Information Technology Room (minimum)	32
(4) Employee Break room (based on serving at the same time)	
Up to 5 people	120
6 to 10 people	180
11 to 15 people	220

(F) Service Areas

Area

(1) Janitorial Closet	24
(2) Electrical Closet	(minimum clearance as required by building codes) (3' clearance in front of equipment & 12' above)
(3) Telecommunications Closet (minimum)	32
(4) ADA Unisex Restroom (minimum dimensions)	7'6" x 6'
(5) Mechanical space	See below

(G) **Circulation**

Corridor and circulation space, toilet rooms, stairs, elevators, and separate mechanical space should not exceed 25% of the total building area. Ratio of net leasable area to gross building area should result in a building efficiency of 75% - 85%.

Authority. Arkansas Code § 22-2-108.

Appendix A. Building Authority Division Lease Forms 1 and 2

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/147/22CARpt.114LeaseForms.pdf>