

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2322

SPONSOR: Senator Scott

SUBJECT: State Leases

DATE: March 23, 2000

REVISED: 03/28/00

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
2.	<u> </u>	<u> </u>	<u>CF</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>CM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill precludes a state agency from terminating a lease without cause until July 1, 2002. It also specifies circumstances under which leases may be terminated for the purposes of relocation.

The bill creates an undesignated section of Florida statute.

II. Present Situation:

The Department of Management Services (DMS) is the nominal organization that acts as the central property management and lease holder for agencies of the State of Florida. It discharges these responsibilities through its headquarters-based Facilities Program. Program personnel manage and negotiate leases on behalf of constituent state agencies. The program also acts as the administrative entity for the operation of the facilities pool program through which agency rental payments are channeled into principal and interest payments for the debt service of capital facilities bond issuances.

III. Effect of Proposed Changes:

The bill precludes a state agency from terminating a lease without cause until July 1, 2002.

It further provides that a state agency may not terminate a lease without cause for the purpose of relocating unless: it justifies to the DMS that there is a reduction in occupancy cost; that at least one-half of the lease term has expired; the lease is terminated at the end of its term; and the landlord is reimbursed for all unamortized tenant improvements.

The DMS is directed to promulgate rules in accordance with the bill's provisions.

All other state agencies with leasing needs shall be given preference to fill the unoccupied portions of buildings whose leases are terminated.

The bill takes effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The DMS has a fiduciary relationship to provide a revenue stream sufficient to meet its debt service requirements. Any significant disruption of this stream may jeopardize the trust agreement it has with the bondholders.

D. Other Constitutional Issues:

Well-established decisional law has long precluded the impairment of contracts, especially when that action has been initiated by the legislative branch. *Dartmouth College v. Woodward*, 4 Wheaton, 518 (1819). Florida courts have voided enactments which have presented similar impairments, except where there was a showing of exigent public necessity in the exercise of police powers. *State ex. rel. Sovereign Camp, W.O.W. v. Boring*, 121 Fl 781, 164 So.859 (1935); *Park Benziger v. Southern Wine and Spirits, Inc.*, 391 So.2d 681 (1980), citing *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla.1979).

In this instance various sections of the state budgeting statutes, ss. 216.311 and 216.321, F.S., authorize expenditures of state funds only upon lawful appropriation for an authorized purpose. Subsection 1 of the bill precludes a state agency from terminating a lease without cause until July 1, 2002. It is unclear from the style of the bill whether the provision alters the above sections of ch. 216, F.S. At the very least it may render Section 1. to be void simply because the bill does not provide the required cross-reference to s. 216.351, F.S., which must be invoked under current law for there to be a subsequent inconsistent law relative to that chapter.

The DMS has suggested also that its current contracts may be impaired. Article 18 of its existing lease documents contains a standard clause which obligates payment contingent upon annual appropriation. Article 21 provides a termination right with six months advance notice upon the availability of state office space within the county. After July 1, 2002, an agency, under terms of this bill, would be presented with the circumstance of terminating a lease without cause in spite of the fact that a lawful appropriation had been made for the full term.

Lease agreements are negotiated in single or multi-year terms. An agency may be unable to invoke the powers granted it in this bill until expiration of the current lease term, except for those circumstances contained in ss. 18 and 21 of the standard lease to which it is a signatory.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private lessors would derive additional financial stability under terms of the bill since there could be no unilateral cancellation of the lease by a state agency until July 1, 2002, regardless of the availability of alternative state building accommodations.

C. Government Sector Impact:

The DMS has offered a financial assessment of the bill as it affects its facilities pool operations.

Estimated Cost of Debt Service and Maintenance on Vacant Space		
Project Location	FY 2000-2001	FY 2001-2002
Opa-Locka	\$ 45,000	\$ 335,182
Alachua	\$ 46,440	\$ 282,988
FDLE (Miami)		\$ 184,250
TOTAL	\$ 91,440	\$ 802,420

In FY 2000-01 lost revenue from building completion is projected to be \$469,797 and \$1,364,893 in FY 01-02. State agency rental payments for privately owned space for the respective periods are \$702,376 and \$1,065,873.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DMS builds and manages the satellite office complex in southeastern Leon County. Under the terms of its Development of Regional Impact, the DMS has the authority to construct one additional 65,000 net square foot facility, subject to budget authority. The state complex is located about one mile from an existing office park owned by Koger Properties, Inc. The owner of that property has approached the DMS with concerns about state agency lease terminations

after its incurring capital expenditures on facility improvements. Additionally, the Department of Health will vacate some 85,000 square feet of office space at the Koger site by June 2000. The Fish and Wildlife Commission will sublease about one-half of the vacated space and there is a prospective tenant for the remaining vacated space. The DMS has approached the property owner with an alternative proposal which would permit a direct agency negotiation in such circumstances in lieu of a competitive procurement for the remaining term of the affected lease. That proposal itself would also require a statutory change. Unknown further impacts resulting from the reorganization of the Department of Labor and Employment Security by the 1999 Legislature, and augmented by SB 2050 pending before the 2000 Legislature, may be anticipated as large portions of that agency's operations are also located at the Koger office park.

Application of the term "state agency" varies widely in the Florida Statutes. In matters of purchasing and procurement in ch. 287, F.S., it does not apply to the State University System or the Board of Regents. It is similarly unclear whether the impact of this bill extends to all executive branch agencies or only an implicit subset of those defined in ch. 287, F.S. Likewise, it is unclear how this bill would affect other governmental entities in the exercise of their constitutional powers.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Strikes everything after the enacting clause to make alternative lease termination provisions effective for state buildings appropriated after July 1, 2000. New state building occupancy is to be coordinated by the DMS with expiring private sector leases. When this cannot be accomplished the agency will determine the amount of unamortized tenant improvements. Vacated private sector space affected by agency lease terminations may be considered for occupancy by other state agencies without the receipt of competitive bids.