

STORAGE NAME: h1589.sa.doc
DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1589
RELATING TO: State Facilities/Replacement Leases
SPONSOR(S): Representative(s) Machek

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION
 - (2) FISCAL RESPONSIBILITY COUNCIL
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Current law requires the Department of Management Services (DMS) to approve any lease entered into by a state agency for space in a privately owned building. Current DMS rules require that any lease agreement entered into by a state agency for privately owned space contain a "right-to-terminate" clause. This clause permits a state agency, upon six months advanced written notice to the private lessor, to terminate the lease if space becomes available in a state-owned building.

HB 1589 provides that the DMS *may* exempt any *replacement lease*¹ between a private entity and a state agency from the "right-to-terminate" clause. HB 1589 specifies that the DMS may only exempt a replacement lease from this clause if the cumulative cost of the new replacement lease with the private entity is at least 10 percent less than the cost of a comparable lease plus documented moving costs.

HB 1589 does not change the current requirement that any lease agreement between a state agency and a private entity must contain the "right-to-terminate" clause. This bill only *permits* the DMS to exempt a *replacement lease* from this clause; it does not require this exemption on all replacement leases.

This bill does not appear to have a fiscal impact on local governments, but may have an impact on state government and the private sector. Please see the "Fiscal Analysis and Economic Impact Statement" section for further discussion.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

¹ A replacement lease is one entered into after the lease term has expired and after that lease was extended for the maximum amount of time allowable. (11 months)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 255, F.S., pertains to public property and publicly owned buildings. This chapter provides the Department of Management Services (DMS) with the responsibility and authority for the allocation of space of all buildings in the Florida Facilities Pool. Accordingly, no state agency may lease a building unless prior approval of the lease conditions and of the need for such conditions is first obtained from the DMS. Any approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the DMS subject to the final approval of the Secretary of the DMS.²

If a lease is for less than 5,000 square feet in a privately owned building, the approval of the DMS is not required if certain conditions are met. State agencies are permitted to enter into lease agreements for the use of space 5,000 square feet or above only after advertisement and a competitive bid process that awards the lease agreement to the lowest and best bidder. The DMS has the authority to approve these lease agreements for more than one fiscal year if DMS determines that the lease is in the best interests of the state, but the replacement lease may not exceed 11 months. At the end of the 11th month, if an agency still needs that space, it must be procured by competitive bid. However, if an agency determines that it is in its best interest to remain in the space it currently occupies, the agency may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. The term of the replacement lease may not exceed the base term of the expiring lease.³

The DMS has specific rules pertaining to leasing. Rule 60H-1.007, F.A.C., pertains to the "right-to-terminate" clause contained in Article XXI of DMS' standard lease agreement. The "right-to-terminate" clause gives the state agency the right to terminate a lease with a private entity in the event that a state-owned building becomes available. The state agency must give six months advanced written notice to the private lessor by certified mail if the agency wishes to terminate the lease.⁴ Rule 60H-1.007, F.A.C., specifies that this "right-to-terminate" clause must be a part of any

² Section 255.25(2)(a), F.S.

³ Section 255.25(3)(b), F.S.

⁴ Department of Management Services Lease Agreement, Article XXI, received by facsimile transmission from staff of the Property Management Division on February 15, 2002.

lease exceeding one year, and “may not be omitted from an agency’s lease for any reason.”⁵ This “right-to-terminate” clause is given full legal force and effect.

C. EFFECT OF PROPOSED CHANGES:

By rule, any lease entered into by a state agency for space in a privately owned building must contain a “right-to-terminate” clause which allows the state agency to terminate such lease if the agency provides six months advanced written notice to the private lessor. The lease may only be terminated in the event that a state-owned building becomes available.⁶ HB 1589 provides that the Department of Management Services (DMS) *may* exempt any *replacement lease* between a private entity and a state agency from the “right-to-terminate” clause. HB 1589 specifies that the DMS may only exempt a replacement lease from this clause if the cumulative cost of the new replacement lease with the private entity is at least 10 percent less than the cost of a comparable lease plus documented moving costs.

HB 1589 does not change the current requirement that any lease agreement between a state agency and a private entity must contain the “right-to-terminate” clause. This bill only *permits* the DMS to exempt a *replacement lease* from containing this clause.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Management Services believes that the avoidance of relocation costs resulting from state agencies remaining in leases with private entities could reduce General Revenue expenditures.⁷

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁵ Rule 60H-1.007, F.A.C.

⁶ Department of Management Services Lease Agreement, Article XXI, received by facsimile transmission from staff of the Property Management Division on February 15, 2002.

⁷ Department of Management Services, 2002 Substantive Bill Analysis, Division of Facilities Management and Building Construction, February 7, 2002.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Management Services believes that there may be a positive impact on the private sector for private lessors may be able to secure better financing in leases with state agencies in the absence of the six month "right-to-terminate" clause.⁸

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to the Department of Management Services (DMS), all state agencies will have the ability to utilize the exemption to the "right-to-terminate" clause in their lease agreements. Therefore, this bill will require the DMS to carefully monitor current and upcoming vacancies in the DMS managed facilities to insure full utilization of said facilities prior to granting the exemption to the "right-to-terminate" clause.⁹

Legislation typically does not contain a cross reference to a specific administrative rule. An administrative rule is subject to change and therefore a statutory cross reference could become incorrect. In addition, citing to a specific administrative rule can be confusing because the public may not know the content of the rule. In general, a statutory provision should stand alone. The sponsor of this legislation will file an amendment to address this issue.

⁸ Department of Management Services, 2002 Substantive Bill Analysis, Division of Facilities Management and Building Construction, February 7, 2002.

⁹ *Id.*

STORAGE NAME: h1589.sa.doc

DATE: February 15, 2002

PAGE: 5

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran, M.S.

J. Marleen Ahearn, Ph.D., J.D.