HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1891 (PCB SA 04-09) Procurement of State Leases
SPONSOR(S): State Administration and Benson
TIED BILLS: none **IDEN./SIM. BILLS:** SB 2722(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	7 Y, 0 N	Bond	Everhart
2) Appropriations	38 Y, 0 N	Belcher	Baker
3)			
4)			
5)			

SUMMARY ANALYSIS

Currently, the state leases approximately 9.5 million square feet of office and warehouse space at an annual rental cost of $152 million. There are nearly 1,100 separate leases. Management of the leasing process is by the Division of Facilities Management of the Department of Management Services.

This bill implements several recommendations regarding how much space is leased by state agencies, and the process by which it is leased. Significantly, this bill centralizes the leasing procurement process in the Department of Management Services, allows the department to employ a commission-based real estate broker to assist the department in planning space needs and negotiating leases, and changes the procurement process to a competitive negotiation process.

The Department of Management Services estimates that this bill could result in recurring savings in state expenditures of approximately $30 million. This bill does not appear to have a fiscal impact on local governments. To the extent that the state reduces recurring expenditures by reducing the amount of space leased from the private sector, property owners in the private sector will suffer a loss of revenue until those private sector landlords find replacement tenants.

The bill takes effect July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[x]	No[]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

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

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently, the state leases approximately 9.5 million square feet of office and warehouse space at an annual rental cost of $152 million. There are nearly 1,100 separate leases. Management of the leasing process is by the Division of Facilities Management of the Department of Management Services.

An agency must request space from the Department of Management Services. If there is adequate space within the 5.5 million square feet of state-owned space, the department will assign the agency to space. Typically, however, there is no state-owned space available, and the department authorizes the agency to procure space in the private market. Agencies conduct their own procurement[1], subject to final approval by the department as to form, and approval by the State Fire Marshall as to fire safety of the leased space.

The 2002-2003 General Appropriations Act directed the Department of Management Services to conduct a study of state-owned and state-leased space, and make recommendations regarding changes to how the state owns and leases buildings. The contractor made the following recommendations:

- DMS should be the central leasing authority, on behalf of all state agencies.[2]
- DMS should assist agencies in long-range space planning.
- DMS should employ a tenant representative.
- DMS should adopt and enforce space standards.
- Facilities should be examined and compared to standards.
- The state should fill state-owned properties.

[1] The method of procurement is difficult to categorize. The relevant statutes have been amended numerous times over the years, leading to some inconsistencies. Some points refer to selecting the lowest bid for space, others refer to a competitive solicitation process, and one provision (the “stay in place” provision), simply calls for a study on whether the current lease rate is appropriate for a renewal.
[2] The Final Report of The Real Property Lease Procurement Task Force, December 1, 1994, made the same recommendation.

Effect of Bill

This bill incorporates the study recommendations, together with reconciliation of inconsistent provisions and a re-write for readability.

This bill reorders and clarifies the definitions section at s. 255.248, F.S., which definitions apply only to ss. 255.249 and 255.25, F.S., to:

- Add a definition that "department" means the Department of Management Services.
- Specify that the exceptions to the application of ss. 255.249 and 255.25, F.S., are exceptions to application of both sections, and not simply exceptions to a single definition.
- Add a reference to the Board of Governors to conform to the 2002 creation of the board at art. IX, s. 7(d), Fla.Const.
- Add exceptions to conform to current practice and understanding for custodial facilities for inmates, and building used for the state courts system.

This bill amends s. 255.249, F.S., to:

- Remove the requirement that an agency specify why relocation is in the best interests of the state.
- Add that the department has the authority and responsibility to procure and manage all leases on behalf of executive branch state agencies, and may employ a commission-based private real estate broker to represent the department in procuring and managing leases of privately-owned buildings.[3] The three agencies whose head is an elected member of the cabinet may, but are not required to, utilize the services of the department or the broker in procuring leases.
- Remove the requirement that DMS is to try to coordinate one agency to move into space being vacated by another in a privately-owned building. Instead, the department may move one agency into space being vacated by another, but the agency that is directed to move into the space may reject the space upon meeting certain criteria. Those criteria are: excessive cost, unfavorable lease terms or conditions, negative impact on employee productivity, security concerns, poor location, poor building quality, insufficient parking, excessive moving costs, or difficult access for persons served by the agency. An agency head must state in writing the specific reason or reasons for a rejection.

Section 255.249(4), F.S., requires the department to promulgate rules regarding procurement of space by state agencies. This bill amends the requirements for such rules to:

- Provide a competitive negotiation process.
- Allow the department to provide a simplified solicitation process for leases of less than 5,000 square feet.
- Require evaluation criteria.
- Provide that an agency may reject a proposed placement based on same criteria that an agency may reject a transfer.

[3] See section entitled "Drafting Issues or Other Comments" regarding this provision.

- As to the requirement in current law that the department adopts a standard method for space allocation, this bill provides that the rules regarding space allocation must provide for accommodation of disabled persons, security, visitors, special needs space, investment in additional space where advantageous to the state, and space for employee wellness. Additionally, as applied to state-owned buildings, the allocation method must provide exceptions to accommodate an inability to efficiently reconfigure the space.[4]

- Require adoption of the BOMA standard, or equivalent, when determining a building's quality. Where practical, the state must lease A or B class space.

This bill amends s. 255.25, F.S., to:

- Remove the unused requirement that the department act as a mediator between agencies and private landlords.

- Provide for the department to renegotiate and combine existing leases.

- Remove the 11 month limitation on extension leases, and add a requirement that a lease cannot be renewed unless the space will continue to adequately serve the public.

- Increase the minimum protest bond in a bid dispute regarding a lease procurement from $5,000 to $7,500 to account for inflation.[5]

- Move from s. 255.25, F.S., to s. 255.45, F.S., subsection (4) on fire safety and subsection (5) on buildings located in floodplains.

- Remove an exception related to special lease procedures for specialized educational facilities.

This bill amends ss. 255.25001 and 255.2501, F.S., to change to competitive solicitation for leases.

This bill amends s. 255.45, F.S., to change this section on fire safety in state-owned buildings to a section on safety in all state-owned and state-leased buildings. All of s. 255.45, F.S., together with subsections (4) and (5) of s. 255.25, F.S., are merged. There is no change in language or substance of the merged provisions.

This bill amends s. 255.503, F.S., to add that the department may employ consultants regarding management or disposition of properties in the Florida Facilities Pool.[6]

C. SECTION DIRECTORY:

Section 1 amends s. 255.248, F.S., regarding definitions and exceptions applicable to ss. 255.249 and 255.25, F.S.

Section 2 amends s. 255.249, F.S., regarding state leasing, and related administrative rules.

Section 3 amends s. 255.25, F.S., regarding state leasing.

Section 4 amends s. 255.25001, F.S., to change competitive bidding to competitive solicitation.

Section 5 amends s. 255.2501, F.S., to change competitive bidding to competitive solicitation.

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[4] Currently, the department is operating on non-rule policy for its space allocation process. The department has promulgated a rule establishing a standard providing for an average of 180 square feet per employee.

[5] The $5,000 sum was established in 1990 by ch. 90-224, L.O.F. Adjusting for inflation through 2003, the sum is the equivalent of $7,039.02. Calculation from: http://www.aier.org

[6] See section entitled "Drafting Issues or Other Comments" regarding this provision.

Section 6 amends s. 255.45, F.S., regarding safety in state-owned and state-leased buildings.

Section 7 amends s. 255.503, F.S., regarding the powers of DMS regarding the Florida Facilities Pool.

Section 8 republishes s. 633.085, F.S., which references s. 255.45, F.S.

Section 9 provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Management Services believes that this bill may result in reduced expenditures by state agencies in leasing of real property of approximately $30 million annually. This savings will be reflected in individual agency budgets. It is unknown how much of these savings will be represented in General Revenue, and how much will be in various trust funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. This bill does not affect local governments.

2. Expenditures:

   None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the state reduces recurring expenditures by reducing the amount of space leased from the private sector, property owners in the private sector will suffer a loss of revenue until those private sector landlords find replacement tenants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill modifies the rulemaking authority of the department regarding

C. DRAFTING ISSUES OR OTHER COMMENTS:

On October 15, 2003, the Department of Management Services entered into a two year contract with the Staubach Company for commission-based representation of state agencies in lease negotiations, and for assistance in strategic planning and the sale of state buildings.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.