

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1401

Department of Management Services

SPONSOR(S): Economic Development & Community Affairs Policy Council, Government Accountability Act Council, McBurney and others

TIED BILLS:

IDEN./SIM. BILLS: SB 2410

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Government Accountability Act Council	21 Y, 0 N, As CS	Mitchell	Hansen
2)	Economic Development & Community Affairs Policy Council	14 Y, 0 N, As CS	Williamson/McDonald	Tinker
3)	Government Operations Appropriations Committee			
4)				
5)				

SUMMARY ANALYSIS

Under current law, the Department of Management Services (DMS) is responsible for the custodial and preventive maintenance, repair, and allocation of space of all buildings in the Florida Facilities Pool and the grounds located adjacent thereto. Any state agency planning to terminate a lease for the purpose of occupying space in a new state-owned office building must let DMS know why the proposed relocation is in the best interest of the state.

This bill is related to use and management of state-owned office buildings and the lease of privately-owned buildings by the state. It provides DMS with exclusive authority over, and designates the department as the primary contact point and managing agent for, existing and future leases of a state agency. DMS currently has approval authority over only 35 percent of the state’s leases with no strategic oversight.

This bill substantially revises the responsibilities of DMS with respect to the use and management of state-owned office buildings and the leasing of privately-owned buildings by the state. This includes explicit authority as the state’s primary administrator of existing and future leases to a state agency. The bill provides DMS with the authority to direct an agency to occupy a specific location, which will preclude state agencies from negotiating or executing their own lease agreements for space. In addition, DMS is provided with the responsibility and authority over the execution of a significant amount of the state’s leased space agreements and associated expenditures related to those agreements.

Finally, the bill requires DMS to create a comprehensive database of all state-owned property and submit a plan to do this by January 4, 2010. According to DMS, creation of the database creates a non-recurring expenditure of \$800,000.

The bill takes effect July 1, 2009, unless otherwise specified.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Florida Facilities Pool

Current law authorizes the Department of Management Services to create the Florida Facilities Pool (pool) "in order that agencies may participate, and thereby pool the rentals to be paid by such agencies, at uniform rates with additional charges for services provided, and to authorize the issuance of obligations secured by and payable from such rentals and charges."¹ In order to participate in the pool, an agency must submit a request to DMS and to the Division of Bond Finance of the State Board of Administration.²

Leasing Provisions in Chapter 255, F.S.

DMS is responsible for the custodial and preventive maintenance, repair, and allocation of space of all buildings in the Florida Facilities Pool³ and the grounds located adjacent thereto.⁴ Any state agency planning to terminate a lease for the purpose of occupying space in a new state-owned office building⁵ must let DMS know why the proposed relocation is in the best interest of the state.⁶

DMS publishes a master leasing report that is furnished to the Executive Office of the Governor and the Legislature no later than September 15 of each year. It provides:

- A list, by agency and by geographic market, of all leases that are due to expire within 24 months.
- Details of each lease, including location, size, cost per leased square foot, lease-expiration date, and a determination of whether sufficient state-owned office space will be available at the expiration of the lease to accommodate affected employees.

¹ Section 255.505, F.S.

² Section 255.508, F.S.

³ Section 255.505, F.S.,

⁴ Section 255.249(1), F.S.

⁵ Section 255.248(8), F.S., defines "state-owned office building" to mean "any building title to which is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions." The term excludes: district or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed; all educational facilities and institutions under the supervision of the Department of Education; all custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state; buildings or spaces used for legislative activities; and buildings purchased or constructed from agricultural or citrus trust funds.

⁶ Section 255.249(2), F.S.

- A list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2)(a), F.S., during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state's long-term best interest.
- Financial impacts to the pool rental rate due to the sale, removal, acquisition, or construction of pool facilities.
- Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio. Changes to occupancy costs in leased space by market and changes to space consumption by agency and by market.
- An analysis of portfolio supply and demand.
- Cost-benefit analyses of acquisition, build, and consolidation opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and building.
- The updated plan required by s. 255.25(4)(c), F.S.⁷

By June 30 of each year, each state agency must provide DMS with all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned FTE data, business case analyses related to consolidation plans by an agency, a telecommuting program, and current occupancy and relocation costs.⁸

Pursuant to s. 255.25(2)(a), F.S., no state agency may lease a building or any part thereof unless prior approval of the lease conditions and of the need therefore is first obtained from DMS. Any approved lease may include an option to purchase, an option to renew the lease, or both, upon such terms and conditions as established by DMS and subject to final approval by the head of DMS and s. 255.2502, F.S.⁹

The approval of DMS, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified that all criteria for leasing have been fully complied with,¹⁰ and has determined such lease to be in the best interest of the state.¹¹ Such lease, which is for a term extending beyond the end of a fiscal year, is subject to the provisions of ss. 216.311, 255.2502, and 255.2503, F.S.¹²

DMS is responsible for prior approval of lease terms for leases over 5,000 square feet and for leases less than 5,000 square feet the agency head or their designee must certify compliance with applicable leasing criteria submit to DMS. Leases for less than 5,000 square feet are not required to be competitively bid.

Leasing Statistics

State-owned space managed by DMS consists of 21 regional campus facilities and 35 Tallahassee locations, totaling approximately 7.8 million gross square feet of primarily office space. This space predominately is for administrative direction and support functions and leased to various state agencies.¹³

Not all state-owned buildings and the related parking facilities are managed by DMS. The majority of the 55,736,841 gross square feet of state-owned buildings are managed by 20 other state agencies.¹⁴

⁷ Section 255.249(3)(c), F.S.

⁸ Section 255.249(3)(d), F.S.

⁹ Section 255.2502, F.S., relates to contracts which require annual appropriation; contingency statement.

¹⁰ Pursuant to s. 255.249(4)(k), F.S.

¹¹ Section 255.25(2)(b), F.S.

¹² Relating, respectively, to statutory provisions concerning unauthorized contracts in excess of appropriations, contingency statements in contracts which require annual appropriations, and certain prohibited provisions in contracts for the leasing of buildings.

¹³ Department of Management Services analysis of HB 1401, March 17, 2009, at 2.

¹⁴ *Id.* at 3.

State-owned space managed by DMS consists of less than half of the space required to meet current office space needs of state agencies. This requires that agencies individually lease approximately 8.5 million square feet of privately-owned space at local market prices. As of June 2008, the state's average cost per square foot for full service office space in counties where DMS has office facilities was \$19.06, which costs the state over \$148 million annually.¹⁵

Chapter 2009-15, Laws of Florida

Chapter 2009-15, L.O.F., passed during the 2009 Special Session A, directed DMS to compile a list of all state-owned surplus real property with a value greater than \$1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, and identify current contracts for leased office space in which the leased space is not fully used or occupied and include a plan for contract renegotiation or subletting unoccupied space. DMS subsequently reported the following:

- 566 private leases with 1.3 million square feet in potential excess space.
- More than 500K square feet of potential excess space is in Leon County.
- 276 leases with potential excess space with terms of 24 months or less.
- 80 percent of the leases have less than 2,500 SF of potential excess space.

EFFECT OF PROPOSED CHANGES

This bill substantially revises the responsibilities of DMS with respect to the use and management of state-owned office buildings and the leasing of privately-owned buildings by the state. This includes explicit authority as the state's primary administrator of existing and future state agency leases. DMS is authorized to direct an agency to occupy a specific location, which precludes state agencies from negotiating or executing lease agreements for space.

State-Owned Building Custodial and Maintenance

The bill provides that DMS is responsible for both custodial and preventative maintenance of state-owned buildings and appurtenant parking facilities and grounds; not just DMS managed buildings as is current practice.

Parking Services

The bill requires DMS to manage all parking activities, including the management of parking structures and appurtenant facilities at all state-owned buildings.

Assessment of Leasing Resources

The bill requires agencies to identify intra-agency resources related to leasing and lease administration functions by October 31, 2009. This includes all related full-time and part-time positions, as well as annual appropriations for leasing and funding sources. The bill requires DMS to submit a plan by October 31, 2009, that identifies positions needed to support centralized leasing activities within the department.

Consolidation of Leasing Resources

Effective December 1, 2009, each state agency having a private lease must enter into an interagency agreement with DMS.

Competitive Solicitation Requirements

The bill substantially revises provisions relating to DMS approval prior to the construction or leasing of buildings. DMS must competitively solicit for leases of 5,000 square feet or greater or acquire a minimum of three written quotes for leases exempt from competitive solicitation.

Leases exempt for the competitive solicitation requirements include the acquisition of a portion of space destroyed or rendered uninhabitable by an act of God, malicious destruction, fire, structural failure, or legal action (term no longer than 18 months); leases for nominal or no consideration; or

¹⁵ *Id.*

leases for a term less than 120 days. Leases exempt with written approval by DMS include extension of existing leases if total of extensions from original lease termination date does not exceed 11 months; emergency acquisition of space to replace a portion of space destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, structural failure, or legal action (term cannot exceed 11 months unless original space is inhabitable within 18 months of commencement of emergency lease); or leases that demonstrate best leasing value and public benefit through collocation or consolidation of like public services in partnership with municipal or other governmental entities.

Consultant Contracting

The bill authorizes DMS to procure contracts for real estate consulting and for tenant brokerage services. DMS may use a contractor procured for those purposes to assist with the execution of its responsibilities. Any contract procured prior to January 1, 2010, remains in effect.

Leasing Restrictions

DMS may not execute a lease agreement with specified private landlords based on ownership conflicts of interest.

Exceptions

The centralized leasing provisions do not apply to:

- District or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist-welcoming functions are performed;
- Educational facilities under the Department of Education;
- Custodial facilities and institutions used primarily for care, custody, or treatment of wards of the state;
- Buildings or spaces used for legislative activities;
- Buildings purchased or constructed from agricultural or citrus funds;
- Certain wireless communications facilities;
- Leases entered into by the Department of Transportation; and
- Certain leases by the Board of Trustees of the Internal Improvement Trust Fund.

Reporting Requirements

By September 15, 2010, and each year thereafter, DMS must provide a comprehensive leasing report to the Executive office of the Governor and the Legislature. The report must detail: each private lease that is scheduled to expire within 24 months; the specifics of each private lease; the potential financial impact to the pool rental rate that may be realized from the disposition, sale, acquisition, or construction of state-owned buildings; year-over-year percentage changes to occupancy rates, maintenance costs, and operating expenses of the pool; an analysis and summary of major market supply and demand for the 10 largest markets in which the state leases space; and recommendations of strategic opportunities for consolidations, dispositions, acquisitions, and construction, and cost-benefit analyses for each strategic opportunity.

Definitions

The bill defines the following terms:

- “Florida Facilities Pool” means the pool of facilities created in s. 255.505, F.S.¹⁶
- “Private lease to a state agency” means any lease for space in a privately owned building to one or more executive agencies predominantly for administrative direction or support functions.

The bill amends the definition of “privately owned building” to clarify that it includes any building not owned by the Board of Trustees of the Internal Improvement Trust Fund or a state governmental agency. It also amends the definition of “state-owned office building” to remove the exclusions from the definition.

Finally, the bill repeals the definitions for responsible lessor, responsive bid, and responsive lessor.

¹⁶ Section 255.505, F.S., relates to creation of the Florida Facilities Pool.

Database of State-Owned Property

The bill directs DMS to create, administer, and maintain a comprehensive database of all state-owned property. DMS must prepare a plan, by January 4, 2010, to compile the database. The plan must address a method for:

- Requiring that specific information be provided for each property in the database in order to determine appropriate valuation;
- Maintaining and updating the database;
- Identifying and assessing database properties for potential disposition; and
- Requiring identified properties to be routed to DMS for strategic valuation and disposition analysis.

The plan must be submitted to the president of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor.

B. SECTION DIRECTORY:

Section 1 effective December 1, 2009, amends s. 255.248, F.S., to revise, eliminate, and provide additional definitions.

Section 2 effective December 1, 2009, amends s. 255.249, F.S., to substantially revise the responsibilities of DMS with regard to use and management of state-owned office buildings and the lease of privately-owned buildings by the state.

Section 3 effective December 1, 2009, creates s. 255.2491, F.S., to provide direction relative to transition to centralized leasing by DMS.

Section 4 amends s. 255.25, F.S., to substantially revision provisions related to exceptions to the competitive solicitation provisions.

Section 5 effective December 1, 2009, amends s. 110.171, F.S., to make a conforming change.

Section 6 effective December 1, 2009, amends s. 255.25001, F.S., to make a conforming change.

Section 7 effective December 1, 2009, amends s. 288.012, F.S., to make a conforming change.

Section 8 effective December 1, 2009, amends s. 288.1224, F.S., to make a conforming change.

Section 9 effective December 1, 2009, amends s. 288.1226, F.S., to make a conforming change.

Section 10 effective December 1, 2009, amends s. 944.10, F.S., to make a conforming change.

Section 11 effective December 1, 2009, amends s. 957.04, F.S., to make a conforming change.

Section 12 effective December 1, 2009, amends s. 985.682, F.S., to make a conforming change.

Section 13 effective December 1, 2009, amends s. 1013.17, F.S., to make a conforming change.

Section 14 creates an unnumbered section to require DMS to create a comprehensive database of all state-owned property and submit a plan to do this by January 4, 2010.

Section 15 provides an effective date of July 1, 2009, except as provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DMS, the bill creates a non-recurring expenditure of \$800,000 to establish the database of state-owned property.¹⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DMS:

Over the time required to fully benefit from the proposed changes, the current \$148 million expenditure for leasing privately-owned space could be reduced based on identified consolidation opportunities. A single negotiation for consolidating multiple lease agreements will yield an overall reduction in the occupancy costs to the state.

Additionally, consolidation of state agency leasing personnel will result in the elimination of duplication at multiple agencies, reducing the overall operating expenditures of the agencies. The extent of these reductions is currently unknown. There will be an offset after the consolidation through an increase in specialized leasing personnel at DMS, but at a smaller cost than current statewide expenditures.¹⁸

According to the Department of Revenue:

If DMS assumes all of the leasing activities (i.e. procurement, management, billing, remediation, disaster planning, etc.) there will be no fiscal impact to the agencies.

If DMS only assumes the lease procurement activities, there will be a fiscal impact as agencies will need to retain staff to manage and enforce leases.¹⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

¹⁷ Department of Management Services analysis of SB 1804/Amendment 506922, April 6, 2009, at 4.

¹⁸ Department of Management Services analysis of HB 1401, March 17, 2009, at 4 and 5.

¹⁹ Department of Revenue analysis of HB 1401, March 9, 2009, at 10.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DMS to adopt rules providing for:

- Performance and execution of all responsibilities and authorities granted;
- The advertisement, receipt, evaluation, and award of competitive proposals for leases;
- Requirements that all leases be awarded to best leasing value, a statement describing best leasing value in each advertisement, and process for determining best leasing value and awarding lease;
- Extension criteria for existing leases, the termination of an existing lease, and the use of tenant improvement funds upon termination of a lease;
- Methods and guidelines used to validate square footage used for calculation of lease payments; and
- Acceptable terms and conditions for inclusion in lease agreements and addenda.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Corrections

According to the Department of Corrections:

The Department has significant concerns with the bill. Currently, leasing staff work closely with the Office of Community Corrections in resolving the complexities involved in the lease of probation offices. Removing the leasing function from the Department of Corrections would decrease the Department's ability to communicate knowledge and concerns relating to the unique needs of probation offices directly, thereby resulting in operation deficiencies.²⁰

Other Comments: Department of Financial Services

According to the Department of Financial Services:

The bill is not clear on true "centralized" leasing authority and parking management in reference to managing and facilitating the operational duties (e.g., information gathering, security, emergencies, COOP plans, unique lease specifications, move coordination, invoicing, and point of contact for DMS). There doesn't appear to be a distinction between having "exclusive authority over" and "managing" activities. Absent the clarification of duties, the positions could be reallocated to DMS with liaison duties from DFS resources that are familiar with the people and facilities still being required for the coordination of all leasing, parking and facility operations. The end result could be all duties remaining as they are with fewer FTEs to accomplish the tasks.²¹

Other Comments: Department of Revenue

According to the Department of Revenue:

DMS could maintain management, site control, co-location and control of the state leasing portfolio by changing Chapter 255.25(2)(b) to require state agencies to obtain permission (from DMS) to execute leases under 5,000 square feet. This would continue to allow agencies the ability to determine their office specifications, continue to provide the flexibility to move/close offices as needed to support their core missions and control their own expenditures. The movement of the bid process from a chapter 255 to a chapter 287 activity is not necessary.

²⁰ Department of Corrections 2009 analysis of HB 1401 at 3.

²¹ Email from Michael Carlson, Director of Legislative Affairs for the Department of Financial Services, to staff of the House Governmental Affairs Policy Committee on March 23, 2009. (on file with the Economic Development & Community Affairs Policy Council).

At a minimum, agencies should have an appeal process for lease determinations that take into account rates, locations, suitability of sites, office closing and renewals, and security.²²

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At its March 26, 2009, meeting, the Government Accountability Act Council adopted one amendment to HB 1401 which included a number of technical changes requested by DMS and one change that directs DMS to create a comprehensive database of all state-owned property and submit a plan to do this by January 4, 2010. Those changes are reflected in the substantive analysis above.

On April 14, 2009, the Economic Development & Community Affairs Policy Council adopted three amendments which did the following:

- Amendment 1 reinserted language from current law that had been omitted in the earlier council substitute. The language governs provisions that are required to be included in contracts with real estate consultants and tenant brokerage services. The provisions relate to such things as requirement for such brokers or consultants to maintain an office or presence in the market served, preferences given under certain circumstances; limitation on the number of tenant brokers; requirement for tenant brokers to comply with applicable provisions of s. 475.278, F.S.; requirement to work under the department and subject to the rules governing lease procurement; requirement for department training on rules governing procurement of training for awarded tenant brokers; requirement for department compensation for real estate consultants and tenant brokers to be subject to provisions of the term contract and subject to legislative appropriation; requirement that such consultants and brokers may not receive compensation directly from a lessor for services rendered under the term contract; exemption of moneys paid to such consultant or broker from any charge imposed under s. 287.1345, F.S.; exemption of moneys paid by a lessor to the department under a facility leasing arrangement from charges imposed under s. 215.20, F.S.; requirement that all terms relating to compensation of the real estate consultant or tenant broker must be specified in the contract; and, requirement that the department periodically conduct customer-satisfaction surveys.
- Amendment 2 removed from the exceptions to the competitive solicitation process emergency lease acquisitions made necessary by an act of God; thereby, requiring such emergency acquisitions to receive written approval of the department before being exempt from the competitive solicitation process.
- Amendment 3 corrected an incorrect reference to "state-owned building," an undefined term, to "state-owned office building," a defined term.

²² Department of Revenue analysis of HB 1401, March 9, 2009, at 9 and 10.