HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1401 Department of Management Services
SPONSOR(S): McBurney
TIED BILLS: **IDEN./SIM. BILLS:** SB 2410

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Government Accountability Act Council		Mitchell	Hansen
2)	Governmental Affairs Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)	Government Operations Appropriations Committee			
5)				

SUMMARY ANALYSIS

HB 1401 is related to use and management of state-owned office buildings and the lease of privately-owned buildings by the state. The bill authorizes the Department of Management Services (DMS) to have exclusive authority over, and to be the primary contact point and managing agent for existing and future leases of a state agency. DMS currently has approval authority over only 35% of the state's leases and 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. DMS will have the right to direct an agency to occupy a specific location, which will preclude state agencies from negotiating or executing their own lease agreements for space. Amendment of s. 255.249, F.S., will provide DMS responsibility and authority over the execution of a significant amount of the state's leased space agreements and associated expenditures related to those agreements.

Initial estimates from DMS indicate a savings of $11.8 million resulting from the use of a single point of contact on lease negotiations and $3.7 million resulting from a targeted reduction of 195,000 square feet of unnecessary space, for a total annual savings of $15.5 million.

Except as provided therein, the bill is effective July 1, 2009.

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

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 is predominately for administrative direction and support functions and leased to various state agencies.

Not all state-owned buildings and their 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.

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.

Agencies Leasing Liaisons

For lease operations, agencies utilize their internal employees identified by DMS as leasing liaisons. These resources provide lease management services for each specific agency and do so without a statewide holistic view of any other agency or transaction. Leasing liaisons utilize DMS and the tenant brokers to provide up-to-date market intelligence data.

Market Impacts

Inconsistent lease management practices among agencies have historically resulted in higher administration costs for the state. This also contributes to delays in the execution of leases, which impacts the speed at which services are provided to taxpayers.

In 2007, the Legislature expanded DMS's leasing authority by requiring all agencies to provide up-to-date operational program data related to their real estate requirements. The resulting occupancy supply and demand information is used as the platform to create the annual strategic plan provided to the Legislature in September of each year.

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 leases to a state agency. DMS will be authorized to direct an agency to occupy a specific location, which will preclude state agencies from negotiating or executing their own lease agreements for space. Amendment of s. 255.249, F.S., will provide DMS responsibility and authority over the execution of a significant amount of the state's leased space agreements and associated expenditures related to those agreements. The bill amends statutes related to:

- Employee telecommuting (conforming language) (amends s. 110.171, F.S.)
- Revising responsibilities of DMS with respect to the use and management of state-owned office buildings, parking and the leasing of privately-owned space by the state (amends ss. 255.248, 255.249, 255.25, 255.25001, F.S.)
- Exempting space located in foreign countries leased by the Office of Tourism, Trade, and Economic Development (OTTED) from the requirements of s. 255.249, F.S. (amends ss. 288.012, 288.1224, 288.1226, F.S.)
- Exempting law enforcement, military, inspections, road operations and tourist-welcoming functions from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Exempting the Department of Education's educational facilities and institutions from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Exempting custodial facilities and institutions used mainly for wards of the state from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Exempting the buildings purchased or constructed from agriculture or citrus trust funds from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Exempting wireless communications facilities with exception from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Exempting transportation right-of–way leases from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Exempting OTTED foreign country leasing from the requirements of s. 255.249, F.S. (amending s. 255.249, F.S.)
- Specifying the Department of Corrections with respect to s. 255.249, F.S., and all of s. 255.25, F.S., must retain competitive bids and awarding to lowest and best bidder (amends s. 944.10, F.S.)
- Specifying juvenile justice facilities with respect to s. 255.249, F.S., and s. 255.25, F.S. must retain competitive bids and awarding to lowest and best bidder (amends s. 944.10, F.S.)

- Deletes the reference to s. 255.25, F.S., related to private correctional facilities or juvenile commitment facilities related to lease-purchase of up to two facilities if authorized in the general appropriations act (amends s. 957.04, F.S.)

- Exempts (with conditions) universities leasing research and development parks from the requirements of ss. 255.249 and 255.25, F.S. (amends s. 1013.17, F.S.).

State-Owned Building Custodial and Maintenance – DMS will be responsible for both custodial and preventative maintenance of state-owned buildings and appurtenant parking facilities and grounds; not just DMS managed buildings as currently performed.

Parking Services – DMS will be required to manage all parking activities, including the management of parking structures and appurtenant facilities at all state-owned buildings.

Assessment of Leasing Resources – Agencies will be required to identify intra-agency resources related to leasing and lease administration functions by October 31, 2009. This is to include all related full-time and part-time positions, as well as annual appropriations for leasing and funding sources. The bill will require DMS to submit a plan by October 31, 2009, that identifies positions needed to support centralized leasing activities within DMS.

Consolidation of Leasing Resources – State agencies with private leases applicable to the requirement of s. 255.249, F.S., will be required to enter into an interagency agreement with DMS to assume centralized leasing activities.

Competitive Solicitation Requirements – Statutory provisions relating to DMS approval prior to the construction or leasing of buildings would be substantially revised. This includes DMS utilizing the competitive solicitation process for specific leases, alternative process for leases exempt from the competitive solicitation and following a process for competitive solicitation that DMS establishes in rule.

Consultant Contracting – DMS will have the authority to contract for real estate consulting and tenant brokerage services for assisting with the execution of responsibilities, including the continuing effect of existing contracts.

Leasing Restrictions – DMS will not be allowed to execute a lease agreement with specified private landlords based on ownership conflicts of interest.

Rule Authority – DMS will be required to adopt rules for implementation of ss. 255.249 (to implement the sections of s. 255.249, F.S., and for determining if a lease-purchase of a state-owned office building is in the best interest of the state) and s. 255.25, F.S. (for the public to contest awards of leases required through competitive solicitations process)

Utilization of Space – DMS will be tasked to ensure efficient occupancy and allocation of space in state-owned buildings and in privately-owned buildings leased to a state agency.

Annual Comprehensive Leasing Report – DMS will be required to produce and submit an annual comprehensive leasing report to the Governor and the Legislature with specified content requirements.

Rules and Reporting

The bill directs DMS to adopt rules related to the execution of leased space agreements. It will require state agencies to provide in writing to DMS justification for any action not directed by DMS. Each action must describe why the request is in the best interest of the state. The updated rules restrict agencies from vacating space for 120 days or until a lease termination may be reviewed and approved by DMS. DMS is to include a strategic leasing plan with its annual comprehensive leasing report due by September 15 to the Executive Office of the Governor and the Florida Legislature. HB 1401 will amend s. 255.25, F.S., to require DMS to monitor market conditions and adopt rules for subleases to the agencies, establishing a single point of approval of most state leases within DMS to decrease the operational processing time for execution of leases.

Business Practices

The bill requires DMS to advertise and competitively bid space in privately-owned buildings on behalf of state agencies based on established practices in s. 287.057, F.S. HB 1401 will allow DMS to contract for the services of a tenant broker to assist in competitive bids. Tenant brokers will work under the direction of DMS and be compensated subject to the tenant broker's contract and appropriation by the Legislature. Among other exemptions to the requirements of competitive solicitation is DMS authority to procure space, on behalf of state agencies if an emergency acquisition is necessary due to an act of God, fire, malicious destruction, or structural failure, or by legal action.

The proposed statutory changes will continue the maximum utilization of DMS managed state-owned space and centralize operational efficiencies for private leased space across the state. These changes could also result in the consolidation of multiple small leases into single lease agreements that maximize the state's buying power, reduce the cost per square foot and improve the quality of the space for the agencies.

Amendment of s. 255.25, F.S., will require DMS to monitor market conditions from a centralized position as opposed to the current method where each agency performs the tasks when obtaining an agreement for a large or small amount of private space. DMS will also be required to adopt rules for subleasing private space to all agencies, with exceptions that are specifically defined in the statutes.

The proposed changes will provide for the centralization of real estate leasing functions to be located into one area with one point of contact and one point of accountability. HB 1401 will impact DMS by providing an opportunity to holistically view the state's leasing needs and manage the portfolio in a more proactive fashion to reduce the state's occupancy costs in real estate leasing.

B. SECTION DIRECTORY:

Section 1. Effective December 1, 2009, amends s. 255.248, F.S., to add two definitions and delete others. "Florida Facilities Pool" means "the pool of facilities created in s. 255.505, F.S." and "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."

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 buildings and the lease of privately-owned buildings by the state.

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

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

Section 5. Effective December 1, 2009, amends s. 110.171, F.S.; conforming change.

Section 6. Effective December 1, 2009, amends s. 255.25001, F.S.; conforming change.

Section 7. Effective December 1, 2009, amends s. 288.012, F.S.; conforming change.

Section 8. Effective December 1, 2009, amends s. 288.1224, F.S.; conforming change.

Section 9. Effective December 1, 2009, amends s. 288.1226, F.S.; conforming change.

Section 10. Effective December 1, 2009, amends s. 944.10, F.S.; conforming change.

Section 11. Effective December 1, 2009, amends s. 957.04, F.S.; conforming change.

Section 12. Effective December 1, 2009, amends s. 985.682, F.S.; conforming change.

Section 13. Effective December 1, 2009, amends s. 1013.17, F.S.; conforming change.

Section 14. 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:

DMS cites a number of cases supporting centralization of the state real estate leasing:

$25.1 million in cost avoidance through leveraged buying - DMS recently negotiated a 20-month "free rent" period for agencies totaling $12.5 million in avoided costs in a single transaction. As part of that negotiation, the Legislature received an additional $12.6 million in tenant improvement dollars for private sector locations.

$700,000 saved with business-focused negotiations – Rather than accepting renewal rates as stipulated in the original lease, DMS facilitated renegotiation based upon current market conditions. The landlord conceded a 30% rate reduction, saving the state $704,484.12 over the term of the lease.

$134,000 saved with skilled market research – In renegotiating a South Florida lease, the Department of Corrections contacted DMS for market data. The data and coaching provided to the state yielded a savings of $134,126.16 over the term of the lease.

$150,000 saved with professional leasing consultants – While reviewing submissions to an agency request for lease bids, DMS found that the landlord was using industry terms that added 1,439 square feet to the lease. With the correction in language, the total leased square footage was more accurate and saved the state $149,191.00 over the term of the lease.

Initial estimates from DMS indicate a savings of $11.8 million resulting from the use of a single point of contact on lease negotiations and $3.7 million resulting from a targeted reduction of 195,000 square feet of unnecessary space, for a **total annual savings of $15.5 million**.

2. Expenditures:

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES