# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2722

SPONSOR: Appropriations Committee, Governmental Oversight and Productivity Committee and Senator Atwater

SUBJECT: Public property and publicly owned buildings

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | White | Wilson | GO | Fav/CS |
| 2. | | | RI | Withdrawn |
| 3. | | | AGG | Withdrawn |
| 4. | Kynoch | Coburn | AP | Fav/CS |
| 5. | | | RC | |
| 6. | | | | |

## I. Summary:

The bill amends the provisions of ch. 255, F.S., relating to state-owned and state-leased buildings and ch. 216, F.S. relating to planning and budgeting.

Specifically, the bill provides the following for state-owned and state-leased buildings:

- Provides specific statutory authority for the contract entered into by the Department of Management Services (DMS) in October 2003, with the Staubach Company, North Florida, L.L.C., for the provision of commission-based representation of state agencies in lease negotiations and for assistance in the strategic planning and the sale of state buildings. This authority is repealed by the bill upon termination of the contract on October 15, 2005.
- Eliminates the acquisition of private space leases by individual state agencies and to centralize the authority for and execution of all state private space leasing within the DMS.
- Provides the DMS with authority to consolidate existing executive agency leases into a large-scale lease or leases covering one or more private buildings. Provides that the state may not be bound to a lease that exceeds an initial term of five years and two subsequent renewals with each renewal not to exceed the initial term of the lease.
- Requires real estate broker's commissions paid by private landlords to first be remitted to Department of Management Services (DMS). Requires the Chief Financial Officer to approve a written determination by the DMS of a broker negotiated lease's value prior to payment of the broker's commission. Provides that the written determination of the broker negotiated lease's value is not subject to protest.
- Removes a requirement that the DMS survey landlord satisfaction with broker services.
- Provides that the Department of Management Services is responsible for adopting standard methods for determining space allocation in state-owned and state-leased buildings.

- Provides that the act's provisions which amend ch. 255, F.S., are effective when the DMS certifies that it does not have specified real estate broker contracts.
- For Fiscal Year 2004-2005, appropriates $2,000,000 from the General Revenue Fund for reconfiguration of Florida Facilities Pool office space and $1,000,000 from the Working Capital Trust Fund for payment of real estate broker commissions.

Specifically, the bill provides the following for planning and budgeting.

- Clarifies the necessary approval for various agency interim budget amendment requests by providing a separate list of amendments that require Executive Office of the Governor and Legislative Budget Commission (LBC) approval.
- Provides for treatment of the state courts consistent with the executive branch relative to the LBC approval process.
- Establishes salary rate control at the budget entity level as specified in the General Appropriations Act. Provides for interim changes by the LBC, except for reorganizations or other appropriations made by law, and distribution of lump sum appropriations and administered funds.
- Requires specific legislative authorization or LBC approval for privatization, outsourcing, and shared-savings initiatives. Also require "business case", performance contracting procedures, and ongoing legislative oversight.
- Requires budget amendments associated with Department of Transportation Work Program changes to comply with ch. 216 provisions and limits inclusion of fall Revenue Estimating Conference positive impacts in the work program until addressed by Legislature.
- Merges and clarifies provisions regarding agency budget transfer authority, and increases the current limit from $150,000 to $250,000.
- Eliminates the Child Welfare System and Juvenile Justice Estimating Conferences.
- Provides for alternative due dates for Legislative Budget Requests and Long Range Program Plans with House and Senate approval.
- Eliminates separate deficit reduction language that requires prorated reductions for the Chiles Endowment/Tobacco Settlement Trust Fund.
- Clarifies that the Working Capital Fund is the unappropriated balance of the General Revenue Fund, rather than a separate fund.
- Authorizes the Governor and Chief Justice to address General Revenue deficits under 1.5% and allows the House of Representatives and Senate to certify a deficit if the Governor does not certify the deficit.
- Expands current requirements for fiscal impact statements to apply to all agencies and statutorily-created entities, and requires statements prior to final action that will affect revenues or appropriations.
- Requires specific approval by chairs of the House and Senate appropriations committees for non-operating appropriations.
- Removes unnecessary requirements for community budget requests.
- Updates obsolete references in the Innovation Investment program and clarifies that such process cannot circumvent the normal Legislative Budget Request and legislative appropriation process.
- Expands notice requirements for lawsuit settlements.
- Describes standard trust funds to be consistent across agencies.

- Eliminates obsolete zero based budgeting and performance-based program budgeting requirements.
- Modifies the certifications forward process, effective July 1, 2005, to provide automatic approval of items expended but not disbursed, and require a September 30 reversion date.
- Transfers the Florida Single Audit Act functions from the Executive Office of the Governor to the Chief Financial Officer (CFO).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 14.2015, 45.062, 110.1245, 215.32, 215.5601, 215.93, 215.94, 215.97, 216.011, 216.013, 216.023, 216.031, 216.052, 216.053, 216.065, 216.081, 216.136, 216.162, 216.167, 216.168, 216.177, 216.181, 216.1825, 216.183, 216.192, 216.195, 216.221, 216.231, 216.235, 216.241, 216.251, 216.262, 216.292, 216.301, 216.341, 218.60, 252.37, 255.248, 255.249, 255.25, 255.25001, 255.2501, 255.2502, 255.45, 265.55, 270.27, 288.1234, 320.20, 339.135, 381.0303, 393.22, 409.906, 409.912, 468.392, 475.484, 633.085, 921.001, and 1009.536.

## II. Present Situation:

***DMS's responsibilities for state-owned buildings:*** Pursuant to s. 255.249(1), F.S., the DMS is responsible for the custodial and preventive maintenance and repair of, and allocation of space within, all buildings and adjacent grounds in the Florida Facilities Pool.[1] Under the Florida Building and Facilities Act, the DMS may:

- Collect reasonable rentals or charges for the use of and services provided for pool facilities exclusively for the purpose of paying the expenses of improving, repairing, maintaining, and operating facilities and paying debt service charges in connection with its obligations.
- Acquire facilities pursuant to s. 11(f), Art. VII of the State Constitution and own, operate, and finance such facilities in accordance with the act.
- Sell, lease, release, or otherwise dispose of pool facilities in accordance with applicable law.
- Engage consultants for professional and technical assistance and engage professionals in connection with the acquisition or financing of any facility or the operation and activities of the Department of Management Services, including attorneys, auditors, consultants, and accountants.
- Lease all or any portion of any facility to an agency or to any political subdivision.[2]

***DMS's responsibilities for state-leased buildings:*** Pursuant to ss. 255.249 and 255.25, F.S., the DMS is required to oversee state agency leasing of buildings, and to adopt rules for uniform leasing procedures for all state agencies, except the Department of Transportation.[3]

Section 255.249(4), F.S., requires the DMS's leasing rules to address:

[1] Section 255.249(1), F.S.
[2] Section 255.503, F.S.
[3] Section 255.25(2)(c), F.S.; *See also* Chapters 334 and 337, F.S. (granting leasing authority to and establishing leasing procedures for the Department of Transportation).

- Competitive solicitation and evaluation procedures for leased space of 5,000 square feet or more in privately owned buildings and procedures requiring at least three documented quotes for a lease that is not required to be competitively solicited.
- Standard methods for determining measurements used as the basis for lease payments, for the allocation of space in state-owned[4] and state leased buildings based on use, personnel, and office equipment, and for the assessment of rent to state agencies and other authorized occupants of state-owned space.
- Terms and conditions for lease agreements.
- Maximum rental rates, by geographic area, for leases.
- Methods for disclosure of owner names and extent of interest in privately owned buildings leased by the state.
- A method for reporting leases for nominal or no consideration.

***State agency authority to lease private space:*** If suitable space is not available in a state-owned building,[5] a state agency[6] may lease privately owned building[7] space:

- Less than 5,000 square feet if the agency head or his or her designee has: (a) determined that the lease is in the best interest of the state; and (b) certified agency compliance with lease criteria required by DMS rule.[8]
- Equal to or more than 5,000 square feet if: (a) the DMS approves the need for the lease and for its conditions; (b) the lease is competitively awarded to the lowest and best bidder;[9] and (c) the DMS approves any options to purchase or renew contained in the lease.[10] [11]

***Exemptions from competitive solicitation requirements:*** State leases for private space must be awarded by competitive solicitation, unless the lease is: (a) for the purpose of providing care and living space for persons;[12] (b) necessary for an emergency;[13] or (c) for specialized educational

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[4] The term "state-owned office building" is defined for purposes of ss. 255.249 and 255.25, F.S., 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." This term does not include: (a) district or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed; (b) educational facilities and institutions under the supervision of the Department of Education; (c) custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state; (d) buildings or spaces used for legislative activities; and (e) buildings purchased or constructed from agricultural or citrus trust funds. Section 255.248, F.S.

[5] Section 255.25(4)(a), F.S. Rule 60H-1.007, F.A.C., requires all lease agreements that exceed one year to contain a right-to-terminate clause permitting the agency to terminate the lease without penalty if a state-owned building becomes available by providing six months advance written notice to the lessor. On January 23, 2004, the DMS published a notice in the FAW proposing to amend this rule to provide that this requirement may be omitted from a lease upon written approval by the Division Director of Facilities Management and Building Construction.

[6] The terms "state agency" is not defined.

[7] Section 255.248, F.S., defines "privately owned building" as any building not owned by a governmental agency. The term "governmental agency" is not defined.

[8] Section 255.25(2)(b), F.S.

[9] A protest to a competitive award may be filed pursuant to s. 120.57(3)(b), F.S. A protest bond in the amount of one percent of the total lease period or $5,000, whichever is greater, must be posted when filing the protest.

[10] Section 255.25(2), (3), (10), F.S.

[11] No more than one lease may be executed by an agency for space in the same privately owned building or complex without competitive solicitation. Section 255.25(8), F.S.

[12] Section 255.249(4)(b), F.S.

[13] Section 255.25(10), F.S.

facilities, other than classrooms where the agency head certifies that the space is only available from a sole source.[14]

***Extensions of private space leases:*** An agency may extend an existing lease for 5,000 square feet or more for up to 11 months after receiving approval from the DMS. If the space is needed after the 11th month, a new lease must be procured by competitive bid, except that an agency may negotiate a replacement lease for a term not to exceed the base term of the existing lease if: (a) it determines that it is in its best interest to remain in its current space; (b) an independent comparative market analysis demonstrates that the rates offered are within market rates; and (c) the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs.[15]

***Lease-purchase acquisitions:*** The DMS is permitted to adopt rules that set forth procedures to be followed by state agencies wishing to execute a lease-purchase agreement for a building. State agencies must certify the need for the lease-purchase agreement and the certification must include: (a) current and future programmatic space requirements; (b) time considerations; and (c) an analysis of existing leases affected by the lease-purchase agreement. The evaluation process for such an agreement must include: (a) consideration of the cost of comparable operating leases; (b) the appraised value of the facility; (c) a present value analysis of the proposed payment stream; (c) cost of financing the facility to be acquired; (d) cost to repair physical defects and to remove hazardous substances; (e) an energy analysis; and (f) a determination of management and maintenance responsibilities. The DMS must find the lease-purchase agreement to be in the best interest of the state prior to its execution.[16]

***Sale of unused public property:*** Subsection 270.27(1), F.S., provides the DMS with authority to sell any or all detached pieces or parcels of land held by the state for the use of any institution under the supervision and control of the department, whenever the department determines that: (a) such pieces or parcels of land are not suitable for, or necessary and useful in, the operation and maintenance of such institution; and (b) the proceeds from the sale could be used to better advantage than said land in the operation and maintenance of such institution.

Subsection (2) provides that any proceeds from the DMS's sales of land must be deposited in the State Treasury to the account of the Department of Management Services for the use of the particular institution from the sale of whose lands said funds were derived. The proceeds may also be used, " . . . from time to time, by the department for the purpose of acquiring additional lands that may be needed for the particular institution credited with such funds, or for needed buildings or repairs for such institution, in the discretion of the department; and such funds, when obtained, are hereby appropriated for such purposes."

Finally, subsection (3) authorizes the DMS to sell any piece or parcel of land held by the state or the DMS that is located north of Pensacola Street in Tallahassee, and, ". . . to receive as payment or part payment therefore any piece or parcel, or pieces or parcels, of land located within what is known as the Capitol Center at the state capital."

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[14] Section 255.25(9), F.S.
[15] Section 255.25(3)(b), F.S.
[16] Section 255.25001(2), F.S.

***Capitol Center:*** Sections 272.03 and 272.09, F.S., provide that the DMS has general control and custodianship of, and is responsible for the management, maintenance, and upkeep of, the Capitol Center, defined as all state buildings included in the Capitol Center[17] at the state capital and the grounds and squares contiguous thereto. Title to these buildings is vested in the state.[18]

The DMS is required to develop a comprehensive, long-range plan for development within the Capitol Center, which meets the needs of state government and the various agencies that occupy the Capitol Center.[19] This plan is to be submitted to the Governor and the Legislature every five years.[20] Further, the DMS is authorized to allocate space to house the various departments, agencies, boards, and commissions in the Capitol Center, except that authority for the Supreme Court Building is vested in the Supreme Court justices.[21]

Section 272.124, F.S., authorizes the DMS to make any contract to lease, buy, acquire, construct, hold, or dispose of real and personal property as is necessary to carry out the act; however, no contract may be entered without specific authorization by the Legislature for the project.

***2003 Study:*** The 2002 General Appropriations Act[22] directed the DMS to conduct a justification and utilization assessment of public and private sector office space leases by June 30, 2003. To execute this directive, the DMS contracted with CLW Real Estate Services Group. The CLW report issued June 30, 2003, makes the following recommendations:

- State procurement and management of private sector leased space should be centralized within the DMS.
- The DMS should adopt and enforce new space efficiency standards, should examine each state facility to determine how the existing agency layout compares with the standards, and should perform a cost benefit analysis to determine if renovation of the layout could result in a net reduction of occupancy costs.
- As state leases for private space expire, the DMS should backfill available state owned space.
- The DMS should surplus state owned properties that are no longer functional or that do not meet the state's long term needs.

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[17] Section 272.12(1), F.S., states that the Florida Capitol Center Planning District, ". . . shall extend to and include all lands within the following boundaries of the City of Tallahassee: Commence at the northwest corner of Lot 293 of the Old Plan of the City of Tallahassee as recorded in the office of the Clerk of the Circuit Court, Leon County, Florida; thence east along the south right-of-way line of West College Avenue and East College Avenue to its intersection with the west right-of-way line of Franklin Boulevard; thence south along said right-of-way line of Franklin Boulevard to its intersection with the south right-of-way line of East Jefferson Street; thence east along said right-of-way line of East Jefferson Street and the east prolongation of East Jefferson Street to its intersection with the west right-of-way line of the Seaboard Coastline Railroad; thence southerly and westerly along said Seaboard Coastline Railroad right-of-way line to a point of intersection with the south prolongation of the east right-of-way line of South Martin Luther King, Jr. Boulevard; thence north along said south prolongation of the east right-of-way line of South Martin Luther King, Jr. Boulevard and along the east right-of-way line of South Martin Luther King, Jr. Boulevard to the point of beginning."

[18] Section 272.03(2), F.S.

[19] Section 272.12, F.S.

[20] *Id.*

[21] Section 272.04, F.S.

[22] Chapter 2002-394, line 2743, L.O.F.

- The DMS should engage the services of a commercial real estate consultant to be a tenant representative for the state, who will determine market alternatives and negotiate the terms and conditions of each private sector transition.

***Planning and Budgeting Law:*** Chapter 216, Florida Statutes, provides guidelines to the Governor, the judicial branch and state agencies for developing and submitting legislative budget requests and administering legislative appropriations. Over the years, the statute has been modified to incorporate most of the functions related to the state budgetary process; from consensus estimating conferences to the single audit act. The result is an aggregation of topics that periodically require updating in order to keep abreast of the current budgetary practices of the state.

***Consensus Estimating Conferences:*** Section 216.136, F.S., creates eleven consensus estimating conferences. These conferences develop official estimates of revenues, workload, expenditures, and other information related to budgeting. Executive agencies are required to use the conferences' official information for budgeting purposes. Generally, the principals of the conferences include staff of the Executive Office of the Governor and the Legislature. At times, agency staff may serve as principals of the conference, but typically such staff are participants – providing information to the conferences.

The conferences authorized in statute include the Economic Estimating Conference, the Demographic Estimating Conference, the Revenue Estimating Conference, the Education Estimating Conference, the Criminal Justice Estimating Conference, the Social Services Estimating Conference, the Child Welfare System Estimating Conference, the Juvenile Justice Estimating Conference, the Workforce Estimating Conference, the School Readiness Program Estimating Conference, the Self-Insurance Estimating Conference and the Florida Retirement System Actuarial Assumption Conference.

The Child Welfare System Estimating Conference is charged with developing official information relating to the forecasts of child welfare caseloads. The Juvenile Justice Estimating Conference is charged with developing official information relating to estimates of juvenile delinquency caseloads and workloads; secure, nonsecure, and home juvenile detention placements; and mental health and substance abuse treatment for juveniles.

***Funds:*** Section 215.32, F.S., requires all moneys received by the state to be deposited into the State Treasury, unless specifically provided otherwise. The State Treasury is comprised of the four types of funds. These include the General Revenue Fund, the Budget Stabilization Fund, the various trust funds, and the Working Capital Fund.

In the Strategic Business Issue Paper #3 "Trust Funds", the Project Aspire task force recommends a statutory classification scheme for trust funds. The classifications and uses of the trust funds would be consistent statewide for each agency. The task force also recommended a phased-in approach to allow each agency to realign its operations with the new classifications.

***Salary Rate:*** Current law defines "salary rate" as the monetary compensation authorized to be paid a position on an annualized basis. In short, rate represents pure salary only and does not include moneys authorized for benefits associated with the position.

*EXAMPLE:*

Annual salary = $20,000 Salaries and Benefits budget = $25,000
Salary rate = 20,000

Salary rate is the mechanism used in Florida to control overall salary expenditures and avoid unanticipated costs to annualize agency personnel actions, especially those actions occuring late in the fiscal year. Absent a control on salary rate, agencies would be limited only to the total level of salaries and benefits budget for purposes of implementing personnel decisions. This would allow agencies to implement position upgrades or pay raises late in the fiscal year, when the budget impact is small enough to be absorbed within the total budget for the year. However, the annual impact of those decisions would not be covered in the next year's budget, thus creating an immediate salary deficit.

Salary rate is currently controlled at the department level, with the rate level maintained in a rate ledger by the Executive Office of the Governor. Certain adjustments may be authorized by the Executive Office of the Governor, such as increases for vacant positions. Additional adjustments must be approved by the Legislative Budget Commission. Over the years, the various adjustments to agencies' approved salary rate have resulted in many agencies having much more salary rate than they have salaries and benefits budget to support.

See Section III., "Effect of Proposed Changes" for a description of the current situation for remaining issues addressed by the Committee Substitute.

## III. Effect of Proposed Changes:

**Section 1** amends s. 255.248, F.S., which provides definitions for purposes of ss. 255.249 and 255.25, F.S. to:

- Specify that the definitions of "state-owned building" and "privately owned building" refer to real property, rather than buildings as provided in current law.
- Clarify that the exceptions for specified facilities, which are currently provided in s. 255.248(1), F.S., to the definition of "state-owned building" are excepted from the requirements of ss. 255.249 and 255.25, F.S.
- Codify current practice by providing that custodial facilities for inmates and buildings used by the state courts system are excepted from the requirements of ss. 255.249 and 255.25, F.S.
- Add a conforming reference to the Board of Governors, the entity that governs the state university system, as created in 2002 by Art. IX, s. 7(d), Fla. Const.

**Section 2** amends subsection 255.249(2), F.S., to provide that the DMS is responsible for the procurement and management of all executive agency leases of privately-owned buildings, other than leases for the facilities excepted in s. 255.248, F.S.

Paragraph (2)(b) is amended to provide that the DMS may competitively procure, pursuant to ch. 287, F.S., one or more real estate brokers, who are licensed under ch. 475, F.S., to assist the DMS in negotiating leases for privately owned buildings on behalf of executive agencies. The bill specifies that broker compensation:

- May only be paid when the DMS demonstrates in writing that the lease results in a cost savings to the state or otherwise provides value that could not have been achieved without the broker; and the Chief Financial Officer approves that written determination. This written determination is not subject to protest under s. 120.57(3), F.S.
- May include a private landlord paid, market-based commission that constitutes a percentage of the lease price. The DMS must document in writing the basis for its determination of the percentage and the percentage must decline as square footage leased increases. Any such commission must be remitted to the DMS by the private landlord. The DMS may pay broker commissions under an appropriation made by law.

The bill requires that any contract for broker services must include:

- Methodologies for establishing baselines for performance measures and standards.
- Performance measures that include expectations for:
  - The net cost savings to be achieved by the broker;
  - A reduction in the average price per square foot for broker negotiated leases as compared to state negotiated leases;
  - A reduction in the square footage of private space leased by executive agencies;
  - Space per full-time equivalent employee for leases negotiated by the broker compared to state-procured private space;
  - The number of executive agency employees relocated from leased private space into state-owned space; and
  - Executive agency satisfaction with broker services and with the price, quality, and location of broker negotiated private space.
- DMS procedures for monitoring and evaluating a broker's performance.
- Processes that require monthly reporting by a broker on its achievement of the performance measures and standards and on the amount and basis of any compensation received or to be received by the broker under the contract.
- Methods for resolving situations in which a broker fails to achieve the performance measures and standards, which include, but are not limited to, withholding compensation and contract termination.

The bill requires all cost savings resulting from broker negotiated or renegotiated leases to be deposited in escrow for tenant improvements or in the General Revenue Fund. Further, the bill specifies that information about the costs and benefits of any broker negotiated or renegotiated lease must be provided to the Legislative Budget Commission if the new or renegotiated lease costs in excess of $1 million and if it represents a greater than ten percent change in the annualized cost of the agency's original lease.

Paragraph (2)(c) is amended to provide that subsection (2) does not apply to the Departments of Legal Affairs, Financial Services, and Agriculture and Consumer Services.

Subsection (3) is amended to provide that the department may assign one or more agencies to move into space vacated by another state agency; however, the head of an agency that requests space may reject the DMS's transfer in writing for the following reasons: excessive cost; unfavorable lease terms or conditions; negative impact on employee productivity; security concerns; poor location or building quality; insufficient parking; excessive moving costs; or difficult access by persons served by the agency.

Subsection (4) is amended to require the DMS to adopt rules that:

- Specify methods for the DMS to accomplish its duties outlined in subsections 255.249(1) through (3), F.S.
- Specify procedures requiring competitive solicitation of, and procedures for evaluating and accepting, responses to competitive solicitations.
- Provide that an agency that requested space may reject the DMS's selection of space for the agency for the same reasons that an agency may reject a transfer by DMS, and that the DMS upon such rejection is not required to solicit new bids, proposals, or replies; instead, the DMS may renegotiate with landlords or prospective landlords that have previously replied to the solicitation.
- Specify standard methods of determining space allocation, which define appropriate space to be allocated for specified uses and which consider:
  - Accommodation of disabled persons and public visitors;
  - Security;
  - Specials agency needs;
  - Investment in additional space where the cost of additional space is exceeded by gains in employee productivity;
  - Allocation of space for employee wellness programs, childcare, cafeterias, and break areas; and
  - Accommodation of state-owned building space that cannot be efficiently reconfigured because of design and age of the building.
- Adopt the BOMA Metropolitan Base Building Classification, or equivalent, as the standard method for rating the quality of private-owned buildings, and that provide for the utilization of BOMA class A or B space when practical.

Subsection (6) is created by the bill to require the DMS to annually submit a report to the Legislature, which sets forth the DMS's enterprise plan for the next five years for the use of state-owned and state-leased space and for any acquisition, financing, refinancing, or disposition of state real property and improvements that the DMS is permitted by law to execute. The DMS is also required to provide the Legislature with 30 days notice prior to executing a deviation from the report.

**Section 3** amends s. 255.25, F.S., to:

- Remove the requirement that the DMS serve as a mediator in agency lease renegotiations.
- Provide the DMS with authority to competitively negotiate new leases, renegotiate existing leases, or otherwise consolidate existing leases into a large-scale lease or leases covering one or more private buildings.

- Permit the DMS to adopt rules establishing procedures for procuring large scale leases, managing large scale leases, and providing a method for allocating lease costs between agencies.
- Require state agencies to obtain approval from the DMS for any lease or occupancy of a state-owned building or privately-owned building.
- Require the department or agency that is allowed to directly procure a lease or to extend a lease to comply with ss. 216.311, 255.249, 255.2502, and 255.2503, F.S.
- Provide that the DMS may adopt rules that specify uniform leasing procedures and that comply with ss. 255.249, 255.2502, and 255.2503, F.S.
- Remove the 11-month limitation for lease extensions.
- Increase the minimum amount of the bond required for protests to competitive solicitations for leases from $5,000 to $7,500.
- Transfer subsection (5) regarding fire safety and subsection (6) regarding floodplains to s. 255.45, F.S.
- Strike subsection (8) that prohibits an agency from entering into more than one lease in the same privately-owned facility within any 12-month period without a competitive solicitation of bids.
- Strike subsection (9) that exempts specialized educational facilities, other than classrooms, from the section's competitive bid requirements for leasing if such facility is only available from a sole source.

The bill also makes changes throughout s. 255.25, F.S., which permit competitive solicitation, rather than competitive bidding, for leases. The effect of these amendments is to permit the use of requests for proposals and invitations to negotiate in addition to current law's permitted use of invitations to bid.

**Sections 4 and 5** amends ss. 255.25001 and 255.2501, F.S., to make conforming changes with the substitution of the term "competitive solicitation" for "competitive bid" and to clarify that the sections apply to executive agencies, rather than state agencies as is provided in current law.

**Section 6** amends s. 255.2502, F.S., to provide that an executive branch department or agency, or a public officer or employee may not enter any contract on behalf of the state which binds the state to a lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property, or improvements to real property for an initial term exceeding five years and two subsequent renewals with each renewal not the exceed the initial term of the lease.

**Section 7** amends s. 255.45, F.S., to contain the substance of ss. 255.25(5) and (6), F.S., which are stricken in Section 3 of the bill.

**Section 8** reenacts s. 633.085, F.S., to incorporate the bill's amendment to s. 255.45, F.S.

**Section 9** provides that the act's provisions which amend ch. 255, F.S., do not take effect until the DMS certifies in writing to the presiding officers of the Legislature and the Governor that it does not have specified real estate broker contract. The act's provisions take effect only if the certification occurs prior to July 1, 2005.

**Section 10** repeals s. 270.27, F.S., relating to the sale of unused public lands by the DMS effective July 1, 2004. DMS indicates that this authority is not used.

**Section 11** repeals paragraph s. 255.249(2)(b), F.S., relating to the DMS's authority to contract with real estate brokers for lease negotiating services, on October 15, 2005, the termination date of the DMS's contract with Staubach Company, North Florida, L.L.C.

**Section 12** amends s. 14.2015, F.S., to allow the Office of Tourism, Trade and Economic Development and the Commission on Tourism to "advise and consult" (rather than reach agreement) with the consensus estimating conference before changes to the methodology used or the information gathered relating to visitor counts and profiles.

**Section 13** amends s. 45.062, F.S., to limit the ability of agencies to settle lawsuits that require the expenditure of state funds or result in the refund or future loss of state revenues exceeding $10 million, unless:
- Notice is given to the Legislature when settlement negotiations are begun.
- Notice is given to the Legislature at least 5 days before settlement. This is a condition precedent to settlement.
- Notice is given to the Legislature and the Attorney General at least 5 days before finalizing any proposed settlement obligation that requires the other party to commit funds to a particular purpose. This is a condition precedent to settlement.

Notice requirements are waived for:
- The Division of Risk Management for settlements under $10,000.
- Any settlement if the only obligation is less than $10,000 of court costs.

Requires moneys received by the state as the result of settlements to be deposited in the General Revenue Fund or the appropriate trust fund. Exempts moneys received for payment to injured third parties.

**Section 14** amends s. 110.1245, F.S., to correct a reference to the Legislative Budget Commission.

**Section 15** amends s. 215.32, F.S., to define the types of trust funds that should be used for day-to-day operations. Each executive branch agency is directed to adjust its internal accounting to accommodate these types of trust funds. If an agency does not have the necessary trust funds and cannot make such internal adjustments, the agency must recommend the creation of the appropriate trust funds to the Legislature during the agency's next scheduled trust fund review.

This section also eliminates the Working Capital Fund as a statutory term but maintains the concept by substituting unallocated general revenue funds. The default repayment schedule for monies transferred from the Budget Stabilization Fund is delayed until the beginning of the third fiscal year following the year in which the transfer was made.

**Section 16** amends s. 215.5601, F.S., to allow unexpended moneys that were appropriated for biomedical research to be retained in the Biomedical Research Trust Fund rather than reverting to, and being separately accounted in, the Lawton Chiles Endowment Fund. Allows the

Department of Health to invest such moneys through the State Board of Administration outside the Treasury. Deletes the requirement that in the event of a tobacco settlement revenue shortfall, reductions must be prorated among all tobacco settlement appropriations. Deletes the requirement for a special appropriations category for tobacco settlement appropriations for certain agencies.

**Section 17** amends s. 215.93, F.S., to remove the exemption from Financial Management Information Board approval of data codes specified by the Auditor General.

**Section 18** amends s. 215.94, F.S., to clarify the role of the Auditor General relating to implementation of the Florida Financial Management Information System.

**Section 19** amends s. 215.97, F.S., to clarify provisions and responsibilities associated with the Florida Single Audit Act. This section revises and provides the definitions of terms used in the Act, revises the Governor's responsibilities associated with the Act from a primary role to a supporting role in the Act, transfers the responsibilities to the Department of Financial Services, and provides responsibilities for state agencies that award grants.

**Section 20** amends s. 216.011, F.S., to define various terms. "Annual salary rate" will no longer specify that vacant positions must be calculated at the minimum of the pay grade. "Appropriation" is expanded to cover appropriations made by law, not just those included in the annual General Appropriations Act.

The terms "performance-based program appropriation" and "performance-based program budget" are repealed.

"Mandatory reserve" is defined as the reduction of an appropriation by the Governor or Legislative Budget Commission due to anticipated deficits, pursuant to s. 216.211, F.S. No action may be taken to restore a mandatory reserve either directly or indirectly.

"Budget reserve" is defined as the withholding of an appropriation based on conditions set by the Legislature or based on conditions unforeseen when the General Appropriations Act was passed.

"Program" is expanded to cover services, as well as activities.

"Activity" is added and defined as a unit of work that has identifiable starting and ending pionts, consumes resources, and produces outputs.

"Statutorily-authorized entity" is added to define any body that has responsibility for or recommends expenditure of state funds, and is created or authorized in law or assists a state agency to provide statewide services.

**Section 21** amends s. 216.013, F.S., to allow an alternate date to the current August 1 deadline to be set for submission of long-range program plans, and to extend the deadline from June 15 to June 30 for adjustments to such plans, if approved by the Governor and the chairs of the legislative appropriations committees. The concept of agency "functions" is replaced with agency "services" or "activities."

**Section 22** amends s. 216.023, F.S., to modify the legislative budget request process. Alternative dates for the September 15 submission of budget requests and for the June 15 distribution of budget instructions may be set by the Governor and the chairs of the legislative appropriations committees. The information required in budget requests is expanded to include supporting information, including applicable cost-benefit analyses, business case analyses, performance contracting procedures, service comparisons, and impacts to performance standards for any requests by the agency to outsource or privatize current agency functions, and any evaluations of functions currently outsourced and privatized by the agency. Obsolete provisions relating to performance-based budget requests from the state court system are deleted. Agency reports on major litigation are expanded to include cases that may affect revenues received by the state, in addition to cases that may require additional appropriations or statutory changes. Other technical corrections are made.

**Section 23** amends s. 216.031, F.S., to eliminate the deadline for submission of target budgets and to repeal an alternative format for target budgets.

**Section 24** repeals portions of s. 216.052, F.S., to delete certain requirements for community budget requests, including required local participation, an additional hearing, the preference for loans rather than grants, and reports by private or nonprofit organizations.

**Section 25** repeals subsection (5) of s. 216.053, F.S., to delete the requirement that the General Appropriations Act contain summary information on performance-based budget programs.

**Section 26** amends s. 216.065, F.S., to expand the circumstances under which the Governor or Cabinet must submit fiscal impact statements to the appropriations committees on final actions that affect state revenues or spending. The requirements are also applied to all state agencies and statutorily authorized entities.

**Section 27** amends s. 216.081, F.S., to require the Governor's recommended budget for the Legislature to match current appropriations if the Legislature does not provide a future-year estimate of its financial needs.

**Section 28** repeals subsections (7) and (8) of s. 216.136, F.S., to delete reference to the Child Welfare System Estimating Conference and the Juvenile Justice Estimating Conference.

**Section 29** amends s. 216.162, F.S., to allow the Governor an additional 5 days to submit the Governor’s recommended budget to the Legislature.

**Section 30** amends s. 216.167, F.S., to remove references to the Working Capital Fund relating to the Governor's recommended budget.

**Section 31** amends s. 216.168, F.S., to repeal the exemption that the Governor, at his discretion, need not provide amendments to his budget recommendations after March 1.

**Section 32** amends s. 216.177, F.S., to allow the chairs of the legislative appropriations committees to respond to requests for legislative intent, to receive notice of certain budget

amendments, and to advise the Governor or Chief Justice that an action, including expenditure of lawsuit settlement proceeds, exceeds their delegated authority.

**Sections 33 and 34** amends s. 216.181, F.S., to modify several provisions related to approved budgets for operations and fixed capital outlay. Requires Legislative Budget Commission approval of judicial branch amendments consistent with the existing requirements for the executive branch.

Provides for a more direct legislative role in the establishment of salary rate, consistent with the role of establishing the overall salaries and benefits budget amounts. Rate control would be re-established at the budget entity level, with the rate level determined annually in the General Appropriations Act. Adjustments to these figures would be made for reorganizations authorized by law, any other appropriations made by law, and, subject to s. 216.177, for distribution of lump sum appropriations and administered funds appropriations. Any other adjustments would require approval by the Legislative Budget Commission.

Requires the approval of the chairs of the legislative appropriations committees to establish nonoperating budgets. Repeals authority to advance certain contracted services funds in the Department of Health and the Department of Children and Family Services based on approval that existed in 1993-1994.

**Section 35** repeals ss. 216.1825 and 216.183, F.S., which required the zero-based budget review of each state agency every 8 years and which set requirements for the charts of accounts for agencies with performance-based budgets.

**Section 36** amends s. 216.192, F.S., to repeal obsolete provisions allowing the appropriations committees to advise the Administration Commission, Chief Financial Officer, Governor, or Chief Justice on the release of appropriations. The Governor and Chief Justice will be permitted to place appropriations in mandatory reserve or budget reserve in order to prevent deficits or implement directives in the General Appropriations Act.

**Section 37** amends s. 216.195, F.S., to repeal the requirement for notice to the Legislature by the executive or judicial branches if appropriations are impounded to prevent a deficit.

**Section 38** amends s. 216.221, F.S., to provide for the General Appropriations Act to include directions regarding the use of any fund, not just the Budget Stabilization Fund and Working Capital Fund, to address deficits in the General Revenue Fund. Requires that all agencies, not just those with general revenue funding, participate in reductions in the event of a projected general revenue deficit. Expands the legislature's ability to provide direction on resolving general revenue deficits beyond the General Appropriations Act. Allows the President of the Senate and Speaker of the House of Representatives, after consulting with the Revenue Estimating Conference, to certify a general revenue deficit, if the Governor does not certify the deficit. Requires the Governor and Chief Justice to develop a plan to reduce the deficit within 30 days. Revises the statutory guidelines for reductions. Allows the Governor and Chief Justice, rather than the Administration Commission, to resolve those projected general revenue deficits that are less than 1.5% of general revenue appropriations. Requires the Chief Financial Officer to notify the President and Speaker in addition to the Governor if he believes a general revenue

deficit will occur. Requires that actions to resolve projected trust fund deficits greater than $1 million must be approved by the Legislative Budget Commission. Removes the requirement for prorated reductions to address trust fund deficits.

**Section 39** amends s. 216.231, F.S., to require the Governor, rather than the Administration Commission, to determine when deficiency funds appropriated by the legislature should be released for use.

**Section 40** amends s. 216.235, F.S., to eliminate obsolete references to the Information Resource Commission. Requires agencies developing information technology proposals to consult with the State Technology Office, rather than the Information Resource Commission. Prohibits use of funds appropriated to the Innovation Investment Program for proposals requested by agencies in a legislative budget request, or recommended in the Governor 's budget recommendation, but not funded by the Legislature.

**Section 41** amends s. 216.241, F.S., to require the Legislative Budget Commission to approve new programs or programs that require additional appropriations for the judicial branch, consistent with current executive branch requirements. The Legislature or the Legislative Budget Commission must specifically approve state agency and judicial branch proposals to shift responsibilities from an agency to the private sector or to another agency's staff, including outsourcing, public-private partnerships, or shared-savings initiatives. The agency must submit detailed justification for the shift of responsibilities, and any budget amendments necessary to implement the shift must be approved prior to the execution of the contract or related agreement.

**Section 42** amends s. 216.251, F.S., to repeal the authority of the executive and judicial branches to set the salary of certain positions.

**Section 43** amends s. 216.262, F.S., to allow the Governor and Chief Justice to recommend, rather than to authorize, an increase in the number of authorized positions. The Legislative Budget Commission has the authority to approve the Governor's recommendation. The provisions allowing state agencies to retain salary dollars of positions eliminated after July 1, 2001, are repealed.

**Section 44** amends s. 216.292, F.S., to restructure the section for clarity. Increases from $150,000 to $250,000 the authority of agencies and the Supreme Court to transfer certain appropriations without notice to the Legislature, approval by the Executive Office of the Governor, or approval by the Legislative Budget Commission. Incorporates transfer provisions from other statutes, specifically:
- The restriction in s. 393.22, F.S., on transfer of funds appropriated for developmental services programs unless the Secretary of the Department of Children and Families determines no adverse effect will occur.
- The authority in s. 409.906, F.S., for the Department of Children and Families to transfer funds to the Agency for Health Care Administration to fund state match requirements for targeted case management services.
- The requirement to transfer unexpended funds for Assisted Living for the Elderly Medicaid waiver from the Department of Elder Affairs to the Agency for Health Care Administration to fund Medicaid reimbursed nursing home care.

**Section 45** amends s. 216.301, F.S., to clarify and eliminate duplicate processes related to the certification of fixed capital outlay appropriations. Provides for the President of the Senate and the Speaker of the House of Representatives to notify the Executive Office of the Governor to retain certified-forward balances from legislative budget entities until June 30 of the following fiscal year.

**Section 46** amends s. 216.301, F.S., effective July 1, 2005, to modify the certification forward process for operating appropriations. Balances of appropriations expended, but not disbursed, would be certified by the agency head without further review by the Executive Office of the Governor, and would revert Septemer 30. The previous provisions for certification of balances contracted to be expended, and the December 31 reversion date for certified forward balances are repealed, consistent with Project Aspire task force recommendations.

**Section 47** amends s. 216.341, F.S., to clarify that the requirements regarding the increase in authorized positions do not apply to positions within the Department of Health funded from county health department trust funds or the United States Trust Fund.

**Section 48** repeals subsection (3) of s. 218.60, F.S., to delete an out-dated provision related to first-year participation by local governments in half-cent sales tax proceeds.

**Section 49** amends s. 252.37, F.S., to delete reference to the Working Capital Fund.

**Section 50** amends s. 265.55, F.S., to delete reference to the Working Capital Fund.

**Section 51** repeals s. 288.1234, F.S., to repeal the Olympic Games Guaranty Account within the Economic Development Trust Fund. The account was designed to be used to fulfill the state's obligations under a games-support contract to indemnify and insure against any net financial deficit resulting from the conduct of the 2002 games.

**Section 52** amends s. 320.20, F.S., to require the Chief Financial Officer, rather than the Revenue Estimating Conference, to determine when revenues derived from the registration of motor vehicles are sufficient to repay trust funds from which moneys were drawn for deposit into the State Transportation Trust Fund.

**Section 53** amends s. 339.135, F.S., to prevent the Department of Transportation from amending the tentative work program to include new anticipated revenues until such revenues have been appropriated by the Legislature. In addition, spending authority may be rolled forward from one fiscal year to the next fiscal year only with the approval of the Legislative Budget Commission, and current exemptions for budget amendments associated with work program amendments from the standard budget amendment process are eliminated.

**Section 54** amends s. 381.0303, F.S., to allow the compensation of health care practitioners from the General Revenue Fund, rather than from the Working Capital Fund, when such practitioners are used by the Department of Health to staff special needs shelters in times of emergency or disaster.

**Section 55** repeals subsection (1) of s. 393.22, F.S., which was incorporated in the new s. 216.292, F.S. provisions.

**Section 56** amends subsection (5) of s. 409.906, F.S., relating to optional Medicaid services.

**Section 57** repeals paragraph (b) of subsection (11) of s. 409.912, F.S., which was incorporated in the new s. 216.292, F.S. provisions.

**Section 58** amends subsection (2) of s. 468.392, F.S., to eliminate the provision specifying that amounts transferred to the Auctioneer Recovery Fund within the Professional Regulation Trust Fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

**Section 59** amends subsection (2) of s. 475.484, F.S., to eliminate the provision specifying that amounts transferred to the Real Estate Recovery Fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

**Section 60** amends s. 921.001, F.S., to require the Legislature, rather than the Criminal Justice Estimating Conference, to determine that certain legislation creating or enhancing felony criminal penalties will result in no prison impact, unless such legislation contains a funding source.

**Section 61** amends s. 1009.536, F.S., to delete a reference to the Workforce Estimating Conference.

**Section 62** provides that any appropriation made in the budget that would be inadvertently negated by the repeal of the Working Capital Fund as provided in the bill shall remain.

**Section 63** for Fiscal Year 2004-2005, provides $2,000,000 from the General Revenue Fund for reconfiguration of Florida Facilities Pool office space.

**Section 64** for Fiscal Year 2004-2005, provides $1,000,000 from the Working Capital Trust Fund for payment of real estate broker commissions.

**Section 65** provides effective dates.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Private vendors that lease space to the state pursuant to a transaction negotiated by The Staubach Company, North Florida, L.L.C. will be required to pay that company a four percent commission.

### C. Government Sector Impact:

According to the DMS, the State of Florida owns more than seven million square feet of space and leases ten million square feet from the private sector. In FY 2003-2004, the state spent more than $151 million for private sector leases. The DMS estimates that this bill's centralization of state leasing procurement and management and its authorization for the services of a private sector tenant representative will result in approximately $30 million in annual savings to state agencies.

For Fiscal Year 2004-2005, provides $2,000,000 from the General Revenue Fund for reconfiguration of Florida Facilities Pool office space and $1,000,000 from the Working Capital Trust Fund for payment of real estate broker commissions.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

***Overview of Staubach contract:*** On October 15, 2003, the DMS entered a two–year contract with The Staubach Company, North Florida, L.L.C. (Staubach) for the provision of commission-based representation of state agencies in lease negotiations and for assistance in the strategic planning and the sale of state buildings. Under current law, the DMS and state agencies are responsible for executing leases[23] and the DMS and the Board of Trustees of the Internal Improvement Fund are responsible for the disposition of state real property and improvements.[24]

This bill would provide specific statutory authority for this outsourcing initiative. Currently, Florida statutes do not specify as a general matter when an executive agency is permitted to or is prohibited from outsourcing or privatizing state functions.[25] [26] In the past, the Legislature has

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[23] Chapter 255, F.S.
[24] Chapter 253, F.S., s. 270.27, and s. 272.124, F.S.
[25] Some statutes address outsourcing in specific instances. *See, e.g.,* s. 287.057(23), F.S. (providing that the DMS may contract for an eprocurement system). No general parameters, however, for outsourcing or privatization are set forth in statute.

regulated executive branch outsourcing initiatives through its appropriation power; however, in recent years, it is a common practice for executive agencies to execute self-funding contracts, such as the Staubach/DMS contract, for such initiatives. This trend appears to diminish the Legislature's power to make policy decisions regarding which state functions should be outsourced or privatized.

Provisions of the Staubach/DMS contract concerning deliverables and compensation are outlined below. The majority of compensation to be paid to Staubach is based on a fixed percentage of the state's lease price, i.e., four percent, to be paid by private landlords. Staubach's compensation does not require a demonstration of cost savings generated, nor is it structured such that the commission percentage for leases decreases as private space lease volume increases. Further, Staubach may be compensated under the contract for selling state-owned buildings.

The contract does require Staubach to restack state agencies in state-owned space when available; however, Staubach may not be compensated for such efforts during the first year of the contract. Given this fact, the fixed commission compensation structure, and the potential for state building sale commissions, it is unclear what incentive there is, particularly during the first year of the contract, for Staubach to restack agencies in state-owned buildings. Presumably, the DMS will not enter private space leases negotiated by Staubach, which do not result in a savings to the state; however, the contract does not require a demonstration of cost savings prior to execution of such a lease.

***State leasing:*** Staubach is designated the exclusive tenant agent for the state, and is required within the first 90 days of the contract to: (a) conduct market rate reviews to determine where state leases are above/at/below market rates; (b) commence renegotiation activities for leases exceeding 25,000 square feet throughout the state; and (c) complete renegotiations for at least two major deals in Tallahassee. Private landlords are required to pay Staubach four percent of the full service rental obligation for the entire fixed term of a new or renegotiated lease or an amount otherwise agreed upon for any new or renegotiated lease transaction that Staubach negotiates and closes on behalf of the State.

***Restacking of state agencies:*** Staubach must facilitate the restacking of state agencies in state-owned space in accordance with state space standards and must relocate state agencies into state-owned buildings when space is available from functionally obsolete state-owned buildings or from third party leased facilities. Staubach's restacking services are to be provided at no cost for the first year of the contract. Thereafter, the contract authorizes the DMS to pay Staubach for these services.

***Privatized state functions:*** DMS must inform private entities assuming privatized functions that Staubach is the State's exclusive real estate representative and is available to assist them for compensation substantially similar to that provided in the DMS/Staubach contract.

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[26] An agency has only such power as is granted by legislative enactment, and when acting outside the scope of its delegated authority, an agency acts illegally. *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (Fla. 5th DCA 1985). Thus, it might be argued that an agency may only outsource or privatize upon specific statutory authority.

***State-owned facility sale/ lease:*** Staubach may be required by the DMS to provide implementing services for sale/leaseback or lease/leaseback of state-owned facilities, bondable net leases, the structuring of joint ventures, public private partnerships, or other transactions. Staubach is to be paid market-based compensation to be determined when the scope of work is defined. This compensation is to be funded through transaction proceeds, i.e., by private landlords or financing arrangements.

***Construction management:*** Staubach may be required by the DMS to provide construction management services in exchange for market-based compensation to be determined when the scope of work is defined. This compensation may be paid by the State and/or by private landlords.

***Disposal of surplus assets:*** Staubach may be required by the DMS to provide disposition services for surplus state assets, which may include sale, lease, sub-lease, joint venture, public private partnership, or other means. Staubach is to be paid market-based compensation to be determined when the scope of work is defined. This compensation is to be funded through sale proceeds.

***Performance Measures:*** The contract specifies that performance measures, which may be based on a percentage of cost savings realized or on other terms, were to be developed within the first 90 days of the contract's execution, i.e., January 15, 2004, and are to be made an addendum to the contract. Representatives from the DMS have indicated that the addendum is currently being drafted.

## VIII. Amendments:

None.