

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 1134

INTRODUCER: Senator Hays

SUBJECT: State-owned or Leased Space

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill gives the Department of Management Services (DMS) more authority to coordinate state agency use of state-owned and privately-leased office space. The bill also permits DMS to implement renovations or construction of fixed capital outlay projects, if expressly authorized in the General Appropriations Act.

The bill amends sections 216.0152, 255.248, 255.249, 255.25, 110.171, and 985.682 of the Florida Statutes.

**II. Present Situation:**

The Department of Management Services' (DMS) Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the Florida Facilities Pool, and other facilities and structures. One of the divisions in the program, the Bureau of Leasing, administers public and private leasing.

According to the DMS 2011 Master Leasing Report, the state leases a total of 13.9 million square feet with an annual rent of \$252 million, of which 7.7 million square feet is in private sector leases, with an annual rent of \$151 million.

**Leasing Provisions in Chapter 255, F.S.**

The DMS has the authority to approve leases of greater than 5,000 square feet that cover more than one fiscal year by operation of s. 255.25(2)(a), F.S. Except as provided for emergency space

needs,<sup>1</sup> no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations, if such lease is, in the judgment of the department, in the best interests of the state.<sup>2</sup>

The approval of the 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,<sup>3</sup> and has determined such lease to be in the best interest of the state.<sup>4</sup> Such a 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.<sup>5</sup>

Section 255.249(4)(b), F.S., requires the DMS to promulgate rules providing procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exemption from competitive bidding requirements of any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and the securing of at least three documented quotes for a lease that is not required to be competitively bid.

In sum, while the DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency. For leases less than 5,000 square feet, approval by the DMS is not necessary, except for technical sufficiency, so long as the agency head or their designee has certified compliance with applicable leasing criteria and has determined the lease is in the best interest of the state. Leases under 5,000 square feet need not be competitively bid. The terms "bids" and "proposals" are used throughout the leasing provisions of ch. 255, F.S.; the term "invitation to negotiate" does not appear in the chapter.

The 2007 Legislature amended s. 255.249, F.S., to give DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities, and required DMS to submit an annual master leasing report to the Legislature; the report must contain analyses and other information on the status of state-owned facilities and private sector leased space. To assist the department with preparing the report, state agencies are required to provide their projected requirements for leased space based on planned and full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation. In September 2008, DMS released the first required Master Leasing Report and Leasing Plan, in which DMS advocated strongly for the centralization of leasing functions.

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<sup>1</sup> Section 255.25(10), F.S., provides that the DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.

<sup>2</sup> The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, ch. 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, ch. 99-399, L.O.F.

<sup>3</sup> Pursuant to s. 255.249(4)(k), F.S.

<sup>4</sup> Section 255.25(2)(b), F.S.

<sup>5</sup> 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.

### Recent Legislative Direction on Leased Space

During the 2009 Special Session A, the Legislature directed DMS to compile a list of all state-owned surplus real property that has a value greater than \$1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, 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.<sup>6</sup> DMS subsequently reported<sup>7</sup> the following in regards to space leased by state agencies:

- 566 private leases with 1.3 million square feet in potential excess space.
- More than 500,000 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 square feet of potential excess space.

DMS planned to work with state agencies and a contracted tenant broker to renegotiate leases with over 1,500 square feet of excess space, and at least 18 months of remaining term, to recognize potential cost savings.

DMS was directed in 2011 to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,<sup>8</sup> and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

### III. Effect of Proposed Changes:

**Section 1** amends s. 216.0152, F.S., to add the Department of Environmental Protection, along with DMS, currently, as a responsible agency for the creation and maintenance of a state-owned and leased facilities inventory. The bill requires the two agencies to annually publish the inventory of all state-owned facilities, including inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation. The annual state-owned real property disposition report must be included in the report.

**Section 2** amends s. 255.248, F.S., to add definitions of “managing agency” and “tenant broker.”

**Section 3** amends s. 255.249, F.S., which delineates the responsibilities of DMS with regards to leased and owned space. Specifically, it provides that:

- A state agency may not lease space in a private building to be constructed for state use unless DMS gives prior approval of the architectural design and preliminary construction plan;
- DMS may direct state agencies to occupy space in any state-owned building;
- If expressly authorized by the General Appropriations Act and in the best interest of the state, DMS may implement renovations or construction of fixed capital outlay projects to effectively use state-owned buildings;

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<sup>6</sup> Chapter 2009-15, L.O.F.

<sup>7</sup> DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.

<sup>8</sup> Section 76, Chapter 2011-47, L.O.F.

- The annual master report published by DMS must include the strategic leasing plan, and must include recommendations for capital improvement funds to implement agency consolidation into state-owned office buildings;
- State agencies may use the services of a tenant broker in providing the annual office space needs information to DMS, and title entities or managing agencies must report to DMS any vacant or underutilized space; and
- DMS must adopt by rule the procedures for procuring leased office space of 2,000 square feet or more (a change from 5,000 square feet or more), and procedures for administering all its duties.

**Section 4** amends s. 255.25, F.S., to require a state agency to notify DMS at least 30 days before execution of a lease of less than 2,000 square feet (a change from 5,000 square feet), for DMS to determine whether suitable space is available in state-owned or leased space in the same geographic region. If DMS determines execution of the lease is not in the best interests of the state, DMS must notify the agency, the Governor, the Senate, and the House. Leases for 2,000 square feet or more (changed from 5,000 square feet) must be competitively solicited. DMS has the authority to approve leases of 2,000 square feet or more, and extensions of such leases.

The bill also requires state agencies to use tenant brokers with a “lease action,” which is not defined, but presumably includes extensions and renewals. This is a change from the current provision, which allows the state agency head to determine whether or not to use the services of a tenant broker. The bill deletes a requirement that agencies must use tenant brokers that are on contract with DMS, but the new definition of “tenant broker” created in s. 255.248, F.S., specifies that the tenant brokers to be used by agencies must be under contract with DMS.

**Sections 5 and 6** amend sections 110.171 and 985.682, F.S., to correct cross-references.

The bill takes effect July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Tenant brokers may obtain increased business from state agencies.

**C. Government Sector Impact:**

Indeterminate. Greater coordination and efficiency of state agency leasing activities should result in cost savings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The term “lease action” is used in the bill, but not defined. The Legislature may wish to define the term to avoid agency actions inconsistent with the intent of the bill.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.