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.)

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

BILL:	SB 1074
INTRODUCER:	Senator Hays
SUBJECT:	State-owned or State-leased Space
DATE:	March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Favorable**
2.			EP	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1074 gives the Department of Management Services more authority to coordinate and direct state agency use of state-owned and privately-leased office space, requires competitive solicitation for more agency leases, streamlines reports related to leasing activities, and increases reporting related to facility energy savings. The bill also makes changes intended to facilitate the sale of non-conservation state lands determined to be surplus.

The bill amends sections 216.0152, 253.031, 253.034, 255.248, 255.249, 255.25, 255.252, 255.254, 255.257, 255.503, 110.171, and 985.682 of the Florida Statutes.

II. Present Situation:

Leasing and DMS Authority

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 103 state-owned facilities in 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 2012 Master Leasing Report,[1] the state leases a total of 13.5 million square feet with an annual rent of $237 million, of which 7.1 million square feet is in 765 private sector leases, with an annual rent of $136 million.

[1] Available at http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/lease_management

Chapter 255, F.S., provides the statutory authority for the DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space. 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,[2] 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 DMS, in the best interests of the state.[3]

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,[4] and has determined such lease to be in the best interest of the state.[5]

Section 255.249(4)(b), F.S., requires the DMS to promulgate rules to provide 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 its 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 grant the DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities and to require 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 DMS in preparing the report, state agencies are required to provide their projected requirements for leased space based on active and planned 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

[2] 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.
[3] 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.
[4] Pursuant to s. 255.249(4)(k), F.S.
[5] Section 255.25(2)(b), F.S.

September 2008, DMS released the first required Master Leasing Report and Leasing Plan, in which the DMS advocated strongly for the centralization of leasing functions.

Legislative Direction on Leased Space

In 2009, the Legislature directed the 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.[6] The DMS subsequently reported[7] 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.

The 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.

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

In 2012, the DMS and agencies were directed to use tenant broker services to renegotiate or reprocure all private lease agreements expiring between July 1, 2013, and June 30, 2015, in order to achieve a reduction in costs in future years.[9] The DMS had to incorporate this initiative into its 2012 Master Leasing Report and could use tenant broker services to explore the possibilities of co-location, to review the space needs of each agency, and to review the length and terms of potential renewals or renegotiations. The DMS was directed to provide a report by March 1, 2013, which lists each lease contract for private office or storage space, the status of renegotiations, and the savings achieved. According to the Lease Renegotiation Stats Report released by the DMS,[10] renegotiations since July 1, 2011, have resulted in a projected reduction in lease costs of $25.1 million and a net reduction of 709,296 square feet for Fiscal Years 2011-12 and 2012-13.

[6] Chapter 2009-15, L.O.F.
[7] DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.
[8] Section 76, Chapter 2011-47, L.O.F.
[9] Section 23, Chapter 2012-119, L.O.F.
[10] Available at http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/lease_management

Inventory of State-owned and State-leased Facilities

Pursuant to s. 216.0152, F.S., the DMS must develop and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. The DMS must use this data for determining maintenance needs and conducting strategic analyses. For assessing needed repairs and renovations of facilities, the DMS must update its inventory with condition information for facilities of 3,000 square feet or more, and the inventories must record acquisitions of new facilities and significant changes in existing facilities as they occur. The DMS must provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch must report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility must be updated at least every 5 years. The DMS must publish a complete report detailing this inventory every 3 years, and must publish an annual update of the report.

Inventory of State-owned Real Property

In 2010, the Legislature mandated the creation of a database to identify surplus property and dispose of such property owned by the state that is unnecessary to achieving the state's responsibilities.[11] Pursuant to s. 216.0153, F.S., the Department of Environmental Protection (DEP) must create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district. The comprehensive state-owned real property system must contain a database that includes an accurate inventory of all real property that is leased, owned, rented, occupied, or managed by the state, the judicial branch, or the water management districts. The Division of State Lands in the DEP is the statewide custodian of the real property information and accountable for its accuracy.

The Division of State Lands in the DEP must annually submit a report that lists the state-owned real property recommended for disposition, including a report by the DMS of surplus buildings recommended for disposition. The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.

The DEP and DMS are now implementing the Florida State Owned Lands and Records Information System (FL-SOLARIS), designed with two main components:

- Facility Information Tracking System (FITS);
- Lands Information Tracking System (LITS).

The FITS component is now operational and is designed to give agencies an online interface to record data on their state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.[12]

[11] Chapter 2010-280, L.O.F.
[12] Information available at http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/facilities_inventory_tracking_system_fits (last visited March 18, 2013).

Sale and Disposition of Surplus State-Owned Lands

Section 253.034, F.S., provides that for state land determined to be surplus by the Board of Trustees of the Internal Improvement Trust Fund, in order to determine the sale price of the land, it must be appraised, if the estimated value is over $100,000. At the discretion of the Division of State Lands in the DEP, a second appraisal may be required if the value is determined to be equal or greater than $1 million. All property less than $100,000 can be valued by comparable sales analysis or a broker's opinion of value.

Section 253.03, F.S., provides that before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and community colleges, with a priority consideration given to state universities and community colleges. Once a state agency, county, or local government has requested the use of surplus property, it has six months to secure the property under lease.

Energy Performance and Reporting

The "Florida Energy Conservation and Sustainable Buildings Act" in ss. 255.251 through 255.2575, F.S., creates duties for agencies and the DMS with regards to energy efficiency in buildings leased and owned by the state.

Section 255.252(4), F.S., encourages agencies to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state and the vendor. Such energy contracts may be funded from the operating budget.

Section 255.254, F.S., requires agencies to seek from the DMS an evaluation of life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities. Agencies are required to perform an energy performance analysis for all leased facilities larger than 5,000 square feet. The energy performance analysis is required to project forward through the term of the proposed lease the annual energy consumption and cost of the major energy-consuming systems and the analysis is to be based on actual expenses. Potential leases may only be made where there is a showing that the energy costs incurred by the state are minimal compared to available like facilities. A lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to the department by the owner of the building.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities of 5,000 square feet and larger, and report all such data to the DMS.

Consultants' Competitive Negotiation Act

The Consultants' Competitive Negotiation Act (CCNA) in s. 287.055, F.S., is used by public entities for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services in construction, rehabilitation, or renovation activities. The

CCNA must be used when professional services on a project for which the basic cost of construction, as estimated by the agency, will exceed $325,000, or for planning or study activity where compensation exceeds $35,000. The CCNA process generally involves a competitive selection process, in which compensation is not considered, followed by a competitive negotiation process, during which compensation is determined.

III. Effect of Proposed Changes:

Section 1 amends s. 216.0152, F.S., to require the Department of Transportation (DOT) to provide a yearly inventory of transportation facilities of the state transportation system to the Department of Management Services (DMS) and the Department of Environmental Protection (DEP).

The bill requires the DMS and DEP to publish a yearly inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the DOT, excluding the transportation facilities of the state transportation system. The annual report of state-owned real property recommended for disposition required under s. 216.0153, F.S., must be included in this report.

Section 2 amends s. 253.031, F.S., to provide that authorized agents of the Board of Trustees of the Internal Improvement Trust Fund have authority to sign deeds conveying land.

Section 3 amends a requirement in s. 253.034, F.S., relating to when the Division of State Lands (division) may use a comparable sales analysis or broker's opinion of value. Currently, the division, when determining the sale price of lands to be surplussed, must consider an appraisal, or, for lands estimated at a value of less than $100,000, a comparable sales analysis or a broker's opinion of value. The bill allows the division to use a comparable sales analysis or a broker's opinion of value for lands estimated at a value of less than $500,000.

The bill requires that parcels with a market value over $500,000 must be initially offered for sale by competitive bid. The division may use agents for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

The bill reduces from 6 months to 90 days the time period during which a public entity that has requested use of a property must secure the property under lease.

Before a building or parcel of land is offered for lease or sale, it must first be offered for lease to state agencies, state universities, and community colleges, contingent upon the submission of a business plan for the proposed use of the building or parcel. Within 60 days after the offer of a surplus building or parcel, a state agency, state university, or community college that requests the transfer of a surplus building or parcel must develop and submit a business plan for the proposed use. The business plan must include the proposed use, the cost of renovation, the replacement cost for a new building for the same proposed use, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot be otherwise met, and

other criteria developed by rule by the DEP. The board or its designee must compare the appraised value of the building or parcel to any submitted business plan for proposed use of the building or parcel to determine if the transfer or sale is in the best interest of the state. The bill changes this subsection to delete the priority consideration given to state universities and community colleges.

Section 4 amends s. 255.248, F.S., to add definitions of "managing agency" and "tenant broker" to the chapter of the Florida Statutes that governs public property and publicly owned buildings.

Section 5 amends s. 255.249, F.S., to expand the duties of the DMS with regards to the Florida Facilities Pool, and the leasing of space in privately owned space.

The bill expands the DMS' authority with regards to the Florida Facilities Pool, to include the operation, alteration, and modification of all facilities in the pool and adjacent grounds.

An agency that intends to terminate a lease of privately owned space before the expiration of its base term must notify the DMS 90 days before the termination.

The DMS may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by the Department of Environmental Protection.

If expressly authorized by the General Appropriations Act (GAA) and, in the best interest of the state, the DMS may implement renovations or construction that more efficiently use state-owned buildings. Such use of tenant-improvement funds applies only to state-owned buildings, and all expenditures must be reported by the department in the master leasing report that the DMS annually publishes.

The bill requires that a required DMS-developed strategic leasing plan be included in the master leasing report, which must provide, in addition to existing requirements, recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.

The bill amends state agency duties to allow the agencies to use the services of a tenant broker in preparing the required yearly reporting information to the DMS. The title entity or managing agency must also report to the DMS any vacant or underutilized space for all state-owned office buildings, any restrictions that apply to any other agency occupying the vacant or underutilized space, and any significant changes to its occupancy for the coming fiscal year.

The bill mandates that the DMS adopt rules relating to:

- State agency use of space identified in the Florida State-Owned Lands and Records Information System; and
- Procedures for the effective and efficient administration of s. 255.249, F.S.

Section 6 amends s. 255.25, F.S., to require a state agency to notify the 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 the DMS determines execution of the lease is not in the best interests of the state, the DMS must notify the agency, the Governor and the Legislature. Leases for 2,000 square feet or more (changed from 5,000 square feet) must be competitively solicited.

The DMS has the authority to approve leases of 2,000 square feet or more (a change from 5,000 square feet), and extensions of existing leases of 2,000 square feet or more (a change from 5,000 square feet). The bill deletes a provision that allows an agency to determine that it is in its best interest to remain in the space it currently occupies.

In leases of 2,000 square feet or more (a change from 5,000 square feet), agencies and lessors must agree to the cost of tenant improvements before the effective date of the lease.

The bill also requires state agencies to use tenant brokers with a "lease action," except for leases between governmental entities. "Lease action" 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 the 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 the DMS.

Section 7 amends s. 255.252, F.S., to allow, but not require, vendors for energy-saving contracts to be selected pursuant to the Consultants' Competitive Negotiation Act in s. 287.055, F.S.

Section 8 amends s. 255.254, F.S., to require that an energy performance analysis must be performed prior to finalization on all leases of more than 2,000 square feet (change from 5,000 square feet).

Section 9 amends s. 255.257, F.S., to require that each state agency must collect data on energy consumption and costs for all state-owned and state-leased facilities. The requirement currently applies to state-leased facilities of 5,000 square feet or more.

Section 10 amends s. 255.503, F.S., to allow the DMS to charge fees directly to state employees for the use of parking facilities and to allow the DMS to use facility rentals or charges for improvement, maintenance, and repair of those facilities.

Sections 11 and 12 amend sections 110.171 and 985.682, F.S., to correct cross-references.

The bill takes effect July 1, 2013.

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.

According to the DMS, "[t]he bill would allow DMS, at the direction of the Legislature through the General Appropriations Act, to use fixed capital outlay funds to implement renovations or construction of fixed capital outlay projects to increase utilization and occupancy of state-owned office buildings. Because of the bond covenants in place for the Florida Facilities Pool, funds for non-pool facilities should not be comingled with facilities pool funds. Fixed capital outlay funds to renovate Florida Facilities Pool facilities are appropriated based upon annual Legislative Budget Requests and the Capital Improvement Plan. DMS frequently manages construction projects for other agencies or enters into client agency agreements for projects. Fixed capital outlay funds to renovate non-pool facilities are placed in the specific owner-agency's General Appropriations Act line item with proviso to specify what the funds are to be used for and may specify DMS to manage the project."

VI. Technical Deficiencies:

None.

VII. Related Issues:

On line 336 of the bill, the rulemaking authority given to the "department" should instead be given to the Board of Trustees of the Internal Improvement Trust Fund.

The term "lease action" is used in the bill on line 823, 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.