

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1145 State-Owned or State-Leased Space

SPONSOR(S): Government Operations Appropriations Subcommittee; Government Operations Subcommittee; La Rosa

TIED BILLS: **IDEN./SIM. BILLS:** SB 1074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Stramski	Williamson
2) Government Operations Appropriations Subcommittee	13 Y, 0 N, As CS	White	Topp
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill addresses various inventory, sales, lease, and reporting requirements applicable to state-owned and state-leased property. The bill:

- Revises reporting requirements applicable to the annual inventory of state-owned facilities.
- Requires the Division of State Lands in the Department of Environmental Protection (DEP) to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such property has an estimated value of \$500,000 or less.
- Provides and revises various reporting and notice requirements applicable to surplus property.
- Requires state agencies, state universities, and Florida colleges to submit a business plan for the proposed use of a building or parcel determined to be surplus.
- Defines terms.
- Modifies requirements applicable to notices relating to the occupation of state-owned and state-leased facilities.
- Authorizes the Department of Management Services (DMS) to direct a state agency (except Cabinet member agencies) to occupy or relocate to space in any state-owned office building within existing appropriations.
- Requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report by October 1 of each year.
- Requires the leasing report to contain recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.
- Subjects the Department of Transportation to DMS' leasing procedures as established by rule.
- Removes the authorization for an agency (except for Cabinet member agencies) to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies and gives the authority to DMS to make the determination.
- Authorizes DMS to approve emergency acquisition of space without competitive bids under certain conditions.
- Revises energy performance analysis requirements.

The bill is likely to have a minimal fiscal impact on state agencies. It is anticipated that the provisions of the bill will be handled within existing agency resources.

The bill has an effective date of July 1, 2013, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Inventory of Facilities and Real Property

Background

State-owned and State-leased Facilities

Current law requires the Department of Management Services (DMS) to develop and maintain an automated inventory of all facilities¹ owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. DMS must use the data for determining maintenance needs and conducting strategic analyses.²

For assessing needed repairs and renovations of facilities, 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. DMS must provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch.³

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 five years.⁴ DMS must publish a complete report detailing this inventory every three years, and must publish an annual update of the report.⁵

State-owned Real Property

In 2010, the Legislature required the Department of Environmental Protection (DEP) to 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.⁶ The comprehensive state-owned real property system must allow the Board of Trustees of the Internal Improvement Trust Fund to perform its statutory responsibilities and the Division of State Lands in DEP to conduct strategic analyses and prepare annual valuation and disposition analyses and recommendations for all state real property assets.⁷

The division must annually submit a report that lists the state-owned real property recommended for disposition, including a report by 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.⁸

DEP and DMS are implementing the Florida State Owned Lands and Records Information System, designed with two main components:

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

¹ Section 216.0152(1), F.S., defines the term “facility” to mean buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.

² Section 216.0152(1), F.S.

³ Section 216.0152(2), F.S.

⁴ *Id.*

⁵ Section 216.0152(3), F.S.

⁶ Chapter 2010-280, L.O.F.; codified as s. 216.0153, F.S.

⁷ Section 216.0153(1), F.S.

⁸ Section 216.0153(3), F.S.

The FITS component is now operational and is designed to give agencies an online interface to record data on state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.⁹

Effect of the Bill

The bill revises s. 216.0152, F.S., to require:

- By July 1 of each year, the Board of Governors of the State University System and DEP to provide to DMS an inventory of all state university and community college facilities.
- By October 1 of each year, DMS and DEP to publish a complete report of the inventory of all state-owned facilities, including the inventories of the Board of Governors, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state transportation system. The report must include the report on state-owned real property recommended for disposition.

The bill clarifies that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

Surplus of State-Owned Lands

Background

The Board of Trustees of the Internal Improvement Trust Fund (board) is authorized and directed to administer all state-owned lands. The board is responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use.¹⁰

The board must determine which lands, the title to which is vested in the board, may be surplus.¹¹ The sale price of land determined to be surplus must be determined by DEP's Division of State Lands (division) and must take into consideration an appraisal if the property if the estimated value is over \$100,000. At the discretion of the division, 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 may be valued by a comparable sales analysis or a broker's opinion of value.¹²

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.¹³

Effect of the Bill

The bill requires the division to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such property has an estimated value of \$500,000 or less, instead of \$100,000 or less. It permits the division to obtain a second appraisal regardless of the value of the surplus property.

The bill requires parcels with a market value of over \$500,000 to initially be offered for sale by competitive bid. Parcels that are not sold by competitive bid, and parcels with a market value of

⁹ Information available at:

http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/facilities_inventory_tracking_system_fits (last visited March 23, 2013).

¹⁰ Section 253.03(7)(a), F.S.

¹¹ For conservation lands, the board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board must make a determination that the lands are no longer needed and may dispose of them by an affirmative vote of at least three members. Section 253.034(6), F.S.

¹² Section 253.034(6)(g), F.S.

¹³ Section 253.03(15), F.S.

\$500,000 or less, may be sold by any reasonable means, including through real estate services, auction, negotiated direct sales, or other appropriate services.

The bill decreases the time a state agency, county, or local government has to secure surplus property under lease from six months to 90 days after being notified that it may use such property.

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 Florida colleges. The bill makes the offer for lease contingent upon the submission of a business plan, within 60 days after the offer, for the proposed use of the building or parcel. The business plan must, at a minimum, 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 board rule. The business plan must be submitted for review and approval by the board or its designee regarding the intended use of the building or parcel of land before approval of a lease. 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.

State Agency Leasing

Background

Leasing and DMS Authority

Current law provides the statutory authority for DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space.¹⁴

A state agency may not lease a building unless prior approval of the lease conditions and the need is provided by DMS.¹⁵ For a lease of less than 5,000 square feet, a state agency must notify DMS at least 30 days before the execution of the lease. DMS must review the lease and determine whether suitable space is available in a state-owned building located in the same geographic region.¹⁶

Except for emergency space needs,¹⁷ 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.¹⁸ While 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.

Current law requires 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; exempting from competitive bidding requirements any lease for which the purpose is the provision of care and living space for persons or emergency space needs as; and securing at least three documented quotes for a lease that is not required to be competitively bid.¹⁹

In 2007, the Legislature granted 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 DMS in preparing the report, state

¹⁴ See ss. 255.248-255.25, F.S.

¹⁵ Section 255.25(2)(a), F.S.

¹⁶ Section 255.25(2)(b), F.S.

¹⁷ Section 255.25(10), F.S., provides that 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.

¹⁸ Section 255.25(3)(a), F.S. 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, chapter 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, chapter 99-399, L.O.F.

¹⁹ Section 255.249(4), F.S.

agencies must provide 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.²⁰

Legislative Direction on Leased Space

In 2009, 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.²¹ DMS subsequently reported²² the following regarding space leased by state agencies:

- There are 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.
- There are 276 leases with potential excess space with terms of 24 months or less.
- Eighty percent of the leases have less than 2,500 square feet of potential excess space.

In 2011, DMS was directed to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,²³ and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

In 2012, DMS and other agencies were directed to use tenant broker services to renegotiate or reprocur all private lease agreements expiring between July 1, 2013, and June 30, 2015, in order to achieve a reduction in costs in future years.²⁴ DMS incorporated this initiative into its 2012 Master Leasing Report and used 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. 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 DMS,²⁵ 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.

Energy Performance and Reporting

The "Florida Energy Conservation and Sustainable Buildings Act"²⁶ creates duties for agencies and 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 DMS to evaluate life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities. Agencies must perform an energy performance analysis for all leased facilities larger than 5,000 square feet. The energy performance analysis must project forward through the term of the proposed lease the annual energy consumption and cost of the major energy-consuming systems and the analysis must 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 DMS by the owner of the building.

²⁰ Section 255.249(3), F.S.

²¹ Chapter 2009-15, L.O.F.

²² DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.

²³ Section 76, Chapter 2011-47, L.O.F.

²⁴ Section 23, Chapter 2012-119, L.O.F.

²⁵ *Supra.* at Fn. 9.

²⁶ Sections 255.251-255.2575, F.S.

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 DMS.

Consultants' Competitive Negotiation Act

The Consultants' Competitive Negotiation Act (CCNA)²⁷ 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.

Effect of the Bill

As used in ss. 255.248-255.25, F.S., the bill defines the terms:

- "Managing agency" as an agency that serves as the title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building; and
- "Tenant broker" as a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

The bill requires an agency that intends to terminate a lease of privately owned space before the expiration of its base term to notify DMS 90 days before termination.

DMS may direct a state agency to occupy or relocate to space in any state-owned office building within existing appropriation, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by DEP. The Cabinet member agencies of the Department of Legal Affairs, Department of Agriculture and Consumer Services, and Department of Financial Services are exempt from this authority, but may elect to comply.

The bill requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report to the Executive Office of the Governor and the Legislature by October 1 of each year instead of September 15. DMS must include in the leasing report recommendations for using capital improvement funds to consolidate state agencies into state-owned office buildings.

For purposes of complying with the annual reporting requirements in current law, the bill allows a state agency to use the services of a tenant broker when preparing information that must be furnished to DMS such as agency programs that affect the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, and business case analyses related to consolidation plans by an agency.

The bill also requires a title entity or managing agency to report to DMS any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying the vacant or underutilized space. The title entity or managing agency must notify DMS of any significant changes to its occupancy for the coming fiscal year. The Cabinet member agencies are exempt from this requirement, but may elect to comply.

A state agency must notify DMS at least 90 days before the execution of a lease of less than 5,000 square feet, including a lease for nominal or no consideration. DMS must determine if suitable space is available in a state-owned or state-leased building in the same geographic region. If DMS determines that the lease is not in the best interests of the state, it must notify in writing the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill subjects the Department of Transportation to DMS's leasing procedures as established by rule.

²⁷ Section 287.055, F.S.

The bill removes the authorization for an agency to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies. The Cabinet member agencies are exempt and retain the authority to negotiate a replacement lease as specified in current law. For other state agencies, DMS may approve a replacement lease for an agency to remain in the space it currently occupies if it is, in the judgment of DMS, in the best interests of the state.

The bill requires a lessor to provide DMS with documentation that a facility meets all uniform firesafety standards of the State Fire Marshal, and prohibits the state from taking occupancy without the Division of the State Fire Marshal's final approval.

The bill provides that s. 255.25, F.S., applies to leases for nominal or no consideration.

The bill authorizes DMS to approve emergency acquisition of space without competitive bids if an agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action, and if the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no other agency-controlled space is available to meet this emergency need. Such lease may not exceed 11 months.

The bill provides that a vendor for an energy contract may be selected in accordance with s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act.

The bill requires that an energy performance analysis that calculates the total annual energy consumption and energy costs be performed for leased facilities larger than 2,000 square feet. The analysis also must compare the energy performance of the proposed lease to similar facilities. A lease may not be finalized until the energy performance analysis has been approved by DMS. The bill removes the requirement of a showing that the energy costs incurred by the state are minimal compared to available like facilities. The bill repeals the requirement that 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 DMS by the owner of the building.

The bill requires each state agency to collect data on energy consumption and cost for each state-owned and state-leased facility.

Effective Date

The bill provides an effective date of July 1, 2013, except as otherwise expressly provided in the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 216.0152, F.S., revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by DMS and revising provisions relating to a report detailing an inventory of state-owned facilities

Section 2 amends s. 253.031, F.S., clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

Section 3 amends s. 253.034, F.S., revising provisions relating to decisions by the board to surplus lands, revising the valuation of lands that are subject to certain requirements and requiring state entities to submit a business plan if a building or parcel is offered for use to the entity.

Section 4 amends s. 255.248, F.S., defining the terms "managing agency" and "tenant broker".

Section 5 amends s. 255.249, F.S., revising the responsibilities of DMS with respect to state-owned buildings, prohibiting a state agency from leasing space in a private building under certain circumstances, requiring an agency (other than Cabinet Member agencies) to notify DMS of an early termination of a lease within a certain timeframe, authorizing the department to direct state agencies (other than Cabinet Member agencies) to occupy space in a state-owned building, revising the contents

of the master leasing report, authorizing state agencies to use the services of a tenant broker to provide certain information to DMS, and requiring the title entity or managing agency (other than Cabinet Member agencies) to report any vacant or underutilized space to the department.

Section 6 amends s. 255.25, F.S., deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances (except for Cabinet member agencies) and giving the authority to approve a replacement lease to DMS.

Section 7 amends s. 255.252, F.S., specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements.

Section 8 amends s. 255.254, F.S., revising provisions relating to requirements for energy performance analysis for certain buildings.

Section 9 amends s. 255.257, F.S., requiring all state-owned facilities to report energy consumption and cost data.

Section 10 amends s. 110.171, F.S., conforming cross-references.

Section 11 amends s. 985.682, F.S., conforming cross-references.

Section 12 provides an effective date of July 1, 2013, unless otherwise specified in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

This bill may increase the workload on state agencies with the various reporting requirements. However, this increase in workload is expected to be minimal and can be handled within existing agency resources. The bill allows DMS to direct agencies to occupy or relocate to state-owned space, but this must be done within agencies' existing appropriations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the board to develop criteria that must be included in the business plan required by s. 253.034(15), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

The bill authorizes DMS to 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 DEP. It is unclear what standards, if any, would apply to DMS issuing such a direction.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Government Operations Subcommittee adopted two amendments to House Bill 1145 and reported the bill favorably as a committee substitute.

The committee substitute removes the requirement that the Department of Transportation provide an inventory of transportation facilities to DMS and DEP; restores the size of a lease that triggers a competitive bid requirement from 2,000 square feet to 5,000 square feet; restores the size threshold for the applicability of certain notice and procedural requirements for state leases from 2,000 square feet to 5,000 square feet; removes the authority for DMS to charge fees directly to state employees for the use of parking facilities.

On April 10, 2013, the Government Operations Appropriations Subcommittee adopted seven amendments and reported the bill favorably as a committee substitute.

The amendments exempt the Cabinet member agencies from being directed by DMS to occupy or relocate to space in a state-owned building; require agencies that are directed to occupy or relocate to space in a state-owned building to do so only within existing appropriations; exempt the Cabinet member agencies from being required to report any vacant or underutilized space to DMS; remove rulemaking authority from DMS related to directing state agencies to occupy or relocated to state-owned space; remove rulemaking authority from DMS related to procedures for managing the Florida Facilities Pool; allow the Cabinet member agencies to retain the authority in current law related to negotiating a replacement lease; give DMS the authority to approve replacement leases for other state agencies; remove the requirement for state agencies to use tenant brokers to any lease actions; and remove the requirement for DMS to procure term contracts for tenant broker services.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.