

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 425 State-leased Space
SPONSOR(S): Trumbull and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 374

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver	Williamson
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Management Services (DMS) manages and operates the Florida Facilities Pool and provides oversight in the leasing of privately owned space. The DMS Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given the responsibility to manage. With certain exceptions, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is obtained from DMS.

Current law requires DMS to adopt a rule that states “[t]he lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months’ advance written notice to the lessor by certified mail, return receipt requested.”

The bill removes the requirement that DMS adopt the termination provision by rule. It also provides that the act does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2016.

The bill has an indeterminate, but likely negative, fiscal impact on the DMS Supervision Trust Fund. See the Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Management Services Leasing Authority

Chapter 255, F.S., provides the statutory authority for the Department of Management Services (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 Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given the responsibility to manage.¹ Except as provided in ss. 255.249² and 255.2501,³ F.S., a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is obtained from DMS.⁴

DMS has authority to approve leases of greater than 5,000 square feet that cover more than 12 consecutive months, if such a lease is, in the judgment of the DMS, in the best interests of the state.⁵ Except as provided for emergency space needs,⁶ 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.⁷

Section 255.249(9)(b), F.S., requires DMS to adopt rules to provide procedures for:

- Soliciting and accepting competitive solicitations for leased space of 5,000 square feet or more in privately owned buildings;
- Evaluating the proposals received;
- Exempting from competitive solicitations requirements any lease for the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and
- Securing at least three documented quotes for a lease that is not required to be competitively solicited.

For the lease of less than 5,000 square feet of space, including space leased for nominal or no consideration, a state agency must notify DMS at least 90 days before the execution of the lease.⁸ DMS must review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region.⁹ If space is not available, DMS must determine whether the proposed lease is in the best interests of the state.¹⁰ If DMS determines that the

¹ See DMS Division of Real Estate Development and Management, available at

http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on Jan. 23, 2016).

² Section 255.249(5), F.S., allows 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 Record Information System managed by the Department of Environmental Protection.

³ Section 255.2501(1), F.S., provides that, “[e]xcept when specifically authorized by the Appropriations Act, no executive agency, department, public officer or employee shall enter any contract on behalf of the state, the term of which contract is more than 5 years, including any and all renewal periods and including any and all leases which constitute a series of leases, for the lease, lease-purchase, sale-leaseback, purchase, or rental of any office space, building, real property and improvements thereto, or any other fixed capital outlay project, any of which is or is to be financed with local government obligations of any type.”

⁴ Section 255.25(2), F.S.

⁵ Section 255.25(3)(b), F.S.

⁶ Section 255.25(10), F.S., authorizes DMS to 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, 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 may the lease for such space exceed 11 months.

⁷ Section 255.25(3)(a), F.S.

⁸ Section 255.25(2)(a), F.S.

⁹ *Id.*

¹⁰ *Id.*

lease is not in the best interests of the state, it must provide written notification of such finding to the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives.¹¹

Section 255.249(9)(j), F.S., requires DMS to adopt rules for a lease of less than 5,000 square feet and provides criteria for the rules.

Section 255.249(11), F.S., authorizes DMS to contract for real estate consulting or tenant brokerage services to assist with carrying out its responsibilities relating to the strategic leasing plan.¹²

State Lease Agreements

Section 255.249(6), F.S., requires DMS to develop and implement a strategic leasing plan that must forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space. The Bureau of Leasing within the Division of Real Estate Development and Management administers public and private leasing and ensures that leases are in the best interests of the state.¹³

Section 255.2502, F.S., prohibits an executive branch department or agency, public officer, or employee from entering into any contract on behalf of the state that binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of one fiscal year unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature." Any contract not containing the required contingency statement is null and void.

Section 255.249(9)(e), F.S., requires DMS to adopt rules providing acceptable terms and conditions for inclusion in lease agreements. At a minimum, such terms and conditions must include the following clauses, which may not be amended, supplemented, or waived:

- "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
- "The lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months' advance written notice to the lessor by certified mail, return receipt requested."

To comply with this requirement, DMS has adopted Rule 60H-1.003, F.A.C., which sets out the form of the lease agreement and includes the required termination clause.

Section 255.2503, F.S., prohibits an executive agency or department from entering into any lease on behalf of the state that requires the state agency to refrain from making legislative budget or fixed capital outlay requests for alternative space other than that in the lease agreement.¹⁴ Any contract containing such a term is null and void.

Unless specifically authorized by law, no agency or branch of state government can contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch.¹⁵ Any such contract or agreement is null and void.¹⁶

Inventory of State-owned Real Property

¹¹ *Id.*

¹² *See also* s. 255.25(3)(h), F.S.

¹³ *See* DMS Division of Real Estate Development and Management, available at http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on Jan. 23, 2016).

¹⁴ This section does not apply to any facility financed under the Florida Building and Facilities Act.

¹⁵ Section 216.311(1), F.S.

¹⁶ *Id.*

Section 216.0153, F.S., requires 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. 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.¹⁷ The Division of State Lands within DEP is the custodian of the real property information and is accountable for its accuracy.¹⁸

State-owned and Leased Real Property Statistics

The State of Florida owns 20,199 facilities, including facilities owned by state agencies, the Florida College System, the State University System of Florida, and water management districts.¹⁹ DMS manages 109 facilities in the Florida Facilities Pool, and five federal surplus property facilities.²⁰ DMS also contracts for seven private correctional facilities and 11 Division of Telecommunications equipment buildings.²¹

According to the DMS 2015 Master Leasing Report,²² the state leases approximately 13.5 million square feet with an annual rent of \$228 million, of which 6.4 million square feet is in 794 private sector leases, with an annual rent of \$125 million.²³

Effect of the Bill

The bill removes the requirement that DMS adopt a rule requiring each lease agreement entered into by the state to contain a clause allowing a lessee state agency to terminate a lease without penalty when a state-owned building becomes available for occupancy and the lessee has provided 6 months' advanced written notice to the lessor by certified mail, return receipt requested. The bill provides that the act does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2016.

B. SECTION DIRECTORY:

Section 1 amends s. 255.249(9)(e), F.S., relating to DMS; responsibility; department rules.

Section 2 provides for applicability of the act.

Section 3 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁷ Section 216.0153(1)(a), F.S.

¹⁸ Section 216.0153(1)(b), F.S.

¹⁹ DMS Master Leasing Report 2015, available at

http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf (last visited on Jan. 23, 2016).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. According to owners of private property leased to the state, inclusion of the clause in lease agreements makes the state a “high risk tenant” instead of a “credit tenant.” According to the owners, landlords face difficulty in refinancing due to their high risk tenants.²⁴

D. FISCAL COMMENTS:

The bill has an indeterminate, but likely negative, fiscal impact on the DMS Supervision Trust Fund. The state may lose a portion of its flexibility to terminate private property lease agreements when state-owned property becomes available, resulting in the state losing its ability to move from more costly rates.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take 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 removes the requirement that DMS adopt a rule requiring any lease agreement entered into by a state agency to contain a clause allowing the state agency to terminate the lease agreement if a state-owned property becomes available to the state agency and the state agency gives six months’ advance written notice of termination.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Management Services

DMS provided the following lease information as of June 30, 2015:²⁵

Lease Type	Lease Count	Square Footage	Percent of Total Lease Space	Annual Rent
Government	324	961,828	7%	\$4,448,295.35
Private	794	6,466,501	48%	\$125,176,825.89
Public	302	6,070,907	45%	\$99,032,316.70
Grand Total	1,420	13,499,236	100%	\$228,657,437.94

²⁴ Document provided by the stakeholders entitled “High Risk Tenant clause is bad for the State and its landlords,” (on file with the Government Operations Subcommittee).

²⁵ 2016 Agency Legislative Bill Analysis of SB 374 by DMS, Oct. 20, 2015, at 2 (on file with the Government Operations Subcommittee). SB 374 is the identical Senate companion to HB 425.

In addition, DMS stated, “some agencies are in private leases that are not fully utilized. The clause in s. 255.249, F.S., allows agencies to move/realign to underutilize state-owned space to reduce costs.”²⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²⁶ *Id.*