

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 Appropriations Subcommittee on General Government

BILL: CS/SB 1540

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Department of Management Services

DATE: April 17, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------------|----------------|------------|--------------------|
| 1. | <u>Ferrin</u> | <u>Ferrin</u> | <u>GO</u> | <u>Fav/CS</u> |
| 2. | <u>Davis/Reagan</u> | <u>Betta</u> | <u>AGG</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1540 allows the Department of Management Services (DMS) to waive a clause in lease agreements for private property over 50,000 square feet and within 30 miles of the Capitol building for a period of up to seven years. The clause currently allows the lessee state agency to terminate the lease agreement if state-owned property becomes available to the lessee state agency and the state agency gives six months' advance written notice of termination. Under current law, this requirement may not be amended, supplemented, or waived by contract.

The bill also creates the Statewide Procurement Efficiency Task Force to evaluate the effectiveness and value of state and local procurement laws and policies to the taxpayers of this state, determine where inconsistencies in such laws and policies exist, and submit a report by July 1, 2018. The final report of the task force must include, at a minimum, recommendations for consideration by the Legislature that promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

The bill also requires the DMS to prepare a plan regarding the centralized management of state-owned motor vehicles, and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2018. The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

The bill has an indeterminate fiscal impact on state revenues and expenditures.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Leasing and Department of Management Services (DMS) Authority

State Leasing

The Department of Management Services (DMS) Facilities Program, also called the Division of Real Estate Development and Management (REDM), is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures the DMS has been given responsibility to manage.¹ The State of Florida owns 20,256 facilities, including facilities owned by state agencies, the Florida College System, the State University System of Florida, and water management districts.² The DMS manages 110 facilities in the Florida Facilities Pool, and five federal surplus property facilities.³ The DMS also manages contracts for seven private correctional facilities and 11 Division of Telecommunications equipment buildings.⁴ The Bureau of Leasing within the REDM administers public and private leasing and ensures that leases are in the best interests of the state.⁵

Public, Private, and Other Government Leases as of June 30, 2016:

| Lease Type | Lease Count | Square Footage (SF) | Percent of Total Lease Space (SF) | Annual Rent |
|-------------|-------------|---------------------|-----------------------------------|------------------|
| Government | 451 | 1,023,980 | 8% | \$4,210,532.82 |
| Private | 789 | 6,134,224 | 46% | \$126,692,910.52 |
| Public | 301 | 6,042,537 | 46% | \$98,795,604.37 |
| Grand Total | 1,541 | 13,200,741 | 100% | \$229,699,047.71 |

According to the DMS 2015 Master Leasing Report,⁶ the state leases approximately 13.2 million square feet with an annual rent of \$229.7 million, of which 6.1 million square feet is in 789 private sector leases, with an annual rent of \$126.7 million.

Chapter 255, F.S., provides the statutory authority for the DMS to manage and operate the Florida Facilities Pool and specifies the oversight role the DMS has in the leasing of privately

¹ See http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on March 23, 2017).

² DMS Master Leasing Report 2016, at p. 2. Available at http://www.dms.myflorida.com/content/download/129096/802953/2016_Master_Leasing_and_Strategic_Leasing_Report_withAppendix.pdf (last visited on March 23, 2017).

³ *Id.*

⁴ *Id.*

⁵ See http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on March, 23, 2017).

⁶ DMS Master Leasing Report 2016, at p. 3.

owned space. Except as provided in ss. 255.249⁷ and 255.2501,⁸ 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 first obtained from the DMS.⁹

The DMS has the authority to approve leases of greater than 5,000 square feet that cover more than 12 consecutive months, if such lease is, in the judgment of the DMS, in the best interests of the state.¹⁰ Except as provided for emergency space needs,¹¹ 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.¹²

Section 255.249(9)(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; exempting from competitive bidding requirements 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.

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 the DMS at least 90 days before the execution of the lease.¹³ The 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.¹⁴ If space is not available, the DMS must determine whether the proposed lease is in the best interests of the state.¹⁵ If the DMS determines that the lease is not in the best interests of the state, the DMS must notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives of such finding in writing.¹⁶

Section 255.249(9)(j), F.S., requires the DMS to promulgate rules for a lease of less than 5,000 square feet; a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for filing a copy of such lease with all supporting documents with the DMS for its review and approval as to technical sufficiency and whether such lease is in the best interest of the state.

⁷ Section 255.249(5), F.S. 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 Record Information System managed by the Department of Environmental Protection.

⁸ Section 255.2501, F.S. Lease of space financed with local government obligations under specified conditions.

⁹ Section 255.25(2), F.S.

¹⁰ Section 225.25(3)(b), F.S.

¹¹ 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, 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.

¹² Section 225.25(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 ch. 90-224, s. 3, Laws of Fla., and raised in 1999 to 5,000 square feet by ch. 99-399, s. 22, Laws of Fla.

¹³ Section 255.25(2)(a), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Section 255.249(11), F.S., authorizes the DMS to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities.¹⁷ The DMS is required to annually publish a master leasing report that includes its required strategic leasing plan and to submit this report to the Governor and the Legislature by October 1st of each year.¹⁸ The report must contain analyses and other information on the status of state-owned facilities and private sector leased space.¹⁹ 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.²⁰

Chapter 2016-62, L.O.F., requires the DMS, with the cooperation of the agencies having existing private lease contracts for office or storage space in excess of 2,000 square feet, to renegotiate or reprocure all private lease agreements expiring between July 1, 2017, and June 30, 2019, in order to reduce costs in future years. According to the 2016 Lease Renegotiation Report released by the DMS, between July 1, 2015, and June 30, 2016, the DMS and partner agencies have reprocured or renegotiated lease contracts for a savings of \$480,018.02 or 1.73 percent of the 156 leases that met the criteria with annual lease cost of \$27,782,391.39.²¹ However, the DMS notes that due to the improving economic outlook in Florida, rental rates are expected to rise in all major markets, which may potentially decrease returns from renegotiating leases, and that co-location may help offset the rising rental rates across the state.²²

State Lease Agreements

Section 255.249(6), F.S., requires the DMS to develop and implement a strategic leasing plan which 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.

Section 255.2502, F.S., requires any contract on behalf of the state which 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, including any and all renewal periods and including all leases which constitute a series of leases, to contain a contingency statement that the state's obligation and performance under such 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 the DMS to adopt rules providing acceptable terms and conditions for inclusion in lease agreements. At a minimum, lease terms and conditions must include the following clauses, which may not be amended, supplemented, or waived:

¹⁷ Also, see s. 225.25(3)(h), F.S.

¹⁸ Section 255.249(7), F.S.

¹⁹ *Id.*

²⁰ Section 255.249(8), F.S.

²¹ DMS 2016 Lease Renegotiation Status Report, available at http://www.dms.myflorida.com/content/download/129589/805274/2016_Lease_Renegotiation_report.pdf (last visited March 23, 2017).

²² *Id.*

1. As provided in s. 255.2502, “The State of Florida’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”
2. “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, the 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.²³ Any contract containing such a term is null and void.²⁴ Any person who willfully violates this section is guilty of a misdemeanor of the first degree.

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.²⁵ Any such contract is null and void.²⁶

To best manage leasing costs, the DMS must ensure that available and suitable state-owned space takes precedence over approving an agency’s request to lease private-sector space, and whenever possible, backfill public office space, to ensure that debt service and operations and maintenance revenue projections are met.²⁷

Procurement of Personal Property and Services

Procurement of Personal Property and Services by State Agencies

Chapter 287, F.S., regulates state agency²⁸ procurement of personal property and services.²⁹ The DMS is responsible for overseeing state purchasing activity including professional and

²³ This section does not apply to any facility financed under the Florida Building and Facilities Act.

²⁴ Section 255.2503, F.S.

²⁵ Section 216.311(1), F.S.

²⁶ Section 216.311(2), F.S.

²⁷ See 2016 Department of Management Services, SB 374 Legislative Bill Analysis (October 20, 2015) copy on file with the Senate Governmental Oversight and Accountability Committee.

²⁸ As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

²⁹ Personal property” is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is “Procurement of Personal Property and Services.” Additionally, the definition of “commodity” in s. 287.012(5), F.S., is “any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies.” This definition is used in Part I of Ch. 287, F.S., “Commodities, Insurance, and Contractual Services.”

contractual services³⁰ as well as commodities needed to support agency activities.³¹ The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.³²

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- Single source contracts,³³ which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,³⁴ which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP),³⁵ which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),³⁶ which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.

Criteria used to evaluate proposals received pursuant to a RFP must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated;
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor; and
- Consideration of prior relevant experience of the vendor.³⁷

In ITNs, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN. The evaluation criteria must also include consideration of prior relevant experience of the vendor.³⁸

³⁰ As defined in s. 287.012(8), F.S. “contractual service” includes, but is not limited to “evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to chapter 255 and rules adopted thereunder.”

³¹ See ss. 287.032 and 287.042, F.S.

³² Section 287.032(2), F.S.

³³ Section 287.057(3)(c), F.S.

³⁴ Section 287.057(1)(a), F.S.

³⁵ Section 287.057(1)(b), F.S.

³⁶ Section 287.057(1)(c), F.S.

³⁷ Section 287.057(1)(b)3., F.S.

³⁸ Section 287.057(1)(c)3., F.S.

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.³⁹ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁴⁰

Procurement of Personal Property and Services by Local Governments

Local governments are not subject to the provisions of ch. 287.057, F.S. that prescribe methods for agencies' procurement of commodities or contractual services.⁴¹ Local governmental units may look to the chapter for guidance in the procurement of goods and services, but have local policies or ordinances to address competitive solicitations.⁴²

State and Local Government Procurement of Certain Professional Services

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for architect and engineering services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of architectural and engineering professionals.⁴³

The Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA) in 1973,⁴⁴ which specifies the necessary procedures when procuring professional services⁴⁵ by an agency.⁴⁶

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process that state and local government agencies must follow when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA

³⁹ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁴⁰ See s. 287.057(3)(e), F.S.

⁴¹ See ss. 287.012(1), F.S.

⁴² In the absence of specific constitutional or statutory requirements, a public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious. *Volume Servs. Div. of Interstate United Corp. v. Canteen Corp.*, 369 So. 2d 391 (Fla. 2d DCA 1979).

⁴³ Forty-six states use this process. American Council of Engineering Companies, Qualifications-Based Selection Resource Center, available at <http://www.acec.org/advocacy/qbs/> (last visited Feb. 24, 2017).

⁴⁴ Chapter 73-19, Laws of Fla.

⁴⁵ Section 287.055(2)(a), F.S., defines "professional services" as those within the scope of practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

⁴⁶ Section 287.055(2)(b), F.S., defines "agency" as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term agency does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.

requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:⁴⁷

- A project, when the agency estimates the basic construction cost to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁴⁸ In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.⁴⁹

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁵⁰ Section 287.055(2)(d), F.S., defines the term “compensation” to mean the amount paid by the agency for professional services regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency negotiates compensation with the most qualified of the minimum three selected firms for professional services at compensation, which the agency determines, is “fair, competitive, and reasonable.”⁵¹ If the agency cannot negotiate a satisfactory contract, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm.⁵² The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.⁵³ If the agency cannot negotiate a satisfactory contract with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until it reaches a contract.⁵⁴ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects and are limited to utilizing statutorily defined procedures.⁵⁵

⁴⁷ Section 287.055(3)(a)1., F.S.

⁴⁸ Sections 287.055(4) and (5), F.S.

⁴⁹ Section 287.055(4)(b), F.S., requires agencies to consider the following factors: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

⁵⁰ Section 287.055(4)(b), F.S.

⁵¹ Section 287.055(5)(a), F.S.

⁵² Section 287.055(5)(b), F.S.

⁵³ *Id.*

⁵⁴ Section 287.055(5)(c), F.S.

⁵⁵ Op. Att’y Gen. Fla. 2011-21 (2011).

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the DMS to establish, by rule,⁵⁶ the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder. Additionally, the DMS must provide procedures for cases in which the DMS declares a valid emergency to exist, which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when the DMS Secretary determines that such negotiations are in the best interest of the state.
- Entering into performance-based contracts for the development of public facilities when the DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:⁵⁷

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

The state must competitively bid contracts for construction projects that it projects to cost in excess of \$200,000.⁵⁸ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 also must be bid competitively.⁵⁹ Counties, municipalities, special districts,⁶⁰ or other political subdivisions seeking to construct or improve a public building must bid the project competitively if the projected cost is in excess of \$300,000.⁶¹

The solicitation of competitive bids or proposals for any state construction project with anticipated costs of more than \$200,000 must be advertised publicly in the Florida

⁵⁶ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

⁵⁷ Section 255.29(4)(a)-(d), F.S.

⁵⁸ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

⁵⁹ Section 255.0525(2), F.S.

⁶⁰ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

⁶¹ *Id.* For electrical work, local governments must bid projects competitively estimated to cost more than \$75,000.

Administrative Register (FAR) at least 21 days prior to the established bid opening.⁶² If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.⁶³

Department of Management Services' Fleet Management

One of the duties of the DMS is to obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes.⁶⁴ Chapter 287, F.S., Part II: Means of Transport (ss. 287.14 – 297.20) governs the purchase or lease of motor vehicles.⁶⁵ Chapter 287, F.S., Part II, applies to motor vehicles, watercraft, and aircraft owned, leased, or acquired in any manner by any state agency, or the judicial branch.⁶⁶ It is unlawful for a state officer or employee to authorize the purchase or continuous lease of any motor vehicle to be paid out of state funds or any agency funds unless such funds have been appropriated by the Legislature.⁶⁷ All motor vehicles purchased or leased must be in the subcompact class, with exceptions for law enforcement, towing, transportation of more than three adults or bulk material, and vehicles operated on unpaved roads.⁶⁸ Motor vehicles needed for an emergency or to meet unforeseen or emergency situations are allowed, if approved by the Executive Office of the Governor after consulting with the legislative appropriations committees.⁶⁹ Vehicles for which replacement funds have been appropriated may not be retained in service unless an emergency or major unforeseen need exists.⁷⁰ Any motor vehicle retained for this purpose must be reported to the Legislature in subsequent agency budget request documents that detail the specific justification for retention of each vehicle.⁷¹ Motor vehicles may not be acquired on a deferred payment contract that requires payment of interest or its equivalent except when specifically approved by the Governor's Office in consultation with the legislative appropriations committees.⁷²

A state agency must obtain prior approval from the DMS for purchasing, leasing, or acquiring any motor vehicle, watercraft, or aircraft of any type.⁷³ The DMS approval is not required for casual (short-term) lease of motor vehicles by state agencies.⁷⁴ Funding in the General Appropriations Act is not allowed for purchases of vehicles in excess of prices negotiated by the DMS.⁷⁵ Also, with the DMS approval, special authorization is given to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to secure automobiles, trucks,

⁶² Section 255.0525(1), F.S.

⁶³ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

⁶⁴ Section 287.16(1), F.S.

⁶⁵ Section 287.14(2), F.S., defines the term "motor vehicle" as any automobile or light truck. Motor vehicle also includes any airplane or other vehicle designed primarily for transporting persons.

⁶⁶ Section 287.20, F.S.

⁶⁷ Section 287.14(3), F.S.

⁶⁸ Section 287.151(1), F.S.

⁶⁹ Section 287.14(3), F.S.

⁷⁰ Section 287.14(4), F.S.

⁷¹ *Id.*

⁷² Section 287.14(5), F.S.

⁷³ Section 287.15, F.S.

⁷⁴ *Id.*

⁷⁵ Section 287.151(2), F.S.

tractors, and other automotive equipment for use at institutions, centers, residential facilities and county health departments under their respective jurisdictions.⁷⁶

Use of state-owned or leased vehicles or aircraft is limited to travel necessary to carry out employee job assignments, official state business, security and emergency activity.⁷⁷ State employees whose duties are those of law enforcement⁷⁸ have more latitude in their use of state owned or leased motor vehicles for official state business.⁷⁹ Use of a state owned or leased motor vehicle for commuting is prohibited unless special assignment is authorized as a prerequisite by the DMS, the vehicle is required after hours to perform position duties, or an employee's home is his or her official base of operations.⁸⁰ A state agency head may assign a motor vehicle to a state officer or employee only if the officer or employee is projected to drive the motor vehicle a minimum of 10,000 miles annually on state business, unless the agency head provides written justification for the need of the assignment of the motor vehicle.⁸¹ Priority for vehicle assignment is given to those state employees who drive over 15,000 miles annually on state business.⁸²

Bureau of Fleet Management

The Bureau of Fleet Management and Federal Property Assistance within the DMS provides oversight responsibility for the state's fleet of motor vehicles and mobile equipment, along with the federal surplus property program.⁸³ The Bureau of Fleet Management manages the purchase, operation, maintenance and disposal of the state's fleet of motor vehicles and watercraft.⁸⁴ The state's fleet includes approximately 25,000 units, consisting of automobiles and light trucks, medium and heavy trucks, aircraft, construction and industrial equipment, marine equipment (e.g., boats, airboats, boat engines, etc.), trailers, tractors and mowers, small utility, motorcycles and all-terrain vehicles.⁸⁵ The Division of Fleet Management determines the motor vehicles and watercraft included on state contracts, develops technical bid specifications and assists in evaluating contracts.

⁷⁶ Section 287.155, F.S.

⁷⁷ Section 287.17(2)(a)-(d), F.S.

⁷⁸ Section 943.10(1), F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁷⁹ Section 287.17(3)(b), F.S., provides that the term "official state business" shall be construed to permit the use of the vehicle during normal duty hours to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business, if such use is at the direction of or with the permission of the agency head.

⁸⁰ Section 287.17(3)(a), F.S.

⁸¹ Section 287.17(4)(a), F.S.

⁸² *Id.*

⁸³ See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance (last visited on March 23, 2017).

⁸⁴ *See*

http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management (last visited on March 23, 2017). *Also, see* Chapters 60B-1(Motor Vehicles and Watercraft Acquisition, Assignment and Use) and 60B-3(Disposal of Motor Vehicles, Watercraft, and Aircraft), F.A.C.

⁸⁵ *Id.*

The Division of Fleet Management operates the Florida Equipment Electronic Tracking (FLEET) system, which provides the management, reporting and cost information required to effectively and efficiently manage the state's fleet and to account for equipment use and expenditures. The FLEET Online System.⁸⁶

- Requires agencies to keep records and make reports regarding the effective and efficient use, operation, maintenance, repair and replacement of automobiles, light trucks, small and large (greater than one ton) vehicles and equipment designed primarily for transporting people and legal to operate on public roads, watercraft and aircraft; and
- Assures the efficient and safe use of motor vehicles and that they are used only for official state business.

The goals of the Division of Fleet Management are to:⁸⁷

- Ensure the state purchases quality and energy efficient motor vehicles, equipment and watercraft;
- Achieve maximum feasible return from disposal of used and surplus equipment;
- Return surplus equipment to governmental service when practical;
- Restrict use of state equipment to official state business;
- Provide management reports and data required to properly manage state fleet; and
- Provide reports to assure accountability of equipment expenditures and use.

Climate-Friendly Public Business Provisions

Section 286.29, F.S., outlines climate-friendly public business provisions required by state agencies. Some of these practices include requiring all state agencies to ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption.⁸⁸ Each agency must measure and report compliance to the DMS through the Equipment Management Information System database.⁸⁹ Also, state agencies, universities, community colleges, and local governments that purchase motor vehicles under a state purchasing plan are required to define the intended purpose of vehicle and use class for which vehicle is being procured.⁹⁰ Additionally, all state agencies must use ethanol and biodiesel blended fuels when available.⁹¹ State agencies with central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.⁹²

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Section 286.29(3), F.S.

⁸⁹ *Id.*

⁹⁰ Section 286.29(4), F.S.

⁹¹ Section 286.29(5), F.S.

⁹² *Id.*

State Agency Fleets

Table 1 shows the statewide count of state agency vehicles.⁹³

Table 1. State Agency Fleet as of December 20, 2016

| Type | Count |
|---|--------|
| Sedans & Light Trucks - Vans, SUVs, Motorcycles, etc. (< 1 ton) | 17,019 |
| Medium & Heavy Duty Trucks (>1 ton) | 1,975 |
| Buses | 217 |
| Aircraft | 41 |
| Watercraft | 987 |
| Outboard Motors | 125 |
| Heavy Duty/Misc. Equipment (Backhoes, Dozers, Forklifts, Mixers, Compressors, etc.) | 1,250 |
| Off Road (Buggies, ATVs, Golf Carts, Gators, etc.) | 353 |
| Trailers | 1,155 |
| Mowers & Plows | 433 |
| Tractors | 716 |
| Other | 79 |
| TOTAL | 24,350 |

FLEET Management Business Case

The Fiscal Year 2013-2014 General Appropriations Act included \$224,000 to fund a FLEET Management Business Case (Business Case). The DMS contracted with Mercury Associates, Inc., in July 2013 to identify the best options for managing the state's fleet and to document recommendations in a formal business case.⁹⁴ The Business Case presents a strategic review of fleet management activities in the state and contains an analysis report and recommendations for improving the performance and cost effectiveness of Florida's statewide fleet operations.⁹⁵

The Business Case was completed in December 2013 and concluded the FLEET system was the least capable system Mercury Associates, Inc. had encountered in any of the 34 states they have reviewed.⁹⁶ As a consequence, much of the detailed data Mercury required to conduct this study was either not available or was only available at a summary level.⁹⁷ In addition, the Business Case identified 43 detailed recommendations. These recommendations were summarized into areas in the DMS's Legislative Budget Request, Schedule IV-B, and are summarized below:

- Fleet Administration - Expand the DMS role and increase staff resources to provide increased and centralized oversight, analysis, and services to manage the state's fleet.
- Fleet Management Information System - Replace the existing in-house developed system (FLEET) with a more robust, fully featured and user friendly, intuitive Commercial Off the

⁹³ Email from James Ballas, Deputy Director of Legislative Affairs, Florida Department of Management Services (January 4, 2017) copy on file with the Senate Governmental Oversight and Accountability Committee.

⁹⁴ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited March 23, 2017).

⁹⁵ Contract Between Florida Department of Management Services and Mercury Associates, Inc., Contract No.: DMS-12/13-008, FLEET Management Consulting Services, Attachment B-Scope of Work. See <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=MP004> (last visited March 23, 2017).

⁹⁶ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited March 23, 2017).

⁹⁷ *Id.*

Shelf (COTS) application that allows easy distribution of information to all fleet users, customers, and management in a real-time environment.

- Fleet Replacement and Financing - Centralize fleet replacement planning and budgeting in the DMS, identify optimal replacement cycles for key types of vehicles, develop a long-term fleet replacement planning program, and adopt leasing as the primary means of financing fleet renewal.
- Fleet Size and Utilization - Conduct a study to reduce the size of the fleet by eliminating low use vehicles, study the feasibility of establishing shared-use motor pool locations in Tallahassee, develop and implement an ongoing fleet utilization monitoring system, and mandate the use of charge-back rates as a financial incentive for agencies to maintain an optimized fleet size.
- Fleet Acquisition - Develop, formalize and document a policy and process for vehicle specification, solicitation and selection that incorporates best practice elements.
- Fleet Disposal - Conduct an analysis of the cost and benefits of employing various resale methods to dispose of vehicles. Use the results to establish core methods for various types of equipment. Formalize and document a policy and process for vehicle disposal that incorporates the best practice elements, including minimizing days to sale and return of funds to the agency fleet. Establish performance metrics to actively monitor and manage disposal outcomes.
- Fleet Maintenance and Repair - Open shops to all agencies; develop standards and consistent shop procedures; consolidate shops; outsource large shops and outsource all sublet repair to a maintenance service provider.
- Fleet Fueling - Review the current state contract for bulk fuel; complete a justification audit of all current sites; develop uniform pricing, chargeback and processing methods; develop and implement a fuel management program; establish electronic interface for fuel, mileage and repair data.⁹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 255.249(9), F.S., to modify a requirement on the Department of Management Services (DMS) to adopt a rule that each lease agreement include a clause to allow a lessee state agency to terminate a lease, without penalty, when a state-owned building becomes available for occupancy and the lessee has provided a six month advanced written notice to the lessor by certified mail, return receipt requested. Under this section, the DMS may waive inclusion of the clause in the lease for property that exceeds 50,000 square feet and is located within 30 miles of the Capitol building for a lease period of up to seven years.

Some agencies may be in private leases that are not fully utilized. The clause in s. 255.249, F.S., allows agencies to move/realign to under-utilized state-owned space to reduce costs. By eliminating this required clause, the state's ability to negotiate reductions in square footage and continue to backfill vacant public space may be limited.⁹⁹

⁹⁸ Fiscal Year 2016-2017, DMS LBR Manual Exhibits, Issue 4400600 Schedule IV-B page 204, document available on the Florida Fiscal portal at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13920&DocType=PDF> (last visited March 23, 2017).

⁹⁹ See 2016 Department of Management Services, SB 374 Legislative Bill Analysis (October 20, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

Section 2 provides that the bill 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, 2017.

Section 3 creates the Statewide Procurement Efficiency Task Force (task force) to evaluate the effectiveness and value of state and local procurement laws and policies to the taxpayers of this state and to determine where inconsistencies in such laws and policies exist. The task force is to be chaired by the DMS Secretary, or their designee, and composed of:

- Six members appointed by the Governor: one county government official, one municipal government official, one district school board member, and three representatives of the business community;
- Two members appointed by the Speaker of the House of Representatives: one member of the House of Representatives and one attorney who is a Florida Bar member in good standing and has expertise in procurement law; and
- Two members appointed by the President of the Senate: one member of the Senate and one attorney who is a Florida Bar member in good standing and has expertise in procurement law.

Members of the task force are to serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

The bill also requires appointments to be made by July 31, 2017. By August 31, 2017, the task force is to have met to organize. The task force shall meet at the call of the chair. A majority of task force members constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings must be held in Tallahassee, unless otherwise decided by the task force, and no more than two such meetings may be held in other locations for the purpose of taking public testimony. The DMS is to provide administrative and technical support for the task force. The final report of the task force is to be submitted to the Governor, President of the Senate, and the Speaker of the House by July 1, 2018, and must include, at a minimum, recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts. The task force is to be terminated December 31, 2018.

Section 4 requires the DMS to prepare a plan for the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. The DMS must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2018.

The plan must provide a method for:

- Using break-even mileage¹⁰⁰ in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees;
- Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools;
- Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet;
- Purchasing motor vehicles necessary for the operation of the centralized fleet;
- Repairing and maintaining motor vehicles;
- Monitoring the use of motor vehicles and enforcing regulations regarding proper use;
- Maintaining records related to the operation and maintenance of motor vehicles and the administration of the centralized fleet;
- Disposing of motor vehicles that are no longer needed or the use of which is not cost effective;
- Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles;
- Implementing a fuel management program and a standardized methodology for reporting fuel data;
- Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle;
- Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use; and
- Equipping fleet motor vehicles with real-time locational monitoring systems.

The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁰⁰ A breakeven analysis identifies the mileage at which vehicles should be purchased as opposed to the state agency reimbursing employees for work mileage in their personal vehicles. See http://www.dms.myflorida.com/content/download/98763/571269/Fleet_Management_Business_Case_Final.pdf (last visited March 23, 2017). Also, see Office of Program Policy Analysis & Governmental Accountability, The Florida Legislature, *Centralizing Vehicle Fleet Operations and Implementing Cost-Saving Strategies Could Reduce State Spending, Report No. 11-16* (April 2011) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1116rpt.pdf> (last visited March 23, 2017). DMS calculated that the breakeven point for assignment of a state-owned vehicle at 7,448 miles driven for a 2010 Ford Fusion, the type of vehicle most state employees require.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate fiscal impact.

The owners of private property leased to the state have stated that they bear additional financing costs when the lessee (the state) has the option to terminate the lease based on the availability of other state-owned property.¹⁰¹ According to the owners of private property leased to the state, their creditors may classify lessees with this option as “high risk tenants”.¹⁰² If the lease agreement did not contain the current requirement allowing for termination, the owners of the private property may “save” money when refinancing their properties to the extent the institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause.¹⁰³

It is unknown at this time if the Department of Management Services (DMS) would utilize contract services or agency staff to develop the plan regarding the centralized management of state-owned motor vehicles required in the bill.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on state expenditures.

The state may lose a portion of its flexibility to terminate private property lease agreements when state-owned property becomes available. In addition, the state’s uniform rental rate for full-service office space in the Florida Facilities Pool facilities is \$17.18 per square foot.¹⁰⁴ This rate is below the average July 2016 private full-service office rates in all markets.¹⁰⁵ As a result of the bill, the state may lose its ability to move from more costly rates. However, the Legislature retains its authority to annually appropriate funds for the lease agreements and potentially terminate the lease agreements or a portion thereof.

The costs of financing the private property may be reduced if institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause. The state may realize some cost savings if the landlord passes such financing savings on

¹⁰¹ Meeting with stakeholders on March 21, 2017.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ DMS Master Leasing Report 2016 at p. 16-17 (last visited on March 23, 2017)

¹⁰⁵ *Id.*

to the state. However, the lease agreements are competitively procured, and the state should be entering into lease agreements based on the best value to the state.

Administrative and technical support for the Statewide Procurement Efficiency Task Force are to be provided by the DMS. The DMS has indicated that it can absorb these duties with existing resources.¹⁰⁶

The plan required of the DMS, if implemented, may identify significant indeterminate cost-savings to the state comparable to costs and benefits provided in the Business Case. Based on the Business Case, opportunities to achieve cost savings include a five-year cumulative benefit of implementing the operating best practice recommendations and right sizing recommendations that total \$26.8 million in projected savings.¹⁰⁷ According to the DMS, until such time that Fleet Centralization is studied and a plan is completed the fiscal impact to State Government is unknown.¹⁰⁸ In Fiscal Year 2016-2017, the Legislature appropriated \$1.8 million in non-recurring General Revenue to procure services for a new Fleet Management System. The Senate General Appropriations Act for Fiscal Year 2017-2018 (SB 2500, First Engrossed) recommends \$453,656 for continued services provided in the 2016-2017 fiscal year for the new Fleet Management System. A new Fleet Management System will assist the DMS in generating the information requested in the plan required in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 255.249 and 287.057 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 22, 2017:

The CS adds the provision to s. 255.249, F.S., which allows the DMS to waive the inclusion of the second clause in a lease for more than 50,000 sq. ft. located within 30 miles of the Capitol for a lease period of up to seven years. The waiver does not restrict the department from entering into lease agreements for a period exceeding seven years, in

¹⁰⁶ Email from James Ballas, Deputy Director of Legislative Affairs, Florida Department of Management Services (March 20, 2017) copy on file with the Senate Governmental Oversight and Accountability Committee.

¹⁰⁷ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited April 14, 2017, 2017).

¹⁰⁸ See 2017 Florida Department of Management Services, SB 92 Legislative Bill Analysis (December 28, 2016) (copy on file with Senate Committee on Governmental Oversight and Accountability) at p. 4.

which case the waiver would only apply to the first seven. Terms and conditions of leases agreed to before July 1, 2017 are not to be impacted.

The CS also requires the DMS to prepare a plan regarding the centralized management of state-owned motor vehicles, and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2018. The plan must include an evaluation of the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

B. Amendments:

None.