

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2722

SPONSOR: Governmental Oversight and Productivity Committee and Senator Atwater

SUBJECT: Public property and publicly owned buildings

DATE: April 14, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill amends the provisions of ch. 255, F.S., relating to state-owned and state-leased buildings. The overall effect of the amendments is to:

- Provide specific statutory authority for the contract entered into by the Department of Management Services (DMS) in October 2003, with the Staubach Company, North Florida, L.L.C., for the provision of commission-based representation of state agencies in lease negotiations and for assistance in the strategic planning and the sale of state buildings. This authority is repealed by the bill upon termination of the contract on October 15, 2005.
- Eliminate the acquisition of private space leases by individual state agencies and to centralize the authority for and execution of all state private space leasing within the DMS.
- Provide the DMS with authority to consolidate existing executive agency leases into a large-scale lease or leases covering one or more private buildings.
- Provide that the Department of Management Services is responsible for adopting standard methods for determining space allocation in state-owned and state-leased buildings.

This bill substantially amends ss. 255.248, 255.249, 255.25, 255.25001, 255.2501, 255.45, and 633.085 of the Florida Statutes. The bill repeals s. 270.27 of the Florida Statutes.

## II. Present Situation:

***DMS's responsibilities for state-owned buildings:*** Pursuant to s. 255.249(1), F.S., the DMS is responsible for the custodial and preventive maintenance and repair of, and allocation of space

within, all buildings and adjacent grounds in the Florida Facilities Pool.<sup>1</sup> Under the Florida Building and Facilities Act, the DMS may:

- Collect reasonable rentals or charges for the use of and services provided for pool facilities exclusively for the purpose of paying the expenses of improving, repairing, maintaining, and operating facilities and paying debt service charges in connection with its obligations.
- Acquire facilities pursuant to s. 11(f), Art. VII of the State Constitution and own, operate, and finance such facilities in accordance with the act.
- Sell, lease, release, or otherwise dispose of pool facilities in accordance with applicable law.
- Engage consultants for professional and technical assistance and engage professionals in connection with the acquisition or financing of any facility or the operation and activities of the Department of Management Services, including attorneys, auditors, consultants, and accountants.
- Lease all or any portion of any facility to an agency or to any political subdivision.<sup>2</sup>

***DMS's responsibilities for state-leased buildings:*** Pursuant to ss. 255.249 and 255.25, F.S., the DMS is required to oversee state agency leasing of buildings, and to adopt rules for uniform leasing procedures for all state agencies, except the Department of Transportation.<sup>3</sup>

Section 255.249(4), F.S., requires the DMS's leasing rules to address:

- Competitive solicitation and evaluation procedures for leased space of 5,000 square feet or more in privately owned buildings and procedures requiring at least three documented quotes for a lease that is not required to be competitively solicited.
- Standard methods for determining measurements used as the basis for lease payments, for the allocation of space in state-owned<sup>4</sup> and state leased buildings based on use, personnel, and office equipment, and for the assessment of rent to state agencies and other authorized occupants of state-owned space.
- Terms and conditions for lease agreements.
- Maximum rental rates, by geographic area, for leases.
- Methods for disclosure of owner names and extent of interest in privately owned buildings leased by the state.
- A method for reporting leases for nominal or no consideration.

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<sup>1</sup> Section 255.249(1), F.S.

<sup>2</sup> Section 255.503, F.S.

<sup>3</sup> Section 255.25(2)(c), F.S.; *See also* Chapters 334 and 337, F.S. (granting leasing authority to and establishing leasing procedures for the Department of Transportation).

<sup>4</sup> The term "state-owned office building" is defined for purposes of ss. 255.249 and 255.25, F.S., to mean, ". . . any building title to which is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions." This term does not include: (a) district or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed; (b) educational facilities and institutions under the supervision of the Department of Education; (c) custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state; (d) buildings or spaces used for legislative activities; and (e) buildings purchased or constructed from agricultural or citrus trust funds. Section 255.248, F.S.

**State agency authority to lease private space:** If suitable space is not available in a state-owned building,<sup>5</sup> a state agency<sup>6</sup> may lease privately owned building<sup>7</sup> space:

- Less than 5,000 square feet if the agency head or his or her designee has: (a) determined that the lease is in the best interest of the state; and (b) certified agency compliance with lease criteria required by DMS rule.<sup>8</sup>
- Equal to or more than 5,000 square feet if: (a) the DMS approves the need for the lease and for its conditions; (b) the lease is competitively awarded to the lowest and best bidder;<sup>9</sup> and (c) the DMS approves any options to purchase or renew contained in the lease.<sup>10 11</sup>

**Exemptions from competitive solicitation requirements:** State leases for private space must be awarded by competitive solicitation, unless the lease is: (a) for the purpose of providing care and living space for persons;<sup>12</sup> (b) necessary for an emergency;<sup>13</sup> or (c) for specialized educational facilities, other than classrooms where the agency head certifies that the space is only available from a sole source.<sup>14</sup>

**Extensions of private space leases:** An agency may extend an existing lease for 5,000 square feet or more for up to 11 months after receiving approval from the DMS. If the space is needed after the 11<sup>th</sup> month, a new lease must be procured by competitive bid, except that an agency may negotiate a replacement lease for a term not to exceed the base term of the existing lease if: (a) it determines that it is in its best interest to remain in its current space; (b) an independent comparative market analysis demonstrates that the rates offered are within market rates; and (c) the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs.<sup>15</sup>

**Lease-purchase acquisitions:** The DMS is permitted to adopt rules that set forth procedures to be followed by state agencies wishing to execute a lease-purchase agreement for a building. State agencies must certify the need for the lease-purchase agreement and the certification must include: (a) current and future programmatic space requirements; (b) time considerations; and (c) an analysis of existing leases affected by the lease-purchase agreement. The evaluation process for such an agreement must include: (a) consideration of the cost of comparable

<sup>5</sup> Section 255.25(4)(a), F.S. Rule 60H-1.007, F.A.C., requires all lease agreements that exceed one year to contain a right-to-terminate clause permitting the agency to terminate the lease without penalty if a state-owned building becomes available by providing six months advance written notice to the lessor. On January 23, 2004, the DMS published a notice in the FAW proposing to amend this rule to provide that this requirement may be omitted from a lease upon written approval by the Division Director of Facilities Management and Building Construction.

<sup>6</sup> The terms “state agency” is not defined.

<sup>7</sup> Section 255.248, F.S., defines “privately owned building” as any building not owned by a governmental agency. The term “governmental agency” is not defined.

<sup>8</sup> Section 255.25(2)(b), F.S.

<sup>9</sup> A protest to a competitive award may be filed pursuant to s. 120.57(3)(b), F.S. A protest bond in the amount of one percent of the total lease period or \$5,000, whichever is greater, must be posted when filing the protest.

<sup>10</sup> Section 255.25(2), (3), (10), F.S.

<sup>11</sup> No more than one lease may be executed by an agency for space in the same privately owned building or complex without competitive solicitation. Section 255.25(8), F.S.

<sup>12</sup> Section 255.249(4)(b), F.S.

<sup>13</sup> Section 255.25(10), F.S.

<sup>14</sup> Section 255.25(9), F.S.

<sup>15</sup> Section 255.25(3)(b), F.S.

operating leases; (b) the appraised value of the facility; (c) a present value analysis of the proposed payment stream; (d) cost of financing the facility to be acquired; (e) cost to repair physical defects and to remove hazardous substances; (f) an energy analysis; and (g) a determination of management and maintenance responsibilities. The DMS must find the lease-purchase agreement to be in the best interest of the state prior to its execution.<sup>16</sup>

***Sale of unused public property:*** Subsection 270.27(1), F.S., provides the DMS with authority to sell any or all detached pieces or parcels of land held by the state for the use of any institution under the supervision and control of the department, whenever the department determines that: (a) such pieces or parcels of land are not suitable for, or necessary and useful in, the operation and maintenance of such institution; and (b) the proceeds from the sale could be used to better advantage than said land in the operation and maintenance of such institution.

Subsection (2) provides that any proceeds from the DMS's sales of land must be deposited in the State Treasury to the account of the Department of Management Services for the use of the particular institution from the sale of whose lands said funds were derived. The proceeds may also be used, “. . . from time to time, by the department for the purpose of acquiring additional lands that may be needed for the particular institution credited with such funds, or for needed buildings or repairs for such institution, in the discretion of the department; and such funds, when obtained, are hereby appropriated for such purposes.”

Finally, subsection (3) authorizes the DMS to sell any piece or parcel of land held by the state or the DMS that is located north of Pensacola Street in Tallahassee, and, “. . . to receive as payment or part payment therefore any piece or parcel, or pieces or parcels, of land located within what is known as the Capitol Center at the state capital.”

***Capitol Center:*** Sections 272.03 and 272.09, F.S., provide that the DMS has general control and custodianship of, and is responsible for the management, maintenance, and upkeep of, the Capitol Center, defined as all state buildings included in the Capitol Center<sup>17</sup> at the state capital and the grounds and squares contiguous thereto. Title to these buildings is vested in the state.<sup>18</sup>

The DMS is required to develop a comprehensive, long-range plan for development within the Capitol Center, which meets the needs of state government and the various agencies that occupy the Capitol Center.<sup>19</sup> This plan is to be submitted to the Governor and the Legislature every five

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<sup>16</sup> Section 255.25001(2), F.S.

<sup>17</sup> Section 272.12(1), F.S., states that the Florida Capitol Center Planning District, “. . . shall extend to and include all lands within the following boundaries of the City of Tallahassee: Commence at the northwest corner of Lot 293 of the Old Plan of the City of Tallahassee as recorded in the office of the Clerk of the Circuit Court, Leon County, Florida; thence east along the south right-of-way line of West College Avenue and East College Avenue to its intersection with the west right-of-way line of Franklin Boulevard; thence south along said right-of-way line of Franklin Boulevard to its intersection with the south right-of-way line of East Jefferson Street; thence east along said right-of-way line of East Jefferson Street and the east prolongation of East Jefferson Street to its intersection with the west right-of-way line of the Seaboard Coastline Railroad; thence southerly and westerly along said Seaboard Coastline Railroad right-of-way line to a point of intersection with the south prolongation of the east right-of-way line of South Martin Luther King, Jr. Boulevard; thence north along said south prolongation of the east right-of-way line of South Martin Luther King, Jr. Boulevard and along the east right-of-way line of South Martin Luther King, Jr. Boulevard to the point of beginning.”

<sup>18</sup> Section 272.03(2), F.S.

<sup>19</sup> Section 272.12, F.S.

years.<sup>20</sup> Further, the DMS is authorized to allocate space to house the various departments, agencies, boards, and commissions in the Capitol Center, except that authority for the Supreme Court Building is vested in the Supreme Court justices.<sup>21</sup>

Section 272.124, F.S., authorizes the DMS to make any contract to lease, buy, acquire, construct, hold, or dispose of real and personal property as is necessary to carry out the act; however, no contract may be entered without specific authorization by the Legislature for the project.

**2003 Study:** The 2002 General Appropriations Act<sup>22</sup> directed the DMS to conduct a justification and utilization assessment of public and private sector office space leases by June 30, 2003. To execute this directive, the DMS contracted with CLW Real Estate Services Group. The CLW report issued June 30, 2003, makes the following recommendations:

- State procurement and management of private sector leased space should be centralized within the DMS.
- The DMS should adopt and enforce new space efficiency standards, should examine each state facility to determine how the existing agency layout compares with the standards, and should perform a cost benefit analysis to determine if renovation of the layout could result in a net reduction of occupancy costs.
- As state leases for private space expire, the DMS should backfill available state owned space.
- The DMS should surplus state owned properties that are no longer functional or that do not meet the state's long term needs.
- The DMS should engage the services of a commercial real estate consultant to be a tenant representative for the state, who will determine market alternatives and negotiate the terms and conditions of each private sector transition.

### III. Effect of Proposed Changes:

**Section 1.** Section 255.248, F.S., that provides definitions for purposes of ss. 255.249 and 255.25, F.S., is amended to:

- Specify that the definitions of “state-owned building” and “privately owned building” refer to real property, rather than buildings as provided in current law.
- Clarify that the exceptions for specified facilities, which are currently provided in s. 255.248(1), F.S., to the definition of “state-owned building” are excepted from the requirements of ss. 255.249 and 255.25, F.S.
- Codify current practice by providing that custodial facilities for inmates and buildings used by the state courts system are excepted from the requirements of ss. 255.249 and 255.25, F.S.
- Add a conforming reference to the Board of Governors, the entity that governs the state university system, as created in 2002 by Art. IX, s. 7(d), Fla. Const.

**Section 2.** Subsection 255.249(2), F.S., is amended to provide that the DMS is responsible for the procurement and management of all executive agency leases of privately-owned buildings, other than leases for the facilities excepted in s. 255.248, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 272.04, F.S.

<sup>22</sup> Chapter 2002-394, line 2743, L.O.F.

Paragraph (2)(b) is amended to provide that the DMS may competitively procure, pursuant to ch. 287, F.S., one or more real estate brokers, who are licensed under ch. 475, F.S., to assist the DMS in negotiating leases for privately owned buildings on behalf of executive agencies. The bill specifies that broker compensation:

- May only be paid when the DMS demonstrates in writing that the lease results in a cost savings to the state or otherwise provides value that could not have been achieved without the broker; and
- May include a private landlord paid, market-based commission that constitutes a percentage of the lease price. The DMS must document in writing the basis for its determination of the percentage and the percentage must decline as square footage leased increases.

The bill requires that any contract for broker services must include:

- Methodologies for establishing baselines for performance measures and standards.
- Performance measures that include expectations for:
  - The net cost savings to be achieved by the broker;
  - A reduction in the average price per square foot for broker negotiated leases as compared to state negotiated leases;
  - A reduction in the square footage of private space leased by executive agencies;
  - Space per full-time equivalent employee for leases negotiated by the broker compared to state-procured private space;
  - The number of executive agency employees relocated from leased private space into state-owned space; and
  - Executive agency and private building owner satisfaction with broker services and with the price, quality, and location of broker negotiated private space.
- DMS procedures for monitoring and evaluating a broker's performance.
- Processes that require monthly reporting by a broker on its achievement of the performance measures and standards and on the amount and basis of any compensation received or to be received by the broker under the contract.
- Methods for resolving situations in which a broker fails to achieve the performance measures and standards, which include, but are not limited to, withholding compensation and contract termination.

The bill requires all cost savings resulting from broker negotiated or renegotiated leases to be deposited in escrow for tenant improvements or in the General Revenue Fund. Further, the bill specifies that information about the costs and benefits of any broker negotiated or renegotiated lease must be provided to the Legislative Budget Commission if the new or renegotiated lease costs in excess of \$1 million and if it represents a greater than ten percent change in the annualized cost of the agency's original lease.

Paragraph (2)(c) is amended to provide that subsection (2) does not apply to the Departments of Legal Affairs, Financial Services, and Agriculture and Consumer Services.

Subsection (3) is amended to provide that the department may assign one or more agencies to move into space vacated by another state agency; however, the head of an agency that requests space may reject the DMS's transfer in writing for the following reasons: excessive cost;

unfavorable lease terms or conditions; negative impact on employee productivity; security concerns; poor location or building quality; insufficient parking; excessive moving costs; or difficult access by persons served by the agency.

Subsection (4) is amended to require the DMS to adopt rules that:

- Specify methods for the DMS to accomplish its duties outlined in subsections 255.249(1) through (3), F.S.
- Specify procedures requiring competitive solicitation of, and procedures for evaluating and accepting, responses to competitive solicitations.
- Provide that an agency that requested space may reject the DMS's selection of space for the agency for the same reasons that an agency may reject a transfer by DMS, and that the DMS upon such rejection is not required to solicit new bids, proposals, or replies; instead, the DMS may renegotiate with landlords or prospective landlords that have previously replied to the solicitation.
- Specify standard methods of determining space allocation, which define appropriate space to be allocated for specified uses and which consider:
  - Accommodation of disabled persons and public visitors;
  - Security;
  - Specials agency needs;
  - Investment in additional space where the cost of additional space is exceeded by gains in employee productivity;
  - Allocation of space for employee wellness programs, childcare, cafeterias, and break areas; and
  - Accommodation of state-owned building space that cannot be efficiently reconfigured because of design and age of the building.
- Adopt the BOMA Metropolitan Base Building Classification, or equivalent, as the standard method for rating the quality of private-owned buildings, and that provide for the utilization of BOMA class A or B space when practical.

Subsection (6) is created by the bill to require the DMS to annually submit a report to the Legislature, which sets forth the DMS's enterprise plan for the next five years for the use of state-owned and state-leased space and for any acquisition, financing, refinancing, or disposition of state real property and improvements that the DMS is permitted by law to execute. The DMS is also required to provide the Legislature with 30 days notice prior to executing a deviation from the report.

**Section 3.** Section 255.25, F.S., is amended to:

- Remove the requirement that the DMS serve as a mediator in agency lease renegotiations.
- Provide the DMS with authority to competitively negotiate new leases, renegotiate existing leases, or otherwise consolidate existing leases into a large-scale lease or leases covering one or more private buildings.
- Permit the DMS to adopt rules establishing procedures for procuring large scale leases, managing large scale leases, and providing a method for allocating lease costs between agencies.

- Require state agencies to obtain approval from the DMS for any lease or occupancy of a state-owned building or privately-owned building.
- Require the department or agency that is allowed to directly procure a lease or to extend a lease to comply with ss. 216.311, 255.249, 255.2502, and 255.2503, F.S.
- Provide that the DMS may adopt rules that specify uniform leasing procedures and that comply with ss. 255.249, 255.2502, and 255.2503, F.S.
- Remove the 11-month limitation for lease extensions.
- Increase the minimum amount of the bond required for protests to competitive solicitations for leases from \$5,000 to \$7,500.
- Transfer subsection (5) regarding fire safety and subsection (6) regarding floodplains to s. 255.45, F.S.
- Strike subsection (8) that prohibits an agency from entering into more than one lease in the same privately-owned facility within any 12-month period without a competitive solicitation of bids.
- Strike subsection (9) that exempts specialized educational facilities, other than classrooms, from the section's competitive bid requirements for leasing if such facility is only available from a sole source.

The bill also makes changes throughout s. 255.25, F.S., which permit competitive solicitation, rather than competitive bidding, for leases. The effect of these amendments is to permit the use of requests for proposals and invitations to negotiate in addition to current law's permitted use of invitations to bid.

**Sections 4 and 5.** Sections 255.25001 and 255.2501, F.S., are amended to make conforming changes with the substitution of the term "competitive solicitation" for "competitive bid" and to clarify that the sections apply to executive agencies, rather than state agencies as is provided in current law.

**Section 6.** Section 255.45, F.S., is amended to contain the substance of ss. 255.25(5) and (6), F.S., which are stricken in Section 3. of the bill.

**Section 7.** Section 633.085, F.S., is reenacted to incorporate the bill's amendment to s. 255.45, F.S.

**Section 8.** Section 270.27, F.S., relating to the sale of unused public lands by the DMS, is repealed. The DMS indicates that this authority is not used.

**Section 9.** Paragraph s. 255.249(2)(b), F.S., relating to the DMS's authority to contract with real estate brokers for lease negotiating services, is repealed by the bill on October 15, 2005, the termination date of the DMS's contract with Staubach Company, North Florida, L.L.C.

**Section 10.** The bill provides that the act takes effect on July 1, 2004.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Private vendors that lease space to the state pursuant to a transaction negotiated by The Staubach Company, North Florida, L.L.C. will be required to pay that company a four percent commission.

## C. Government Sector Impact:

According to the DMS, the State of Florida owns more than seven million square feet of space and leases ten million square feet from the private sector. In FY 2003-2004, the state spent more than \$151 million for private sector leases. The DMS estimates that this bill's centralization of state leasing procurement and management and its authorization for the services of a private sector tenant representative will result in approximately \$30 million in annual savings to state agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

**Overview of Staubach contract:** On October 15, 2003, the DMS entered a two-year contract with The Staubach Company, North Florida, L.L.C. (Staubach) for the provision of commission-based representation of state agencies in lease negotiations and for assistance in the strategic planning and the sale of state buildings. Under current law, the DMS and state agencies

are responsible for executing leases<sup>23</sup> and the DMS and the Board of Trustees of the Internal Improvement Fund are responsible for the disposition of state real property and improvements.<sup>24</sup>

This bill would provide specific statutory authority for this outsourcing initiative. Currently, Florida statutes do not specify as a general matter when an executive agency is permitted to or is prohibited from outsourcing or privatizing state functions.<sup>25</sup> <sup>26</sup> In the past, the Legislature has regulated executive branch outsourcing initiatives through its appropriation power; however, in recent years, it is a common practice for executive agencies to execute self-funding contracts, such as the Staubach/DMS contract, for such initiatives. This trend appears to diminish the Legislature's power to make policy decisions regarding which state functions should be outsourced or privatized.

Provisions of the Staubach/DMS contract concerning deliverables and compensation are outlined below. The majority of compensation to be paid to Staubach is based on a fixed percentage of the state's lease price, i.e., four percent, to be paid by private landlords. Staubach's compensation does not require a demonstration of cost savings generated, nor is it structured such that the commission percentage for leases decreases as private space lease volume increases. Further, Staubach may be compensated under the contract for selling state-owned buildings.

The contract does require Staubach to restack state agencies in state-owned space when available; however, Staubach may not be compensated for such efforts during the first year of the contract. Given this fact, the fixed commission compensation structure, and the potential for state building sale commissions, it is unclear what incentive there is, particularly during the first year of the contract, for Staubach to restack agencies in state-owned buildings. Presumably, the DMS will not enter private space leases negotiated by Staubach, which do not result in a savings to the state; however, the contract does not require a demonstration of cost savings prior to execution of such a lease.

***State leasing:*** Staubach is designated the exclusive tenant agent for the state, and is required within the first 90 days of the contract to: (a) conduct market rate reviews to determine where state leases are above/at/below market rates; (b) commence renegotiation activities for leases exceeding 25,000 square feet throughout the state; and (c) complete renegotiations for at least two major deals in Tallahassee. Private landlords are required to pay Staubach four percent of the full service rental obligation for the entire fixed term of a new or renegotiated lease or an amount otherwise agreed upon for any new or renegotiated lease transaction that Staubach negotiates and closes on behalf of the State.

***Restacking of state agencies:*** Staubach must facilitate the restacking of state agencies in state-owned space in accordance with state space standards and must relocate state agencies into

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<sup>23</sup> Chapter 255, F.S.

<sup>24</sup> Chapter 253, F.S., s. 270.27, and s. 272.124, F.S.

<sup>25</sup> Some statutes address outsourcing in specific instances. *See, e.g.*, s. 287.057(23), F.S. (providing that the DMS may contract for an eprocurement system). No general parameters, however, for outsourcing or privatization are set forth in statute.

<sup>26</sup> An agency has only such power as is granted by legislative enactment, and when acting outside the scope of its delegated authority, an agency acts illegally. *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (Fla. 5<sup>th</sup> DCA 1985). Thus, it might be argued that an agency may only outsource or privatize upon specific statutory authority.

state-owned buildings when space is available from functionally obsolete state-owned buildings or from third party leased facilities. Staubach's restacking services are to be provided at no cost for the first year of the contract. Thereafter, the contract authorizes the DMS to pay Staubach for these services.

***Privatized state functions:*** DMS must inform private entities assuming privatized functions that Staubach is the State's exclusive real estate representative and is available to assist them for compensation substantially similar to that provided in the DMS/Staubach contract.

***State-owned facility sale/ lease:*** Staubach may be required by the DMS to provide implementing services for sale/leaseback or lease/leaseback of state-owned facilities, bondable net leases, the structuring of joint ventures, public private partnerships, or other transactions. Staubach is to be paid market-based compensation to be determined when the scope of work is defined. This compensation is to be funded through transaction proceeds, i.e., by private landlords or financing arrangements.

***Construction management:*** Staubach may be required by the DMS to provide construction management services in exchange for market-based compensation to be determined when the scope of work is defined. This compensation may be paid by the State and/or by private landlords.

***Disposal of surplus assets:*** Staubach may be required by the DMS to provide disposition services for surplus state assets, which may include sale, lease, sub-lease, joint venture, public private partnership, or other means. Staubach is to be paid market-based compensation to be determined when the scope of work is defined. This compensation is to be funded through sale proceeds.

***Performance Measures:*** The contract specifies that performance measures, which may be based on a percentage of cost savings realized or on other terms, were to be developed within the first 90 days of the contract's execution, i.e., January 15, 2004, and are to be made an addendum to the contract. Representatives from the DMS have indicated that the addendum is currently being drafted.

#### **VIII. Amendments:**

None.