H-2521.1

HOUSE BILL 2366

State of Washington 60th Legislature 2007 Regular Session

By Representatives Dunshee, Jarrett, Ormsby, Hunter and Kenney

Read first time 02/27/2007. Referred to Committee on Capital Budget.

AN ACT Relating to accountability, efficiency, and oversight of state facility planning and management; amending RCW 43.82.150 and 43.82.010; adding new sections to chapter 43.82 RCW; adding a new section to chapter 39.35B RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that the capital stock of facilities owned and leased by state agencies represents a significant financial investment by the citizens of the state of Washington. Capital construction projects funded in the state's capital budget require diligent analysis and approval by the governor and the legislature. In some cases, long-term leases obligate state agencies to a larger financial commitment than some capital construction projects without a comparable level of diligence. State facility analysis and portfolio management can be strengthened through greater oversight and support from the office of financial management and the legislature.

The legislature finds that the state lacks specific policies and standards on conducting life-cycle cost analysis to determine the cost-effectiveness of owning or leasing state facilities and lacks clear guidance on when and how to use it. Further, there is limited oversight and review of the results of life-cycle cost analyses in the capital project review process. Unless decision makers are provided a thorough economic analysis, they cannot identify the most cost-effective alternative or identify opportunities for improving the cost-effectiveness of state facility alternatives.

The legislature finds that the statewide accounting system limits the ability of the office of financial management and the legislature to analyze agency expenditures that include only leases for land, buildings, and structures. Additionally, other statewide data systems that track state-owned and leased facility information are limited, onerous, and inflexible.

Therefore, it is the intent of the legislature to strengthen the office of financial management's oversight role in state facility analysis and decision making. Further, it is the intent of the legislature to support the office of financial management's and the department of general administration's need for technical expertise and data systems to conduct thorough analysis, long-term planning, and state facility portfolio management by providing adequate resources in the capital and operating budgets.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.82 RCW to read as follows:

The office of financial management, in consultation with the appropriate committees of the legislature, shall prepare an implementation plan to improve the oversight of real estate procurement and management practices. The plan must identify specific steps that state government can take to better manage the acquisition, ownership, lease, and disposition of office and warehouse space so that state services are delivered in an effective manner. The plan shall be submitted to the governor and the appropriate committees of the legislature by October 1, 2007.

NEW SECTION. **Sec. 3.** A new section is added to chapter 39.35B RCW to read as follows:

The office of financial management shall:

(1) Design and implement a cost-effective life-cycle cost model by

October 1, 2008, based on the work completed by the joint legislative audit and review committee in January 2007 and in consultation with legislative fiscal committees;

(2) Deploy the life-cycle cost model for use by state agencies once completed and tested;

(3) Update the life-cycle cost model periodically in consultation with legislative fiscal committees;

(4) Establish clear policies, standards, and procedures regarding the use of life-cycle cost analysis by state agencies including:

(a) When state agencies must use the life-cycle cost analysis, including the types of proposed capital projects and leased facilities to which it must be applied;

(b) Procedures state agencies must use to document the results of required life-cycle cost analyses;

(c) Standards regarding the discount rate and other key model assumptions; and

(d) A process to document and justify any deviation from the standard assumptions.

NEW SECTION. **Sec. 4.** A new section is added to chapter 43.82 RCW to read as follows:

(1) The office of financial management shall design and implement a modified predesign process for any space request to lease, purchase, or build facilities that involve (a) the housing of new state programs, (b) a major expansion of existing state programs, or (c) the relocation of state agency programs. This includes the consolidation of multiple state agency tenants into one facility. The office of financial management shall define facilities that meet the criteria described in (a) and (b) of this subsection.

(2) State agencies shall submit modified predesigns to the office of financial management and the legislature. Modified predesigns must include a problem statement, an analysis of alternatives to address programmatic and space requirements, proposed locations, and a financial assessment. For proposed projects of twenty thousand gross square feet or less, the agency may provide a cost-benefit analysis, rather than a life-cycle cost analysis, as determined by the office of financial management.

(3) Projects that meet the capital requirements for predesign on major facility projects with an estimated project cost of five million dollars or more pursuant to chapter 43.88 RCW shall not be required to prepare a modified predesign.

(4) The office of financial management shall require state agencies to identify plans for major leased facilities as part of the ten-year capital budget plan. State agencies shall not enter into new or renewed leases of more than one million dollars per year unless such leases have been approved by the office of financial management except when the need for the lease is due to an unanticipated emergency. The regular termination date on an existing lease does not constitute an emergency. The department of general administration shall notify the office of financial management and the appropriate legislative fiscal committees if an emergency situation arises.

(5) For project proposals in which there are estimates of operational savings, the office of financial management shall require the agency or agencies involved to provide details including but not limited to fund sources and timelines.

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.82 RCW to read as follows:

State agencies are prohibited from entering into lease agreements for privately owned buildings that are in the planning stage of development or under construction unless there is prior written approval by the director of the office of financial management. Approval of such leases shall not be delegated. Lease agreements described in this section must comply with section 4 of this act.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.82 RCW to read as follows:

The office of financial management shall:

(1) Work with the department of general administration and all other state agencies to determine the long-term facility needs of state government; and

(2) Develop and submit a six-year facility plan to the legislature by January 1st of every odd-numbered year, beginning January 1, 2009, that includes state agency space requirements and other pertinent data

necessary for cost-effective facility planning. The department of general administration shall assist with this effort as required by the office of financial management.

Sec. 7. RCW 43.82.150 and 1997 c 96 s 2 are each amended to read as follows:

(1) The office of financial management shall develop and maintain an inventory system to account for all owned or leased facilities utilized by state government. At a minimum, the inventory system must include the <u>facility owner,</u> location, type, condition, and size of each facility. In addition, for owned facilities, the inventory system must include the date and cost of original construction and the cost of any major remodeling or renovation. The inventory must be updated by June 30<u>th</u> of each year. The office of financial management shall publish a report summarizing information contained in the inventory system for each agency by October 1<u>st</u> of each year, beginning in ((~~1997~~)) <u>2010 and shall submit this report to the appropriate fiscal committees of the legislature</u>.

(2) All agencies, departments, boards, commissions, and institutions of the state of Washington shall provide to the office of financial management a complete inventory of owned and leased facilities by May 30, ((~~1994~~)) <u>2010</u>. The inventory must be updated and submitted to the office of financial management by May 30<u>th</u> of each subsequent year. The inventories required under this subsection must be submitted in a standard format prescribed by the office of financial management.

(3) <u>The office of financial management shall report to the legislature by September 1, 2008, on recommended improvements to the inventory system, redevelopment costs, and an implementation schedule for the redevelopment of the inventory system. The report shall also make recommendations on other improvements that will improve accountability and assist in the evaluation of budget requests and facility management by the governor and the legislature.</u>

<u>(4)</u> For the purposes of this section, "facilities" means buildings and other structures with walls and a roof. "Facilities" does not mean roads, bridges, parking areas, utility systems, and other similar improvements to real property.

Sec. 8. RCW 43.82.010 and 2004 c 277 s 906 are each amended to read as follows:

(1) The director of general administration, on behalf of the agency involved <u>and after consultation with the office of financial management</u>, shall purchase, lease, lease purchase, rent, or otherwise acquire all real estate, improved or unimproved, as may be required by elected state officials, institutions, departments, commissions, boards, and other state agencies, or federal agencies where joint state and federal activities are undertaken and may grant easements and transfer, exchange, sell, lease, or sublease all or part of any surplus real estate for those state agencies which do not otherwise have the specific authority to dispose of real estate. This section does not transfer financial liability for the acquired property to the department of general administration.

(2) Except for real estate occupied by federal agencies, the director shall determine the location, size, and design of any real estate or improvements thereon acquired or held pursuant to subsection (1) of this section. Facilities acquired or held pursuant to this chapter, and any improvements thereon, shall conform to standards adopted by the director and approved by the office of financial management governing facility efficiency unless a specific exemption from such standards is provided by the director of general administration. The director of general administration shall report to the office of financial management <u>and the appropriate committees of the legislature</u> annually on any exemptions granted pursuant to this subsection.

(3) The director of general administration may fix the terms and conditions of each lease entered into under this chapter, except that no lease shall extend greater than twenty years in duration. The director of general administration may enter into a long-term lease greater than ten years in duration upon a determination by the director of the office of financial management that the long-term lease provides a more favorable rate than would otherwise be available, it appears to a substantial certainty that the facility is necessary for use by the state for the full length of the lease term, and the facility meets the standards adopted pursuant to subsection (2) of this section. The director of general administration may enter into a long-term lease greater than ten years in duration if an analysis shows that the life-

cycle cost of leasing the facility is less than the life-cycle cost of purchasing or constructing a facility in lieu of leasing the facility. ((~~For the 2003-05 biennium,~~)) <u>A</u>ny lease entered into ((~~after April 1, 2004,~~)) with a term of ten years or less shall not contain a nonappropriation clause.

(4) Except as permitted under chapter 39.94 RCW, no lease for or on behalf of any state agency may be used or referred to as collateral or security for the payment of securities offered for sale through a public offering. Except as permitted under chapter 39.94 RCW, no lease for or on behalf of any state agency may be used or referred to as collateral or security for the payment of securities offered for sale through a private placement without the prior written approval of the state treasurer. However, this limitation shall not prevent a lessor from assigning or encumbering its interest in a lease as security for the repayment of a promissory note provided that the transaction would otherwise be an exempt transaction under RCW 21.20.320. The state treasurer shall adopt rules that establish the criteria under which any such approval may be granted. In establishing such criteria the state treasurer shall give primary consideration to the protection of the state's credit rating and the integrity of the state's debt management program. If it appears to the state treasurer that any lease has been used or referred to in violation of this subsection or rules adopted under this subsection, then he or she may recommend that the governor cause such lease to be terminated. The department of general administration shall promptly notify the state treasurer whenever it may appear to the department that any lease has been used or referred to in violation of this subsection or rules adopted under this subsection.

(5) It is the policy of the state to encourage the colocation and consolidation of state services into single or adjacent facilities, whenever appropriate, to improve public service delivery, minimize duplication of facilities, increase efficiency of operations, and promote sound growth management planning.

(6) The director of general administration shall provide coordinated long-range planning services to identify and evaluate opportunities for colocating and consolidating state facilities. Upon the renewal of any lease, the inception of a new lease, or the purchase of a facility, the director of general administration shall determine

whether an opportunity exists for colocating the agency or agencies in a single facility with other agencies located in the same geographic area. If a colocation opportunity exists, the director of general administration shall consult with the affected state agencies and the office of financial management to evaluate the impact colocation would have on the cost and delivery of agency programs, including whether program delivery would be enhanced due to the centralization of services. The director of general administration, in consultation with the office of financial management, shall develop procedures for implementing colocation and consolidation of state facilities.

(7) The director of general administration is authorized to purchase, lease, rent, or otherwise acquire improved or unimproved real estate as owner or lessee and to lease or sublet all or a part of such real estate to state or federal agencies. The director of general administration shall charge each using agency its proportionate rental which shall include an amount sufficient to pay all costs, including, but not limited to, those for utilities, janitorial and accounting services, and sufficient to provide for contingencies; which shall not exceed five percent of the average annual rental, to meet unforeseen expenses incident to management of the real estate.

(8) If the director of general administration determines that it is necessary or advisable to undertake any work, construction, alteration, repair, or improvement on any real estate acquired pursuant to subsection (1) or (7) of this section, the director shall cause plans and specifications thereof and an estimate of the cost of such work to be made and filed in his or her office and the state agency benefiting thereby is hereby authorized to pay for such work out of any available funds: PROVIDED, That the cost of executing such work shall not exceed the sum of twenty-five thousand dollars. Work, construction, alteration, repair, or improvement in excess of twenty-five thousand dollars, other than that done by the owner of the property if other than the state, shall be performed in accordance with the public works law of this state.

(9) In order to obtain maximum utilization of space, the director of general administration shall make space utilization studies, and shall establish standards for use of space by state agencies. Such studies shall include the identification of opportunities for

colocation and consolidation of state agency office and support facilities.

(10) The director of general administration may construct new buildings on, or improve existing facilities, and furnish and equip, all real estate under his or her management. Prior to the construction of new buildings or major improvements to existing facilities or acquisition of facilities using a lease purchase contract, the director of general administration shall conduct an evaluation of the facility design and budget using life-cycle cost analysis, value-engineering, and other techniques to maximize the long-term effectiveness and efficiency of the facility or improvement.

(11) All conveyances and contracts to purchase, lease, rent, transfer, exchange, or sell real estate and to grant and accept easements shall be approved as to form by the attorney general, signed by the director of general administration or the director's designee, and recorded with the county auditor of the county in which the property is located.

(12) The director of general administration may delegate any or all of the functions specified in this section to any agency upon such terms and conditions as the director deems advisable. <u>By January 1st of each year, beginning January 1, 2008, the department shall submit an annual report to the office of financial management and the appropriate committees of the legislature on all delegated leases.</u>

(13) This section does not apply to the acquisition of real estate by:

(a) The state college and universities for research or experimental purposes;

(b) The state liquor control board for liquor stores and warehouses; and

(c) The department of natural resources, the department of fish and wildlife, the department of transportation, and the state parks and recreation commission for purposes other than the leasing of offices, warehouses, and real estate for similar purposes.

(14) Notwithstanding any provision in this chapter to the contrary, the department of general administration may negotiate ground leases for public lands on which property is to be acquired under a financing contract pursuant to chapter 39.94 RCW under terms approved by the state finance committee.

(15) The department of general administration shall report annually to the office of financial management and the appropriate fiscal committees of the legislature on facility leases executed for all state agencies for the preceding year, lease terms, and annual lease costs. The report must include leases executed under section 5 of this act and subsection (12) of this section.

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