

(Base) Agency: Building Program
Purchase of DOR Building

2766

Recommendations:

Paper No. 253: Alternatives 1 & 4

1, 2, 3, 4

Comments: Alternative 1 approves the purchase of the DOR building, and Alternative 4 says significant attempts should be made to construct the DOR facility using prevailing wage and minority contracting requirements.

Alternatives 2 and 3 would also be fine if Rep. Gard would agree to them. Otherwise, other Dems might want to move their adoption separately.

prepared by: Barry



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June 3, 1999

Joint Committee on Finance

Paper #253

Purchase of Department of Revenue Building (Building Program)

[LFB 1999-01 Budget Summary: Page 122-1, #1(part)]

CURRENT LAW

Building program projects with a cost exceeding \$500,000 are required to be enumerated in the authorized state building program. To enumerate a project, the Legislature lists the project title and budget in a nonstatutory provision enacted as part of the biennial budget bill. In addition, the Legislature must authorize any new bonding or other monies needed to fund the project.

BUILDING COMMISSION

Enumerate the purchase of the Department of Revenue (DOR) building currently under construction in Madison at \$30.1 million. Provide \$30.1 million in program revenue supported borrowing to fund the costs of the purchase of the facility and the parking area.

DISCUSSION POINTS

Enumeration Requirement

1. Each biennium, the Building Commission, with assistance from the Department of Administration-Division of Facilities Development (DFD), reviews agency capital budget requests. After that review, the Building Commission and staff make recommendations for capital improvements and construction under the biennial state building program. The Legislature may modify those recommendations in approving the state building program for the biennium. Those projects enumerated within the state building program have legislative approval to be constructed as described in the enumeration.
2. The Building Commission has general authority to acquire leasehold interests for the

state in land and buildings. Also, the Commission may authorize the lease, lease purchase or acquisition of facilities that are constructed in the manner authorized by the Building Commission. The Commission may also authorize the lease, lease purchase or acquisition of existing facilities in lieu of state construction of any project enumerated in the authorized state building program.

3. On February 11, 1999, the Building Commission approved a 20-year lease for approximately 240,000 rentable square feet of office and parking space on Rimrock Road in Madison to be occupied by the DOR. The land on which the building will be constructed is considered a brownfield site. The lease contained an option to purchase the facility within the first three years of occupancy for \$26.5 million for the building and \$2.6 million for the parking areas. The remaining \$1.0 million in costs associated with the purchase of the facility is primarily associated with DFD project management costs.

4. The \$30.1 million in program revenue bonding would be paid off from rent payments paid to DOA from all agencies. All building costs are pooled in establishing state rental rates. These rent payments are generally split-funded based on the percentage of GPR, PR and SEG funding sources provided the agency. DOR is expected to first occupy the building in November, 2000.

5. The \$500,000 statutory enumeration requirement, which applies to state construction projects, provides the Legislature oversight over the expenditure of funds for new state facilities and major renovation or upgrade projects. Requiring that state building projects be enumerated also allows the Legislature to be involved in determining the need for such projects in conjunction with establishing the overall priorities for state facility expansion and improvements. Further, it allows for legislative input into the siting of state facilities and staff.

6. The Building Commission's authority to enter into leasehold arrangements was established to allow the state to lease additional space in the event that an agency needs additional office space due to expansion of existing programs or the consolidation a larger number of programs within one agency. It is unclear whether this authority was intended to allow the Building Commission and DOA to enter into a lease-purchase agreement for the construction of a new state facility that would house an entire agency.

7. The lease-purchase option has been used in recent years for the construction of state office space in Madison. The DOA and DATCP buildings were, and the state Justice/Law office building will be, built under a lease-purchase agreement. DOA indicates that using the lease-purchase option, as opposed to enumerating the facility through legislation, allows the state to take more timely advantage of market opportunities that occur.

8. In general, state construction projects are enumerated by the Legislature in the state building program and the Building Commission and DOA contract for, and oversee the construction of, those projects. Under a lease purchase arrangement, prior to legislative approval, DOA enters into a contractual obligation with a developer to site and construct a facility, with the state agreeing to a long-term lease for the facility. Also, contained in that lease is an option to purchase the facility, which cannot be exercised without legislative approval. Under the enumeration requirement, the

Legislature has oversight in determining the need and siting of facilities to be constructed. Under the lease-purchase arrangement, DOA and the Building Commission make these decisions, with the Legislature making the decision to purchase the facility. Because the Legislature must enumerate a facility to purchase and provide bonding authority or other monies to fund the purchase, there is legislative oversight. However, because it is nearly always more cost-effective for the state to purchase a facility the size of the proposed DOR building, rather than continue to lease the facility, the Legislature's decision is effectively already made.

9. Some concerns have been raised that using the lease-purchase option for the construction of state facilities diminishes the degree of legislative oversight of state facility construction. That is, while DOA and the Building Commission are within their authority to contract for the leasing of office space, it is argued that the lease-purchase option for projects that are to be constructed solely to house state agencies effectively circumvents the statutory enumeration requirement. If the degree of legislative oversight related to these facilities is a concern, the Committee could consider requiring that the construction of such facilities under lease-purchase agreements that involve initial occupancy by the state must be enumerated prior to the state entering into a the lease-purchase agreement.

10. Conversely, it could be argued that the Legislature does provide oversight of state building projects in that legislative representatives are on the Building Commission. The Building Commission consists of eight members: the Governor, six legislators and a private member appointed by the Governor.

11. The idea of a new state office facility for DOR that would consolidate staff into one central location has been discussed for several years. Further, DOA issued a request for proposal for the DOR facility in February, 1998, and the lease was approved by the Building Commission in February, 1999. Based on this timeline, it appears that sufficient time was available to request legislative approval for the facility, prior to the state entering into the current lease-purchase obligation for the facility.

12. If the Finance Committee does not approve the purchase of the DOR facility, the state would continue to be under the obligation to lease the facility for 20 years. DOA indicates that the purchase of the facility would be significantly more cost-effective than leasing the facility for 20 years.

Contracting Requirements

13. State construction projects have to meet certain contracting requirements, such as the competitive bidding process, minority contracting provisions and prevailing wage requirements. Under lease-purchase arrangements, although the state is overseeing the construction of the project, the project is not a state-constructed facility and therefore, the contracting requirements associated with state construction projects do not apply.

14. The lease-purchase arrangement does not require the same competitive bidding process that is required for state construction projects. DOA uses the request for proposal (RFP)

process in selecting the site and contractor for the facility, with the most cost-effective proposal that meets the state's needs being selected. DOA issued an RFP for the DOR building in February, 1998, that described the size, dimensions, specifications and other requirements for the proposed facility. DOA officials indicate that the RFP process for the facility was very competitive, with seven developers submitting proposals.

15. DOA indicates that construction of a facility under a lease-purchase differs from state-contracted construction projects. Under lease-purchase agreements, the state enters into a lease with a developer, with an option to purchase at a certain price, but does not get involved in the direct bidding of contracts for the construction of the facility. DFD staff monitor the project so that the construction is completed to the required state standards. Under state-contracted construction of a facility, the state has some involvement in the contracting of each component or phase of the construction process.

16. Under current law, DOA is required to either solicit sealed bids or proposals for the procurement of materials, supplies, equipment and contractual services for the state. Because the lease-purchase agreement often involves the eventual procurement of a building that is being built for the purpose of initial occupancy by the state, the Finance Committee could consider applying these sealed bid or proposal requirements to lease-purchase agreements.

17. The RFP for the DOR building contains a clause that the developer must make every effort to award work to minority businesses enterprises and requires the developer to submit a report indicating the type and value of the work conducted by minority contractors. Further, a term of the lease agreement is that the lessor, in connection with the performance of work under the lease, agrees not to discriminate against any employee or applicant for employment. Under state contracts for construction, DOA must attempt to ensure that 5% of the total amount expended on state construction in each fiscal year be awarded to minority business contractors.

18. Under current law, for state construction projects, contractors may not authorize final payment to each subcontractor until an affidavit of compliance with prevailing wage laws is submitted to the contractor. Further, the state may not authorize final payment until the contractor submits the compliance affidavit to the state. The lease-purchase agreement for the DOR building does not contain any prevailing wage requirements on the part of contractors or subcontractors. DOA officials indicate that, due to the construction labor market in Madison, prevailing wage is not an issue associated with the DOR building.

19. Because, as with the current DOR building request, it is often the intention of the state to exercise the purchase option on lease agreements for lease-purchase construction projects, the Finance Committee could consider applying some of the contracting requirements for state construction projects to the construction of lease-purchase facilities.

ALTERNATIVES TO BASE

1. Approve the Building Commission's recommendation to enumerate the purchase of the Department of Revenue (DOR) building currently under construction in Madison at \$30.1

million. Provide \$30.1 million in program revenue supported borrowing to fund the costs of the purchase of the facility and the parking area.

Alternative 1	BR
1999-01 FUNDING (Change to Base)	\$30,100,000
[Change to Bill]	\$30,100,000]

2. Require that the state may not enter into a future lease agreement, with an option to purchase a building constructed for purposes of initial occupancy by the state, unless the construction and purchase of the facility is enumerated in a state building program prior to entering into the lease-purchase agreement.

3. Require that any lease or contract that involves the construction of a building for the purposes of initial occupancy by the state, and that contains an option for the state to purchase the building or facility, be subject to the following:

- a. current law competitive sealed bids or proposals requirements associated with the state procurement activities;
- b. an agreement by the contractor constructing the facility to ensure that 5% of the total amount expended on the construction of the facility be awarded to minority business contractors, which would be subject to DOA enforcement;
- c. that the contractor constructing the facility agrees, in the contract, to pay prevailing wages to those providing labor for the project, including subcontractor labor.

4. Direct DOA, to the extent practicable, to ensure that the DOR facility is constructed in a manner consistent with the minority contracting and prevailing wage requirements for state-constructed facilities.

5. Maintain current law, where the DOR facility would be leased and the state would not exercise its purchase option.

Prepared by: Al Runde

MO# Alts 1,2,3,4

2	BURKE	Y	N	A
	DECKER	Y	N	A
	JAUCH	Y	N	A
	MOORE	Y	N	A
	SHIBILSKI	Y	N	A
	PLACHE	Y	N	A
	COWLES	Y	N	A
	PANZER	Y	N	A
	GARD	Y	N	A
	PORTER	Y	N	A
	KAUFERT	Y	N	A
	ALBERS	Y	N	A
	DUFF	Y	N	A
	WARD	Y	N	A
	HUBER	Y	N	A
	RILEY	Y	N	A