



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #264

Lease Purchase of State Facilities (Building Program)

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.

In the interest of preventing land speculation the Building Commission may acquire property within the blocks bordered by East Washington Avenue, South Webster Street, East Wilson Street and South Hancock Street in the city of Madison for possible future construction. Also, any acquisition in the city of Madison within block number 72, 73, 74, 75, 76, 77, 83, 84, 89, 90, 99, 100, 101, 102, 103 or 104 of the original plat of the city is exempt from enumeration requirement if such acquisition is to be solely used to meet the space needs of the state law library, the legislative reference bureau library and legislative and judicial branch agencies and support staffs.

BUILDING COMMISSION

No provision.

DISCUSSION POINTS

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 to be enumerated 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 Legislature has provided a specific exemption from the enumeration requirement for the acquisition of a property to be solely used to meet the space needs of the state law library, the legislative reference bureau library and legislative and judicial branch agencies and support staffs. Therefore, the Building Commission has authority to enter a lease purchase agreement to acquire the State Justice Center, which is recommended for enumeration under the 2001-03 state building program.

3. The \$500,000 statutory enumeration requirement, which applies to all other 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.

4. The Building Commission also 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.

5. 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.

6. 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 that would house an entire state agency, rather than continue to lease the facility,

the Legislature's decision is effectively already made.

7. The lease-purchase option has been used in recent years for the construction of state office space in Madison. The DOA, DATCP and DOR buildings were built under a lease-purchase agreement. The program revenue bonding for these facilities 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.

8. In the past, DOA has indicated that using the lease-purchase option, as opposed to first enumerating the facility through legislation, allows the state to take more timely advantage of real estate and construction market opportunities that occur. While timing is a key factor that is cited in any real estate transaction, the biennial building program has been amended through separate legislation in the past to accommodate the timing issues associated with specific capital projects. Relative to the DOR lease purchase agreement, the idea of a new state office facility for DOR that would consolidate staff into one central location had 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 lease-purchase obligation for the facility, rather than having the facility enumerated after the fact as part of the 1999-01 building program.

9. In addition, the Building Commission has recommended the enumeration of the purchase of a correctional facility at Stanley, that was built by private firm without state oversight, as part of the 2001-03 state building program. DOA has entered into a lease agreement for the facility, which contains an option to purchase the facility. As part of the lease agreement, DOA has agreed to include a request for authorization of the lease and the funds for operation of the facility in the 2001-03 biennial budget.

10. Some concerns have been raised that using the lease-purchase option for the construction of facilities are intended to be 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, and are within their authority relative to the State Justice Center, 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.

11. During its deliberations on the 1999-01 biennial budget, the Joint Finance Committee included a provision that would have required that the state may not enter into a lease agreement, with an option to purchase a building, including correctional facilities, constructed for the purposes of initial occupancy by the state, unless the construction and purchase of the facility would be

enumerated in a state building program prior to entering into a lease purchase. The provision was approved by the Legislature but vetoed by the Governor. In his veto message the Governor indicated that he vetoed the provisions because they place unnecessary restrictions on the Building Commission's ability to sign lease-purchase agreements on behalf of the state. He also indicated 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.

ALTERNATIVES TO BASE

1. 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, including correctional facilities, unless the construction and purchase of the facility is enumerated in a state building program prior to entering into the lease-purchase agreement.

2. Maintain current law. DOA and the Building Commission could continue the practice of entering into lease purchase agreements for facilities constructed to house state agencies or program efforts.

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