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May 21, 2013 Joint Committee on Finance Paper #163

# Authority to Sell or Lease State Properties -- Authority to Affect Agency Budgets and Positions (Administration)

[LFB 2013-15 Budget Summary: Page 40, #6 (part)]

## CURRENT LAW

The Legislature authorizes funding levels for agency appropriations and state-funded position levels in the biennial budget. Absent legislation, the Joint Committee on Finance can adjust funding levels and position changes under s. 13.101 or 16.505. Under s. 16.54, the Governor, through the Department of Administration (DOA) Secretary, has authority to create federal positions if federal funding is available. The DOA Secretary must notify the Joint Committee on Finance at least quarterly of any federal funds received in excess of those approved in the biennial budget process and of any such positions created or abolished.

## GOVERNOR

Provide that on the day prior to the effective date of the sale, lease, or contract for operation, of state-owned real property, the DOA Secretary must require the submission of expenditure estimates for the Secretary's approval, under the current law allotment process, for each agency that proposes to expend moneys from any appropriation for the operation of the facility during the fiscal biennium in which the facility is sold, leased, or operated under contract. Require the DOA Secretary to disapprove of any such estimate for the period during which the facility is not operated by the agency and authorize the DOA Secretary to: (a) require the use of the amounts of any disapproved expenditure estimates for the purpose of purchase of contractual services from the facility or from an alternative source; (b) identify any full-time equivalent positions authorized for the agency that was operating the facility, the duties of which primarily relate to the management or operation of the facility; and (c) decrease the authorized full-time equivalent positions for the agency by the number of positions so identified effective on the effective date of the sale, lease, or contract.

Authorize the DOA Secretary to lapse or transfer to the general fund from the unencumbered balance of appropriations to any agency, other than sum sufficient appropriations, PR appropriations of the UW System, or SEG or FED appropriations, any amount appropriated to an agency that is determined by the Secretary to be allocated for the management or operation of the facility that was sold or leased. These provisions would be effective on the effective date of the sale, lease, or contract. Require the DOA Secretary to report any action taken under these provisions relative to positions or funding to Joint Finance Committee.

## DISCUSSION POINTS

### DOA Secretary Authority

1. Staff from DOA indicate that unlike past proposals related to the sale of state properties, the intention is to reduce agency position and budget authority related to the sale or lease of the property. The bill would provide the Secretary broad authority to make adjustments to the budget and positions of any agency whose property is sold or leased by the DOA Secretary.

2. The DOA Secretary would be authorized to adjust agency budgets and positions relative to properties sold or leased by the Secretary. However, other bill provisions would also allow the Building Commission the authority to sell or lease state properties. The bill contains no provisions relative to the adjustment of agency budgets and staffing for properties sold or leased by the Commission. The Committee could extend the authority of the DOA Secretary to make such budgetary and staffing adjustments to those properties sold or leased by the Building Commission (Alternative 2).

3. Under current law, the DOA Secretary has some limited authority to affect established budget levels. If revenues are inadequate or the spending plan does not reflect legislative intent, the Secretary can direct all state agencies except the Legislature and the Courts to reduce spending below budgeted levels, except from appropriations for general school aids, shared revenue and tax relief, and for supplemental appropriations under the Joint Committee on Finance. This authority cannot be used if the Secretary determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than 0.5% of GPR appropriations for that fiscal year. In this case, the Secretary is prohibited from taking administrative action to reduce expenditures. Instead, the Governor is required to submit a bill to address the imbalance.

4. The Legislature is charged with setting expenditure levels by establishing appropriations for specific purposes. Under the bill, the Secretary of Administration, alone and without standards or direction from the Legislature, would have the authority to reduce the position and appropriation authority for any state agency whose property is sold or leased. Further, the provisions in the bill provide no standards for the Secretary to follow in determining the lapse or transfer of funds from the unencumbered balances of GPR, except to exclude sum sufficient appropriations, PR appropriations of the UW System, SEG, or FED appropriations.

5. Given this broad authority to affect agency positions and funding, an issue could be raised as to whether it is a proper delegation of the legislative authority to the DOA Secretary. The Committee could address this concern of delegating legislative authority over state appropriations,

positions, and transfers to DOA, by simply deleting the provision (Alternative 4). Instead, the Legislature could rely upon the current law authority of the Secretary of Administration to prevent the expenditure of funds associated with any cost and position reductions within the agency whose property is sold or leased. The Governor or DOA could then submit separate legislation and obtain legislative approval to carry out any appropriation or position reductions as well as any needed lapses or transfers.

6. Past budgets have authorized the DOA Secretary to lapse or transfer moneys from the unencumbered balances of executive branch state agencies to the general fund, other than sum sufficient appropriations and federal appropriations. As an example, 2007 Act 20, required the Secretary to lapse or transfer a $200 million biennially from most agencies to the general fund, during each of the 2007-09 and 2009-11 biennia. Under 2011 Act 32, the DOA Secretary was required to lapse of $174.3 million in the 2011-13 biennium and in the 2013-15 biennium. In AB 40, the Governor has proposed eliminating the $174.3 million lapse requirement for the 2013-15 biennium, and the remaining lapse plan provisions specifies the amount of each agency's lapse, rather than providing the discretion to DOA Secretary as was done under 2007 Act 20.

7. Under the bill, the DOA Secretary would only have to report to the Joint Committee on Finance on the actions the Secretary has taken in adjusting the budgets and staffing of state agencies whose property is sold or leased. While this would provide some information to a legislative committee, it would be an after-the-fact report rather than an actionable item before the Committee. If the Committee, wanted to have a greater level of review of the actions carried out by the Secretary regarding the budgets and positions of agencies whose property is sold or leased, the Committee could require the Secretary to submit the proposed actions to the Committee for approval under a 14-day passive review process (Alternative 3). This would allow the Committee to review the proposal and gain input from DOA as well as the affected agency.

8. As mentioned in Paper #162, a funding mismatch could occur if DOA or the Building Commission would use the proceeds from the lease of state property to retire outstanding state debt related to that property rather than using those funds to pay for any costs related to buying back the services or output associated with the property being leased. If the Committee decides to delete the provisions related to the use of lease proceeds to retire debt, the Committee would not have to provide the DOA Secretary specific authority related to the use of such proceeds at this time. Rather, DOA could submit subsequent legislation that would adjust the budgets of any agency whose property is leased or the affected agency could request a budgetary adjustment under the s. 13.10 process, as allowed under current law.

**ALTERNATIVES**

1. Approve the Governor's recommendation.

2. Modify the Governor's recommendation to extend the authority of the DOA Secretary to adjust the budgets and positions of agencies whose property is sold or leased by the Building Commission.

3. Modify that Governor's recommendation and require DOA to submit any proposed

actions to carried out by the Secretary regarding the budgets and positions of agencies whose property is sold or leased to the Joint Finance Committee for approval under a 14-day passive review process

4. Delete the Governor's recommendation (Any transfers or changes in funding and positions associated with the sale or lease of state properties by the DOA Secretary or the Building Commission would have to be made through subsequent legislation).

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