SB76

167945-2

By Senator Marsh

RFD: Governmental Affairs

First Read: 03-MAR-15
A BILL

TO BE ENTITLED

AN ACT

To amend Sections 41-4-2 and 41-4-3, Code of Alabama, 1975, relating to the duties of the Department of Finance, Section 41-4-261, relating to the duties of the office of space management and Section 41-9-141, relating to the duties of the Building Commission; to repeal Section 41-4-183, relating to the employment of landscape gardener for Capitol grounds, Section 41-6A-4(10) relating to energy usage and Sections 41-9-140 and 41-9-142 relating to the Building Commission; to create a permanent joint legislative oversight committee on the management of state-owned and leased real property; and to transfer all duties and responsibilities of the Building Commission in Sections 16-1.2.1 and 16-1.2.2, 16-16-10 (o)(2) and (p), 34-14B-1 to 34-14B-10, 39-2-2(f)(1), 41-9-160 to 41-9-165, 41-9-170 to 41-9-174, 41-9-243, 41-9-542, 41-10-271, 41-10-364, and 41-16-72(3)(a), to the Division of Construction Management within the Department of Finance.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature of Alabama hereby finds and determines that the responsible stewardship of its state-owned and leased real property is a proper governmental function of the State of Alabama. The Legislature finds that costs for maintenance, construction and leasing of real property in the state government comprise a significant portion of available resources. The Legislature also finds that as one of the largest owners and operators of buildings in Alabama, the State is a major consumer of energy. It is therefore the intent of this bill to establish centralized management of real property through leasing administration, facilities maintenance and management, and construction management that consists of expanded duties in existing divisions, as well as newly established divisions, within the Department of Finance. In establishing this centralization, it is further the intent of the Legislature to establish comprehensive real property asset management practices to achieve immediate and long term cost savings and cost avoidance, to increase operational efficiency, to optimize opportunities to move from leased spaces to state-owned spaces and to establish office space standards. The Legislature also intends to incorporate energy efficient practices and behaviors into daily and long term operations of state government which will preserve natural resources, conserve energy and water, and reduce waste.
Section 2. All real property owned or leased by state departments, boards, bureaus, commissions, agencies, offices and institutions shall be managed and supervised by the Department of Finance through centralized divisions. These centralized organizations shall be responsible for the management of facilities, the management of leasing of real property, the management of construction projects, space management and the management of energy efficiency efforts.

Section 3. Sections 41-4-2, 41-4-3, 41-4-261 and 41-9-141, Code of Alabama 1975, are hereby amended to read as follows:

"§41-4-2.

There shall be a Department of Finance, which shall be an executive and administrative department and which shall have general supervision of all matters pertaining to the finances and real property of the state and the departments, boards, bureaus, commissions, agencies, offices and institutions thereof and, to the extent herein indicated, over the finances of the counties, municipal corporations, political subdivisions and local public bodies in the state, and to furnish the physical facilities, equipment and supplies and, to the extent herein indicated, the personnel, for the operation of the state and such departments, boards, bureaus, commissions, agencies, offices and institutions thereof. The Department of Finance shall have a seal, which shall be affixed to official acts.

"§41-4-3."
It shall be the duty of the Department of Finance:

(1) To manage, supervise and control all matters pertaining to the fiscal affairs and fiscal procedure of the state, except such as may, by the constitution or statute, be specifically required to be performed by the Auditor, the Treasurer or the Department of Revenue, and to keep all records, accounts and data relating thereto.

(2) To manage and supervise all state real property wherever located through a centralized organization within the department.

(3) To manage, supervise and control the insurance of all state property, wherever located.

(4) To operate, manage and administer the State Insurance Fund.

(5) To make the annual financial report of the state, as soon as possible after the close of each fiscal year, in accordance with approved public accounting practice, and in such form and such detail as may be necessary to present an accurate description of the financial condition of the state during the preceding fiscal year. The reports of the Auditor and the Treasurer shall be bound with, and printed as a part of, such report.

(6) To conduct such studies, to secure such information and data, to make such reports and to furnish such information as may be required by the Governor or the Legislature.

§41-4-261.
The functions, powers and duties of the office division of space management shall be as follows:

(1) To formulate a statewide space management program.

(2) To establish long-range plans in regard to state space needs.

(3) To make studies, surveys, investigations and inventories of all buildings owned or leased by the state and to require all agencies to assist in such activities.

(4) To promulgate uniform standards for allocation of facilities owned or leased by the state.

(5) To investigate all requests for additional facilities needed by all state agencies departments, boards, bureaus, commissions, agencies and offices of the state and to make recommendations concerning the need for and the best method of allocating or acquiring such facilities allocate space for their use.

(6) To contract with other agencies, corporations entities or individuals to make studies, surveys, investigations, inventories and recommendations relative to the most economic and feasible methods of acquiring new space and utilization of present space.

(7) To assist and advise the Director of Finance in allocating available space and in acquiring new space.

(8) To make recommendations and reports to the Legislature Director of Finance relative to the proper utilization of and acquisition of space by state agencies.
(9) To make rules and regulations necessary to implement the provisions of this article.

§41-9-141.

(a) There shall be established within the Department of Finance the Division of Construction Management. The commission division shall have full power and authority for, and on behalf of, the State of Alabama to do any or all of the following:

(1) To acquire lands by purchase, condemnation, or otherwise.

(2) To plan for the construction, repair, remodeling, enlargement, renovation, furnishing, refurnishing, improvement or relocation of buildings, structures, and facilities for state departments, boards, bureaus, commissions, agencies and offices buildings and designate the location thereof.

(3) To plan and provide set policies, procedures, and guidelines for the improvement design, construction, renovation, equipment, furnishing, maintenance and improvement of all property now owned or hereafter acquired by the state or any institution or agency thereof.

(4) To construct, repair, equip, remodel, enlarge, renovate, furnish, refurnish, improve, and locate buildings, structures, and facilities for the use of the State of Alabama or any of its institutions or agencies departments, boards, bureaus, commissions, agencies and offices as in its judgment
shall be necessary for state, institutional, or agency purposes.

(5) To enter into contract or consult with architects, engineers, contractors, suppliers and others as needed to perform any of the functions provided for in this subsection.

(6) To receive any moneys, land, or equipment donated, appropriated, or otherwise acquired by it for the purposes provided for in this subsection.

(7) To take the action necessary to accomplish the purposes provided for in this subsection.

(7) To charge and provide for collection of user fees for its services. The fees established shall take into consideration the costs of operating the commission division. It is provided, however, that the fees so established by this section shall not exceed the Appendix B Recommended Schedule of Permit Fees of the Southern Standard Building Code.

(b) The commission is authorized and empowered to use the services, facilities, or employees of the Alabama Development Office in furthering the objects of this article when its request so to do is approved by the Governor.

(c) The commission may appoint and dismiss any officers, employees, and agents including competent architectural and technical employees as may be necessary to effectuate the purposes of this article. All employees of the commission shall be subject to the provisions of the Merit System. The commission is authorized to fix by contract the
fees or compensation of all architectural and technical employees without regard to the Merit System Act.

(d) The commission is authorized and empowered to make and adopt all necessary rules, regulations, and plans for its own guidance and for the proper conduct of the duties imposed upon it.

(e) The decisions of the commission with respect to approval and allocations of funds shall be final.

(f) No meeting of the commission shall be held on less than three days' actual notice to the members thereof.

(9) To review and approve or disapprove all proposed construction, renovation or improvement projects for constructability, durability, maintainability and to ensure the efficient use and availability of funds.

(10) To promulgate uniform standards for the construction and renovation of all state-owned facilities.

(11) To review and administer all design and construction contracts for all state-owned facilities as provided for in this subsection.

(12) To submit to the Director of Finance the priorities and recommendations for the repair, renovation, capital improvement and planning needs of state departments, boards, bureaus, commissions, agencies and offices.

(13) To review and approve or disapprove all state bond expenditures approved for construction.

(14) To review all emergency project declarations and to aid in the timely execution of emergency projects.
(15) To establish policies relating to the design
and construction of state buildings and facilities to maximize
the efficient use of state funds by allowing the use and reuse
of plans, designs, reports and studies of professionals that
are paid for with state funds for other state projects and
entities.

(b) The Division of Construction Management shall be
headed by and under the supervision, direction and control of
an officer who shall be designated director of construction
management. He or she shall be appointed, subject to the
provisions of the state Merit Law, by the Director of Finance,
with the approval of the Governor. The compensation of such
officer shall be fixed in accordance with the pay plan of the
state Merit System.

Section 4. Effective October 1, 2015, the Building
Commission established in Section 41-9-140 of the Code of
Alabama, 1975, is abolished. All powers, authority and
jurisdiction of the Building Commission, including but not
limited to those authorities currently established in Sections
16-1.2.1 and 16-1.2.2, 16-16-10 (o)(2) and (p), 34-14B-1 to
34-14B-10, 39-2-2(f)(1), 41-9-160 to 41-9-165, 41-9-170 to
41-9-174, 41-9-243, 41-9-542, 41-10-271, 41-10-364, and
41-16-72(3)(a) through (f) are hereby transferred to the
Division of Construction Management within the Department of
Finance.

Section 5. There shall be established within the
Department of Finance the Division of Facilities Management.
(a) The functions, powers and duties of the Division of Facilities Management shall be as follows:

(1) To provide for the supervision, repair, maintenance, operation and cleaning of all buildings, facilities and structures owned or leased by the state.

(2) To develop a statewide maintenance plan to address maintaining and increasing operational efficiency of state buildings through ongoing and preventive maintenance, addressing deferred maintenance and increasing building efficiency.

(3) To develop and implement minimal standards for the maintenance, operations, cleaning and upkeep of state buildings, facilities and structures.

(4) To study, develop and implement methods of increasing building efficiency through operations and maintenance and to require all agencies to assist in such activities.

(5) To contract with other agencies, corporations, entities or individuals for maintenance and operations, preventive maintenance, sourcing of facilities maintenance goods and services, and facilities inspection programs and activities for any department, board, bureau, commission, agency or office.

(6) To perform such other functions and duties of the Department of Finance as may from time to time be assigned by the Director of Finance.
(b) The Division of Facilities Management shall be headed by and under the supervision, direction and control of an officer who shall be designated director of facilities management. He or she shall be appointed, subject to the provisions of the state Merit Law, by the Director of Finance, with the approval of the Governor. The compensation of such officer shall be fixed in accordance with the pay plan of the state Merit System.

Section 6. There shall be established within the Department of Finance the Division of Leasing Management.

(a) The functions, powers and duties of the Division of Leasing Management shall be as follows:

(1) To formulate a statewide leasing plan for offices and other needed lease space for the various state departments, boards, bureaus, commissions, agencies and offices managed by the division.

(2) To maintain and manage an inventory of all state leased property.

(3) To review and approve or disapprove all real property leases and to make recommendations to the Director of Finance.

(4) To develop and implement standards for real estate lease agreements.

(5) To administer and monitor all real estate lease agreements.

(6) To make recommendations and reports to the Director of Finance as to utilization of leased office space.
and future needs as well as other reports and recommendations as required by the Director of Finance.

(7) To contract with other agencies, corporations, entities or individuals for the management and the procurement of leasing of real property for any department, board, bureau, commission, agency or office within the State.

(b) The Division of Leasing Management shall be headed by and under the supervision, direction and control of an officer who shall be designated director of leasing management. He or she shall be appointed, subject to the provisions of the state Merit Law, by the Director of Finance, with the approval of the Governor. The compensation of such officer shall be fixed in accordance with the pay plan of the state Merit System.

Section 7. There shall be established within the Department of Finance a Division of Energy Management.

(a) The functions, powers and duties of the division of energy management shall be, with respect to state-owned or state leased facilities, as follows:

(1) To formulate a statewide energy management program to promote energy conservation.

(2) To establish long-range plans in regard to state energy management needs.

(3) To study, develop and implement methods of measuring and reporting energy efficiency and energy usage for state owned and leased facilities and to require all agencies to assist in such activities.
(4) To promulgate uniform standards of energy management and energy savings procedures and practices applicable to all state-owned or state leased facilities.

(5) To develop energy conservation practices in the design, construction, renovation, operation, furnishing, equipping and maintenance of state facilities.

(6) To assist and advise the Director of Finance on cost savings methods through energy management.

(7) To contract with other agencies, corporations, entities or individuals to make studies, surveys, investigations or recommendations for energy management or energy savings procedures and practices.

(8) To make rules and regulations necessary to implement the provisions of this article.

(9) To perform such other functions and duties of the Department of Finance as may from time to time be assigned by the Director of Finance.

(b) The Division of Energy Management shall be headed by and under the supervision, direction and control of an officer who shall be designated director of energy management. He or she shall be appointed, subject to the provisions of the state Merit Law, by the Director of Finance, with the approval of the Governor. The compensation of such officer shall be fixed in accordance with the pay plan of the state Merit System.

Section 8. For the purposes of this bill, real property shall mean all real property and all interests
pertaining thereon, now or hereafter owned, leased or
otherwise possessed, by the State of Alabama, its departments,
board, bureaus, commissions, institutions, corporations,
agencies and other state entities, and used for government
purposes, unless specifically excluded by other provisions of
this bill.

Section 9. All user fees collected, direct
appropriations, and other funds received under the provisions
of this article shall be deposited into a revolving fund in
the State Treasury designated as the Real Property Management
Fund, and the Director of Finance is authorized to make
deposits and expenditures from time to time from such fund to
carry out the purposes of this article. All balances of
revenue, income and receipts remaining in the Real Property
Management Fund at the end of the fiscal year shall carry over
to the next fiscal year and shall not revert to the State
General Fund or any other fund under the provisions of Section
41-4-93. No funds shall be withdrawn or expended except as
budgeted and allotted according to Sections 41-4-80 to 41-4-96
and Sections 41-19-1 to 41-19-12, inclusive, and only in
amounts as stipulated in the general appropriations act or
other appropriations acts.

Section 10. (a) All real property owned or leased by
state departments, boards, bureaus, commissions, agencies,
offices and other instruments of the state are subject to the
requirements of this bill except:
(1) All educational facilities including K-12, postsecondary, and higher education facilities
(2) Facilities of the Legislative Branch of government
(3) Facilities of the Judicial Branch of government
(4) Facilities of the Retirement Systems of Alabama
(5) Facilities of the Alabama Port Authority
(6) Facilities of the State Military Department
(7) Lands managed by the Lands Division of the Department of Conservation and Natural Resources
(8) Right-of-way owned by the Department of Transportation
(9) Gulf State Park
(10) Facilities and real property owned or leased by departments, boards, bureaus, commissions, agencies, offices, and other instruments of the state that do not receive any appropriation of state funds.
(11) Any real property, building, improvement, or facility managed or controlled by a state agency, if adherence with any requirement of this act would violate Sections 9-2-26 or 9-11-19 of the Code of Alabama 1975, or any federal laws, regulations, or guidance, including, but not limited to, Title 50, Code of Federal Regulations, Part 80.
(12) Any unimproved real property owned, leased or otherwise possessed or controlled by the state or any department, board, bureau, commission, agency, office, or other instrument of the state.
(13) Real property owned or leased by the Alabama Home Builders Licensure Board, the Alabama Housing Finance Authority, the Alabama Plumbers and Gas Fitters Examining Board, the Alabama Board of Heating, Air Conditioning, and Refrigeration Contractors, and the State Licensing Board for General Contractors.

(14) Other real property owned or leased by state departments, boards, bureaus, commissions, agencies, offices, and other instruments of the state may be exempted from the requirements of this bill if the exemption is agreed to by both the Director of Finance and the head of the state department, board, bureau, commission, agency, office, or other instrument of the state seeking the exemption and the exemption is found by them to be in the best interest of the State of Alabama.

(b) Any entity that is provided an exception from the requirements of this bill under subsection (a) may elect to waive that exception and have its real property and facilities become subject to the provisions of this bill by providing written notice of that election to the Director of Finance. Once an entity waives its exception, the entity may not rescind that waiver with respect to any real property or facilities that become subject to the provisions of this bill as a result of the entity's waiver.

(c) The exceptions provided in subsection (a) do not alter or affect any of the provisions for compliance with a minimum building standards code or energy conservation
building code as required by Sections 41-9-160 to 41-9-165 and Sections 41-9-171 to 41-9-174.

(d) The exceptions provided in subsection (a) (1) do not alter or affect the compliance of educational facilities with the contract forms and procedures of the Division of Construction Management.

Section 11. (a) There is created a Permanent Joint Legislative Oversight Committee on the Management of State-Owned and Leased Real Property. The committee shall consist of the Lieutenant Governor, the Speaker of the House of Representatives, three members of the House of Representatives appointed by the Speaker of the House, one of whom shall be a member of the House minority party, and three members of the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be a member of the Senate minority party. Each member of the committee shall receive compensation and expenses pursuant to Amendment 871 to The Constitution of Alabama of 1901.

(b) It shall be the duty and function of the committee to review, analyze, and study the transfer, implementation, and performance of the requirements of this act.

(c) In reviewing the management of state-owned and leased real property, the Committee shall review the work of the Divisions of Facilities Management, Leasing Management, Construction Management, Energy Management, and Space Management.
Section 12. Beginning on October 1, 2015, the Divisions of Space Management, Facilities Management, Leasing Management, Construction Management and Energy Management may charge user fees to any department, board, bureau, commission, agency or office of the state for any services provided to them by these divisions.

Section 13. Sections 41-4-183, 41-6A-4(10), 41-9-140 and 41-9-142, Code of Alabama, 1975, are hereby repealed. All references to the Alabama Building Commission shall be repealed and replaced with the Division of Construction Management within the Department of Finance. All funds remaining in the Building Commission Operating Fund and the Home Inspection Registration Fund shall be transferred into the Real Property Management Fund.

Section 14. The Director of Finance shall implement this law to achieve the intent expressed herein and shall have such full authority and power necessary to accomplish its objectives, including the following express powers, together with those that may be reasonably implied therefrom by the Director in the exercise of his or her discretion:

(1) To organize the division in such fashion as the Director determines will be most effective, to accomplish the objectives of this law;

(2) To employ such personnel as he or she deems necessary, subject to the provisions of the Merit System law, except as otherwise permitted by other provisions hereof. The State Personnel Board shall establish such positions as the
Director determines are needed for operations of the divisions;

(3) To engage such consultants, lawyers, accountants, real estate brokers, agents and other professionals and service providers to provide advice, counsel and such other services and to negotiate such arrangement for compensation as he or she determines to be in the best interest of the state, including payment in such fashion as is customary for the service providers industry;

(4) To determine the times for the orderly transfers of responsibilities and duties pursuant to this bill;

(5) To develop such strategies, plans and priorities that he or she determines necessary and appropriate;

(6) To establish such policies, procedures and rules to ensure that the intent of this bill is realized.

Section 15. All laws or parts of laws which conflict with this bill are hereby repealed.

Section 16. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 17. This act shall become effective October 1, 2015 following its passage and approval by the Governor, or its otherwise becoming law.
Senate

Read for the first time and referred to the Senate committee on Governmental Affairs................. 03-MAR-15

Reported from Governmental Affairs as Favorable with 1 amendment................................. 17-MAR-15

Read for the third time and passed as amended .... 30-APR-15

Yeas 29
Nays 0

Patrick Harris
Secretary