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Subject: Research on H.4690

Legislative Research Issue:

Whether H.4690 (DEW building in Union County) is unconstitutional special legislation: <http://www.scstatehouse.gov/billsearch.php?billnumbers=4690>

- Brief Legal Analysis: Because the bill is specifically for one building at one particular address in one county and because a general law for state-owned building applies (Section 1-11-58 – see below), then this bill is likely unconstitutional special legislation.
 - o Note that we have signed similar, but not exact, bills transferring ownership of armories to counties: http://www.scstatehouse.gov/query.php?search=DOC&searchtext=armory&category=LEGISLATION&session=120&conid=8090281&result_pos=0&keyval=1203180&numrows=10
- Policy Analysis: This bill is adverse to the recent EO regarding DOA's oversight of state real estate: <http://governor.sc.gov/ExecutiveOffice/Documents/2016-06%20Ordering%20State%20Real%20Estate%20Plan.pdf>
- This Week: KV will meet with Rep. Anthony regarding our policy objections on the bill in hopes that it will not have to be vetoed.

SECTION 1-11-58. Annual inventory and report; review; sale of surplus property.

(A)(1) Every state agency, as defined by law, shall annually perform an inventory and prepare a report of all residential and surplus real property owned by it. The report shall be submitted to the Department of Administration, Division of General Services, on or before June thirtieth and shall indicate current use, current value, and projected use of the property. Property not currently being utilized for necessary agency operations shall be made available for sale and funds received from the sale of the property shall revert to the general fund.

(2) The Division of General Services shall review the annual reports addressing real property submitted to it and determine the real property which is surplus to the State. A central listing of such property will be maintained for reference in reviewing subsequent property acquisition needs of agencies.

(3) Upon receipt of a request by an agency to acquire additional property, the Division of General Services shall review the surplus property list to determine if the agency's needs may be met from existing state-owned property. If such property is identified, the division shall act as broker in transferring the property to the requesting agency under terms and conditions that are mutually agreeable to the agencies involved.

(4) The department may authorize the Division of General Services to sell any unassigned surplus real property. The division shall have the discretion to determine the method of disposal to be used, which possible methods include: auction, sealed bids, listing the property with a private broker or any other method determined by the division to be commercially reasonable considering the type and location of property involved.

(B) The procedures involving surplus real property sales under this section also are subject to the approvals required in Section 1-11-65 for surplus real property sales above five hundred thousand dollars.

HISTORY: 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.B, eff July 1, 2015.

Code Commissioner's Note

In 2012 the Code Commissioner substituted "as defined by law" for "as defined by Section 1-19-40 in Subsection (1).

Editor's Note

2004 Act No. 248, Part IB, Section 73.18, subsection (A), provides as follows:

"(A) It is the intent of the General Assembly to establish a comprehensive central property and office facility management process to plan for the needs of state government agencies and to achieve maximum efficiency and economy in the use of state owned or state leased real properties. The Budget and Control Board is directed to identify all state owned properties whether titled in the name of the state or an agency or department, and all agencies and departments of state government are upon request to provide the Board all documents related to the title and acquisition of the real properties that are occupied or used by the agency or titled in the name of the agency. Except for any properties where the Board determines title should not transfer because the properties are subject to reverter clauses or other restraints upon transfer of title to the State, or where the Board determines the state would be best served by not receiving title, and with the exception of properties, highways and roadways owned by the Department of Transportation, title of any property held in a state agency or department name is effectively transferred to the state under the control of the Budget and Control Board upon the effective date of this Act. Further, the Budget and Control Board is directed to approve a long-term plan no later than November 1, 2004, for the real property and space needs of all state agencies. Based on the plan, state owned buildings and properties that the Board determines are not needed shall be sold with the approval of the Board. Upon determination by the Board that a property should be sold, the agency is required to sell the property and remit the proceeds as directed herein. In addition existing debt on facilities and buildings may be refinanced with Board approval.

"The proceeds, net of selling expenses, from the sale of surplus properties shall be used to reduce the Fiscal Year 2001-02 accumulated budgetary general fund operating deficit as provided in this section. A schedule of future proceeds from surplus by fiscal year shall be provided as a part of the plan.

"The property that the Board should consider for sale includes but is not limited to:

"This provision applies to all state agencies and departments except: institutions of higher learning; the Public Service Authority; the Ports Authority; the MUSC Hospital Authority; the Myrtle Beach Air Force Redevelopment Authority; the Department of Transportation; and the Charleston Naval Complex Redevelopment Authority.

"This provision is comprehensive and supersedes any conflicting provisions concerning title and acquisition and disposition of state owned real property whether in permanent law, temporary law or by provision elsewhere in this Act.

"Funds derived from sales and refinancing pursuant to this provision are to be used as provided in this section, except in those instances where the Board determines that the funds should be applied to debt payments related to the property."

Effect of Amendment

2014 Act No. 121, Section 7.B, added subsection designator (A); in subsection (A)(1), substituted "Department of Administration, Division of" for "State Budget and Control Board, Office of"; in subsection (A)(2), substituted "Division" for "Office" and "shall review" for "will review"; in subsection (A)(3), substituted "Division" for "Office", substituted "may be met" for "can be met", and substituted "division" for "Office of General Services"; in subsection (A)(4), substituted "department may authorize the Division" for "Budget and Control Board may authorize the Office", and twice substituted "division" for "Office of General Services"; and added subsection (B).