

REAL PROPERTY SERVICES
DESCRIPTION OF SERVICES

April 2012

Real Property Services provides centralized real estate related services for all agencies of the State of South Carolina. Except for property matters for those agencies and processes specifically exempt from the oversight delegated by the South Carolina Code of Laws and the South Carolina Code of Regulations, Real Property Services, on behalf of the Budget and Control Board and the Division of General Services, maintains and processes all leases either for or from a state agency; easements over and across state-owned property, including marshlands and navigable waterways; real property inventory; conveyances of surplus real property; and annexations of state-owned property into municipalities. The primary source of funding for Real Property Services is from the leasing of State-owned buildings maintained by the Division of General Services to State agencies (Rent Account-3124).

The oversight delegated to the Budget and Control Board and the Division of General Services regarding real property matters is required by the following:

- Leases:
SC Code of Laws §1-11-55, §1-11-56, §1-11-67
SC Code of Regulations §19-447.1000
- Easements:
SC Code of Laws §1-11-80, §1-11-90, §1-11-100 and §10-1-130
- Real Property Inventory:
2010 S.C. Act No. 291, Part 1B, § 90.2, SC Code of Laws §1-11-70
- Surplus Real Property:
SC Code of Laws §1-11-58 and §1-11-65
- Annexations:
SC Code of Laws §5-3-140

The following is a description of each of Real Property Services areas:

LEASES

Real Property Services acts on behalf of the Budget and Control Board as the single central broker for the leasing of real property for state governmental bodies. Whenever a state agency wishes to lease property, Real Property Services reviews all reported vacant state-owned space and/or conducts a search for available commercial properties (usually through a "solicitation" process) and negotiates a lease. This staff actively markets state-owned properties and space maintained by the Budget and Control Board available for lease to other governmental bodies. Real Property Services also assists state agencies in the leasing of other state-owned real property not maintained by the Budget and Control Board to other governmental bodies and private entities which, for brevity, are referred to as "lease-outs." Also, all state agencies are required to report annually to Real Property Services all leases exempt from Budget and Control Board oversight [**S.C. Code of Regulations §19-447.1000(C)**], and Real Property Services also maintains an inventory of all such exempt leases.

Leases of State-owned Space by an Agency:

- Lease of space by an agency in any space owned by a state agency (either B&CB maintained and controlled, or owned and/or controlled by another state agency) are considered agency to agency

leases, and may be staff-approved by the Division of General Services. [S.C. Code of Regulations §19-447.1000(B). See also S.C. Code of Laws §11-35-4850].

Leases of Commercial Space by an Agency:

- By B&CB action at its **March 26, 2002 meeting**, state agencies are exempt from the lease procurement process for commercial leases (non-state-owned property) with an annual rent amount of up to \$25,000 in a fiscal year.
- **Act 74 (R109, S172) of the 119th Session, 2011-2012, Section 13**, amended §1-11-55(2) of the 1976 Code to include that "a technical college, with the approval by the State Board for Technical and Comprehensive Education, and a public institution of higher learning, may enter into any lease agreement or renew any lease agreement up to \$100,000 annually for each property or facility."
- Commercial Leases with a rent amount of greater than \$25,000 annually and less than \$1 Million in a five-year period maybe staff-approved by the Division of General Services. (S.C. Code §1-11-55.
- Commercial leases that commit more than \$1 Million in a five-year period require not only the approval of the Division of General Services, but also the review of JBRC and the approval of the five-member B&CB. (S.C. Code §1-11-56)

Leases of State-owned Space to a Non-government Entity:

- The lease of state-owned real property, whether titled in the name of the State of South Carolina or any governmental body, to any commercial entity requires the approval by the Division of General Services [S.C. Code of Regulations §19-447.1000(B)]. By B&CB action at its **September 23, 2008 meeting**, the Director of General Services Division has the authority to approve leases of state property and space to non-government entities when the term does not exceed five years, is less than \$50,000 per year, and does not exceed \$250,000 over the maximum term of five years. Presumably, based on the restrictions imposed by the 2008 board action relative to "lease outs" and in accordance with office policy, leases of state-owned space to non-government entities which exceeds the threshold established by the B&CB requires the additional approval of the five-member Budget and Control Board.

Additional Leasing Exemptions:

- **January 13, 2010:** The B&CB delegated authority to the staff of the Division of General Services to review and approve the lease of **Clemson** property at the Restoration Institute and any easements and rights of way associated with development of the wind turbine drivetrain test facility. General Services will provide notice to the Board prior to approval.
- **A82, R240, S1066 of 2008: State Farmers' Market:** (C) As part of the relocation project authorized in this joint resolution, **the Commissioner of Agriculture is authorized** to terminate the pending project on the Walker Tract in Richland County, **to** resolve any related disputes, negotiate and **enter any agreements incidental to the relocation project**, and to engage any needed professional services. The commissioner shall provide a quarterly update on the progress of the relocation of the Columbia State Farmers' Market and the implementation of the statewide farmers' market plan to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee. Further, notwithstanding any other provision of law relating to the approval of state real property transactions, **the commissioner must consult with the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Division of General Services prior to entering into any real property**

transaction. Any real estate purchased as part of the relocation project shall be titled in the name of the State of South Carolina. The commissioner is prohibited from purchasing any real estate for the project at an amount greater than the appraised value.

- **December 9, 2003:** The B&CB exempted **Clemson University** from the lease procurement procedures for the leasing out of the Information Technology Research Center (ITRC) to be located at the Clemson University International Center for Automotive Research in Greenville, South Carolina.
- **March 5, 1996:** The B&CB granted an exemption from the leasing procedures for the leasing of **Clemson University PSA** lands provided that the leasing be done in accordance with procedures to be approved by the General Services Division.
- **December 20, 1989:** The B&CB exempted the following **State Development Board** procurements: all procurements paid from the Frankfurt, West Germany office for the use of that office; leases for office space in foreign countries; and all part-time international business consultants who represent the State of South Carolina in foreign countries.
- **October 22, 1985:** The B&CB exempted the following governmental bodies from the Real Property Services leasing procedure requirements of Part II, Section 5 of the 1985-86 Appropriations Act in the leasing of the following types of real property:

Department of Agriculture: State-owned farmers markets

Highways and Public Transportation: lands for maintenance and construction purposes.

Community Mental Health Centers (Department of Mental Health)

Department of Corrections: farm lands

Mental Retardation: farm lands

Forestry Commission: forest lands

PRT: State parks and recreation lands

Wildlife Department: game management areas

In addition, the Board exempted **all governmental bodies** from the real property leasing procedure requirements of **Part II, Section 5 of the 1985-86 Appropriations Act** in the leasing of the following types of real property:

State-owned student housing/dorm space;

Parking spaces in State-owned garages or lots;

State-owned lecture halls, theaters, coliseums, athletic areas, recreation areas and other areas for periods of less than seven days;

Non-State-owned real property

(a) for less than 3 months in a single fiscal year, or

(b) for a total cost of less than \$5,000 in a single fiscal year;

State-owned box or other seats

[Note: Part II, Section 5 of the 1985-86 Appropriations Act was superseded by 1-11-65 which originally referred to all real property transactions. Code Section 1-11-65 was later superseded by 1-11-57.]

- **October 22, 1985:** **State Housing Authority** exempted from provisions of Code Section 1-11-65.
- **September 12, 1985:** **State Ports Authority** and **Public Service Authority (Santee Cooper)** exempted from provisions of Code Section 1-11-65.

EASEMENTS

All navigable waters of South Carolina are considered public trust properties owned by the State. The State of South Carolina is the custodian of these lands and/or waters, and it is within the interest of the State to protect the public interest in which these lands are held. Any easement requested across, over, under or through State-owned property, including marshlands and navigable waters, require the approval of the Budget and Control Board. Real Property Services reviews and assesses all such easement requests and presents to the five-member Budget and Control Board for final approval those easement requests determined to be necessary and beneficial.

Applicants must submit a completed easement application to Real Property Services. This application must be accompanied by:

1. two drawings showing the location and dimensions of the easement and bearing the date, name, signature, RLS number and seal of the surveyor,
2. copy of easements or other documents (i.e., encroachment permit) authorizing the use of adjacent lands and
3. copy of U.S. Army Corps of Engineers and/or DHEC construction permit or correspondence granting construction approval.

The request for a state easement is the final step in the permitting process. All other required permits must be obtained prior to requesting Budget and Control Board approval.

The consideration for easements granted over marshlands or other navigable waters is \$200 per acre or any portion of an acre, plus a \$500 administrative fee. The fee for all other easements over State lands not exempt from real property oversight is the appraised value of the easement plus a \$500 administrative fee. Easements granted over State lands to serve and benefit a State agency are exempt from the aforementioned fees. Fees collected for easements are deposited into Account G041, the Sinking Fund.

Authority for Easement Approvals/Exemptions:

- Easements over state-owned property, navigable waters and marshlands in the state may only be granted upon the approval of the Budget and Control Board, in accordance with the Code sections referred to above (S.C. Code of Laws §1-11-80, §1-11-90, §1-11-100 and §10-1-130).
- The B&CB approved at its **December 9, 2003** meeting:
 - a. A charge of \$500 and \$200 per acre for each easement granted by the Budget and Control Board across navigable waterways and submerged lands.
 - b. For those easements over state-owned real property under the purview of the Budget and Control Board, \$500 will be charged in addition to the fair market value of the easement area as determined by the General Services Division. In the discretion of General Services, fair market value will be determined by contacting the County Tax Assessor to obtain the estimate of the value of real property in the area of the county where the easement is to be located or by requiring an appraisal of the value of the easement.
 - c. Political subdivisions will also be charged in the same manner as any other applicant for any easement granted by the Budget and Control Board, regardless of the location.

- d. Easements will be granted for a fifty-year duration with renewal at the State's discretion for an appropriate additional charge.
- e. Agencies which grant easements for which the Budget and Control Board concurs and acquiesces determine their easement consideration in a manner that is consistent with the policy of the Board.
- **S.C. Code of Laws §44-11-110** The Mental Health Commission may, by resolution recorded on the minutes of its meetings, grant easements, permits or rights of ways on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery.
- The **Department of Transportation** has the authority to grant permits over those properties titled to it in accordance with the **S.C. Code of Laws Title 57 Chapter 3**.

REAL PROPERTY INVENTORY

Real Property Services, on behalf of the Budget and Control Board, is directed to identify all state-owned real property parcels, 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 to Real Property Services all documents related to the title acquisition of the real properties that are occupied or used by the agency or titled in the name of the agency. Accordingly, Real Property Services maintains an inventory of all state real property parcels, except for those properties titled to agencies and departments specifically exempted from the standard titling of state-owned real property and reporting requirements. The information contained in the inventory database is provided by the agencies and institutions that control and/or operate the properties as required by **S.C. Code of Laws §1-11-58**.

SURPLUS REAL PROPERTY

Conveyances of surplus real property are subject to Budget and Control Board approval in accordance with **S.C. Code of Laws §1-11-65**. Unless specifically otherwise exempted, the following procedures are followed in the disposal of real property:

1. A state agency may declare real property as surplus by sending written notice to Real Property Services identifying the property and providing information regarding the prior use of the property. Once the real property has been deemed surplus by the agency and prior to any disposal efforts being made, the agency shall contact Real Property Services to determine the method of disposal.
2. Real Property Services maintains a central listing of surplus real property for reference in reviewing subsequent property acquisition needs of state agencies.
3. If an agency's need for additional real property can be met with state-owned property, Real Property Services, on behalf of the Division of General Services, shall act as broker in transferring or assigning the property to the requesting agency.
4. The Budget and Control Board may authorize the Division of General Services to sell any surplus real property. Real Property Services has discretion to determine the method of disposal to be used, which possible methods include: sealed bid process, listing the property with a private broker, listing the property for auction with a private auctioneer, or any other method determined by Real Property Services to be commercially reasonable considering the type and location of property involved.

5. Prior to the disposal of real property, Real Property Services places notices in several publications and venues including state and local newspapers, the South Carolina Business Opportunities Newsletter (SCBO) and this Real Property Services website.
6. Prior to the disposal of real property, an appraisal of the property by a state certified appraiser, preferably MAI, must be approved by Real Property Services.
7. Except in extraordinary circumstances, real property will not be sold for less than its appraised value.

Technical Colleges: The disposal of all properties by South Carolina technical colleges require not only the approval of the B&CB, but also JBRC in accordance with **S.C. Code of Laws §59-53-53**.

Consideration for the Sale of State-owned Property:

- **S.C. Code of Laws §2-1-170:** The General Assembly shall not by act or resolution give away any State-owned property but may provide that State-owned property may be sold at fair market value.
- **South Carolina Constitution Article III, Section 31.** Public lands. Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the General Assembly from granting a right of way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across State land, nor to interfere with the discretion of the General Assembly in confirming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim.

In accordance with **Proviso 80A.33 (FY 12)**, except for properties controlled by state agencies and departments specifically exempted from this proviso, up to 50% of the proceeds, net of selling expenses, from the sale of surplus real properties shall be retained by the Budget and Control Board and are deposited into Account G042 for the deferred maintenance of state-owned buildings.

ANNEXATIONS

All requests to annex a state-owned property into the city limits of any municipality are processed and reviewed by Real Property Services to present for approval to the five-member Budget and Control Board in accordance with **S.C. Code of Laws §5-3-140**. The city or town requesting or supporting the annexation of state property must adhere to the following:

1. The municipality must waive, in perpetuity, any right to levy, collect or charge, directly or indirectly, any franchise, stormwater drainage or other fee or cost upon the State for services provided to the State or its agencies or the subject property for as long as the property is owned by the State of South Carolina;
2. The municipality must give public notice of the proposed annexation and hold a public hearing at which those interested are given an opportunity to express their views. The result of this meeting should be furnished by a copy of the minutes of the meeting or some other official written communication from the City/Town to the Board.
3. An annexation that changes voting practices or procedures for the affected area requires compliance with Section 5 of the Voting Rights Act of 1965, as amended. Most voting changes can be reviewed administratively by submitting the voting change to the Civil Rights Division of the Department of Justice. Submissions are subject to a 60-day review period and the voting change can be implemented if the Attorney General affirmatively indicates no objection to the

change or if, at the expiration of 60 days, no objection to the change has been interposed by the Attorney General. Submissions under Section 5 can be mailed to the Civil Rights Division or filed electronically here. Preclearance under Section 5 must be provided to Real Property Services by the municipality before requesting the Budget and Control Board's approval of the annexation.

The agency/institution that owns, controls or uses the property involved must provide the following information:

1. A letter requesting the proposed annexation and stating the benefits the agency expects as a result;
2. A letter from the Senator whose district includes the property expressing his/her view of the proposed annexation;
3. A letter from the Representative whose district includes the property expressing his/her view of the proposed annexation;
4. A written legal description of the real property to be annexed;
5. A map showing the property to be annexed and the municipality's current city/town limits; and
6. A tax map number of the property.

After Budget and Control Board approval, Real Property Services will prepare the Petition for Annexation to be executed by the Director of the Division of General Services and will forward the signed petition to the City/Town Manager.