

By Senator Atwater

25-1096-04

1                                   A bill to be entitled  
2           An act relating to public property and publicly  
3           owned buildings; amending s. 255.248, F.S.;  
4           defining terms; amending s. 255.249, F.S.;  
5           prescribing powers and duties of the Department  
6           of Management Services with respect to  
7           allocation of space and procuring and managing  
8           leases of space; amending s. 255.25, F.S.;  
9           requiring department approval of nonconforming  
10          space allocations; requiring uniform leasing  
11          procedures; providing for rules; amending s.  
12          255.29, F.S.; deleting the department's  
13          authority to adopt rules with respect to  
14          prequalification of bidders on building  
15          construction contracts; amending s. 255.31,  
16          F.S.; revising terminology; amending s.  
17          255.503, F.S.; providing for the department to  
18          engage professional assistance in disposing of  
19          or managing facilities and in its operations  
20          and activities; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
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24           Section 1. Subsections (3) and (4) are added to  
25 section 255.248, Florida Statutes, to read:

26           255.248 Definitions; ss. 255.249 and 255.25.--The  
27 following definitions shall apply when used in ss. 255.249 and  
28 255.25:

29           (3) The term "privately owned office building" means  
30 any building not owned by a governmental agency which is  
31

1 predominantly used for administrative direction and support  
2 functions.

3 (4) The term "private tenant representative" means a  
4 nongovernmental entity that is licensed as a real estate  
5 broker by this state and that is engaged by the Department of  
6 Management Services to assist the state in acquiring real  
7 estate through lease transactions.

8 Section 2. Section 255.249, Florida Statutes, is  
9 amended to read:

10 255.249 Department of Management Services;  
11 responsibility; department rules.--

12 (1) The Department of Management Services ~~has~~ shall  
13 ~~have~~ responsibility and authority for the custodial and  
14 preventive maintenance, repair, and allocation of space of all  
15 buildings in the Florida Facilities Pool and the grounds  
16 located adjacent thereto.

17 (2) The department may not allocate space in  
18 state-owned buildings or privately owned office buildings  
19 that, to the extent possible without sacrificing critical  
20 public or client services, exceeds an average of 180 usable  
21 square feet for each agency full-time equivalent position  
22 ~~shall require any state agency planning to terminate a lease~~  
23 ~~for the purpose of occupying space in a new state-owned office~~  
24 ~~building, the funds for which are appropriated after June 30,~~  
25 ~~2000, to state why the proposed relocation is in the best~~  
26 ~~interest of the state.~~

27 (3) The department has the responsibility and  
28 authority for the procurement and management of all state  
29 agency leases of privately owned buildings, including the  
30 authority to retain and designate a private real estate  
31 consultant to provide tenant representation services ~~shall, to~~

1 ~~the extent feasible, coordinate the vacation of privately~~  
2 ~~owned leased space with the expiration of the lease on that~~  
3 ~~space and, when a lease is terminated before expiration of its~~  
4 ~~base term, will make a reasonable effort to place another~~  
5 ~~state agency in the space vacated. Any state agency may lease~~  
6 ~~the space in any building that was subject to a lease~~  
7 ~~terminated by a state agency for a period of time equal to the~~  
8 ~~remainder of the base term without the requirement of~~  
9 ~~competitive bidding.~~

10 (4) The department shall adopt ~~promulgate~~ rules  
11 pursuant to chapter 120 providing:

12 (a) Methods for accomplishing the duties outlined in  
13 subsections ~~subsection~~ (1), (2), and (3).

14 (b) Procedures for soliciting and accepting  
15 competitive bids, proposals, or replies for leased space of  
16 5,000 square feet or more in privately owned buildings, for  
17 evaluating the bids, proposals, or replies received, for  
18 exemption from competitive solicitation ~~bidding~~ requirements  
19 of any lease the purpose of which is the provision of care and  
20 living space for persons or emergency space needs as provided  
21 in s. 255.25(10), and for the securing of at least three  
22 documented quotes for a lease that is not required to be  
23 competitively solicited ~~bid~~.

24 (c) A standard method for determining square footage  
25 or any other measurement used as the basis for lease payments  
26 or other charges.

27 (d) Methods of allocating space in both state-owned  
28 office buildings and privately owned buildings leased by the  
29 state based on use, personnel, and office equipment.

30 (e) Acceptable terms and conditions for inclusion in  
31 lease agreements.

1           (f) Maximum rental rates, by geographic areas or by  
2 county, for leasing privately owned space.

3           (g) A standard method for the assessment of rent to  
4 state agencies and other authorized occupants of state-owned  
5 office space, notwithstanding the source of funds.

6           (h) For full disclosure of the names and the extent of  
7 interest of the owners holding a 4-percent or more interest in  
8 any privately owned property leased to the state or in the  
9 entity holding title to the property, for exemption from such  
10 disclosure of any beneficial interest which is represented by  
11 stock in any corporation registered with the Securities and  
12 Exchange Commission or registered pursuant to chapter 517,  
13 which stock is for sale to the general public, and for  
14 exemption from such disclosure of any leasehold interest in  
15 property located outside the territorial boundaries of the  
16 United States.

17           (i) For full disclosure of the names of all public  
18 officials, agents, or employees holding any interest in any  
19 privately owned property leased to the state or in the entity  
20 holding title to the property, and the nature and extent of  
21 their interest, for exemption from such disclosure of any  
22 beneficial interest which is represented by stock in any  
23 corporation registered with the Securities and Exchange  
24 Commission or registered pursuant to chapter 517, which stock  
25 is for sale to the general public, and for exemption from such  
26 disclosure of any leasehold interest in property located  
27 outside the territorial boundaries of the United States.

28           (j) A method for reporting leases for nominal or no  
29 consideration.

30           (k) For a lease of less than 5,000 square feet, a  
31 method for certification by the agency head or the agency

1 head's designated representative that all criteria for leasing  
2 have been fully complied with and for the filing of a copy of  
3 such lease and all supporting documents with the department  
4 for its review and approval as to technical sufficiency.

5 (5) The Department of Management Services shall  
6 prepare a form listing all conditions and requirements adopted  
7 pursuant to this chapter which must be met by any state agency  
8 leasing any building or part thereof. This form shall be  
9 certified by the agency head or the agency head's designated  
10 representative. However, the form may be amended with written  
11 approval from the agency head or the agency head's designated  
12 representative.

13 Section 3. Subsections (1), (2), (3), (4), (8), and  
14 (10) of section 255.25, Florida Statutes, are amended to read:

15 255.25 Approval required prior to construction or  
16 lease of buildings.--

17 (1)(a) A ~~No~~ state agency may not lease space in a  
18 private building that is to be constructed for state use  
19 unless prior approval of the architectural design and  
20 preliminary construction plans is first obtained from the  
21 Department of Management Services. The department shall  
22 require space allocation standards for leased space in a  
23 privately owned building. An agency may not enter into a lease  
24 that is not in accordance with the space allocation standard  
25 listed in s. 255.249(2) without department approval.

26 (b) During the term of existing leases for~~each~~  
27 agency, the Department of Management Services or its  
28 designated representative shall monitor market conditions and  
29 shall initiate negotiations for each lease held in the private  
30 sector to effect the best overall lease terms reasonably  
31 available to that agency. Amendments to leases may be

1 permitted to modify any lease provisions or any other terms or  
2 conditions, except to the extent specifically prohibited by  
3 this chapter. ~~The Department of Management Services shall~~  
4 ~~serve as a mediator in lease renegotiations if the agency and~~  
5 ~~the lessor are unable to reach a compromise within 6 months of~~  
6 ~~renegotiation and if either the agency or lessor requests the~~  
7 ~~Department of Management Services' intervention.~~

8 (c) When specifically authorized by the Appropriations  
9 Act and in accordance with s. 255.2501, if applicable, the  
10 Department of Management Services may conduct ~~approve~~ a  
11 lease-purchase, sale-leaseback, or tax-exempt leveraged lease  
12 contract or other financing technique for the acquisition,  
13 renovation, or construction of a state fixed capital outlay  
14 project when it is in the best interest of the state.

15 (2)(a) ~~Except as provided in s. 255.2501, no state~~  
16 ~~agency may lease a building or any part thereof unless prior~~  
17 ~~approval of the lease conditions and of the need therefor is~~  
18 ~~first obtained from the Department of Management Services.~~ Any  
19 ~~approved~~ lease may include an option to purchase or an option  
20 to renew the lease, or both, upon such terms and conditions as  
21 are established by the department subject to final approval by  
22 the head of the Department of Management Services and s.  
23 255.2502.

24 (b) The approval of the Department of Management  
25 Services, except for technical sufficiency, need not be  
26 obtained for the lease of less than 5,000 square feet of space  
27 within a privately owned building, provided the agency head or  
28 the agency head's designated representative has certified  
29 compliance with applicable leasing criteria as may be provided  
30 pursuant to s. 255.249(4)(k) and has determined such lease to  
31 be in the best interest of the state. Such a lease which is

1 for a term extending beyond the end of a fiscal year is  
2 subject to the provisions of ss. 216.311, 255.2502, and  
3 255.2503.

4 (c) The Department of Management Services shall adopt  
5 as a rule uniform leasing procedures for use by agencies and  
6 by the department or its designee in procuring and managing  
7 private-sector leases for each state agency other than the  
8 Department of Transportation. ~~Each state agency shall ensure~~  
9 ~~that the leasing practices of that agency are in substantial~~  
10 ~~compliance with the uniform leasing rules adopted under this~~  
11 ~~section and ss. 255.249, 255.2502, and 255.2503.~~

12 (3)(a) Except as provided in subsection (10), the  
13 Department of Management Services may not ~~no state agency~~  
14 ~~shall~~ enter into a lease as lessee for the use of 5,000 square  
15 feet or more of space in a privately owned building except  
16 upon advertisement for and receipt of competitive  
17 solicitations ~~bids and award to the lowest and best bidder.~~  
18 The Department of Management Services has ~~shall have~~ the  
19 authority to enter into ~~approve~~ a lease for 5,000 square feet  
20 or more of space that covers more than 1 fiscal year, subject  
21 to the provisions of ss. 216.311, 255.2501, 255.2502, and  
22 255.2503, if such lease is, in the judgment of the department,  
23 in the best interests of the state. This paragraph does not  
24 apply to buildings or facilities of any size leased for the  
25 purpose of providing care and living space for persons.

26 (b) The Department of Management Services may enter  
27 into ~~approve~~ extensions of an existing lease of 5,000 square  
28 feet or more of space if such extensions are determined to be  
29 in the best interests of the state, ~~but in no case shall the~~  
30 ~~total of such extensions exceed 11 months.~~ If the Department  
31 of Management Services ~~if at the end of the 11th month an~~

1 ~~agency still needs that space, it shall be procured by~~  
2 ~~competitive bid in accordance with s. 255.249(4)(b). However,~~  
3 ~~an agency that determines that it is in the its best interest~~  
4 ~~of the state that an agency to remain in the space it~~  
5 ~~currently occupies, the department may negotiate a replacement~~  
6 ~~lease with the lessor if an independent comparative market~~  
7 ~~analysis demonstrates that the rates offered are within market~~  
8 ~~rates for the space and the cost of the new lease does not~~  
9 ~~exceed the cost of a comparable lease plus documented moving~~  
10 ~~costs. A present-value analysis and the consumer price index~~  
11 ~~shall be used in the calculation of lease costs. ~~The term of~~~~  
12 ~~the replacement lease may not exceed the base term of the~~  
13 ~~expiring lease.~~

14 (c) Any person who files an action protesting a  
15 decision or intended decision pertaining to a competitive  
16 solicitation bid for space to be leased by the agency pursuant  
17 to s. 120.57(3)(b) shall post with the state agency at the  
18 time of filing the formal written protest a bond payable to  
19 the agency in an amount equal to 1 percent of the estimated  
20 total rental of the basic lease period or \$5,000, whichever is  
21 greater, which bond shall be conditioned upon the payment of  
22 all costs which may be adjudged against him or her in the  
23 administrative hearing in which the action is brought and in  
24 any subsequent appellate court proceeding. If the agency  
25 prevails after completion of the administrative hearing  
26 process and any appellate court proceedings, it shall recover  
27 all costs and charges which shall be included in the final  
28 order or judgment, excluding attorney's fees. Upon payment of  
29 such costs and charges by the person protesting the award, the  
30 bond shall be returned to him or her. If the person  
31 protesting the award prevails, the bond shall be returned to



1 that person and he or she shall recover from the agency all  
2 costs and charges which shall be included in the final order  
3 of judgment, excluding attorney's fees.

4 (d) The Department of Management Services ~~agency~~ and  
5 the lessor, when entering into a lease for 5,000 or more  
6 square feet of a privately owned building, shall, before the  
7 effective date of the lease, agree upon and separately state  
8 the cost of tenant improvements which may qualify for  
9 reimbursement if the lease is terminated before the expiration  
10 of its base term. ~~The department shall serve as mediator if~~  
11 ~~the agency and the lessor are unable to agree.~~ The amount  
12 agreed upon and stated shall, if appropriated, be amortized  
13 over the original base term of the lease on a straight-line  
14 basis.

15 (e) The unamortized portion of tenant improvements, if  
16 appropriated, will be paid in equal monthly installments over  
17 the remaining term of the lease. If any portion of the  
18 original leased premises is occupied after termination but  
19 during the original term by a tenant that does not require  
20 material changes to the premises, the repayment of the cost of  
21 tenant improvements applicable to the occupied but unchanged  
22 portion shall be abated during occupancy. The portion of the  
23 repayment to be abated shall be based on the ratio of leased  
24 space to unleased space.

25 (4)(a) The Department of Management Services may ~~shall~~  
26 ~~not authorize any state agency to~~ enter into a lease agreement  
27 for space in a privately owned building when suitable space is  
28 available in a state-owned building located in the same  
29 geographic region, except upon ~~presentation to the department~~  
30 ~~of sufficient written justification, acceptable to the~~  
31 ~~department,~~ that a separate space is required in order to

1 fulfill the statutory duties of the agency making such  
2 request. Upon the availability of suitable space in a  
3 state-owned facility, the department may terminate a private  
4 lease and relocate into the state-owned facility.The term  
5 "state-owned building" as used in this subsection means any  
6 state-owned facility regardless of use or control.

7 (b) State agencies shall cooperate with local  
8 governmental units by using suitable, existing publicly owned  
9 facilities, subject to the provisions of ss. 255.2501,  
10 255.2502, and 255.2503. Agencies may utilize unexpended funds  
11 appropriated for lease payments to:

- 12 1. Pay their proportion of operating costs.
- 13 2. Renovate applicable spaces.

14 (8) The Department of Management Services may not ~~No~~  
15 ~~agency shall~~ enter into more than one lease for space in the  
16 same privately owned facility or complex within any 12-month  
17 period except upon competitive ~~the~~ solicitation and award ~~of~~  
18 ~~competitive bids~~.

19 (10) The Department of Management Services may approve  
20 emergency acquisition of space without competitive  
21 solicitations ~~bids~~ if existing state-owned or state-leased  
22 space is destroyed or rendered uninhabitable by an act of God,  
23 fire, malicious destruction, or structural failure, or by  
24 legal action, if the chief administrator of the state agency  
25 or the chief administrator's designated representative  
26 certifies in writing that no other agency-controlled space is  
27 available to meet this emergency need, but in no case shall  
28 the lease for such space exceed 11 months. If the lessor  
29 elects not to replace or renovate the destroyed or  
30 uninhabitable facility, the agency shall procure the needed  
31 space by competitive bid in accordance with s. 255.249(4)(b).

1 If the lessor elects to replace or renovate the destroyed or  
2 uninhabitable facility and the construction or renovations  
3 will not be complete at the end of the 11-month lease, the  
4 department ~~agency~~ may modify the lease to extend it on a  
5 month-to-month basis for an additional 6 months to allow  
6 completion of such construction or renovations.

7 Section 4. Section 255.29, Florida Statutes, is  
8 amended to read:

9 255.29 Construction contracts; department rules.--The  
10 Department of Management Services shall establish, through the  
11 adoption of administrative rules as provided in chapter 120:

12 ~~(1) Procedures for determining the qualifications and~~  
13 ~~responsibility of potential bidders prior to advertisement for~~  
14 ~~and receipt of bids for building construction contracts,~~  
15 ~~including procedures for the rejection of bidders who are~~  
16 ~~reasonably determined from prior experience to be unqualified~~  
17 ~~or irresponsible to perform the work required by a proposed~~  
18 ~~contract.~~

19 (1)(2) Procedures for awarding each state agency  
20 construction project to the lowest qualified bidder as well as  
21 procedures to be followed in cases in which the Department of  
22 Management Services declares a valid emergency to exist which  
23 would necessitate the waiver of the rules governing the  
24 awarding of state construction contracts to the lowest  
25 qualified bidder.

26 (2)(3) Procedures to govern negotiations for  
27 construction contracts and modifications to contract documents  
28 when such negotiations are determined by the secretary of the  
29 Department of Management Services to be in the best interest  
30 of the state.

31

1           (3)(4) Procedures for entering into performance-based  
2 contracts for the development of public facilities when the  
3 Department of Management Services determines the use of such  
4 contracts to be in the best interest of the state. The  
5 procedures shall include, but are not limited to:

6           ~~(a) Prequalification of bidders;~~

7           (a)~~(b)~~ Criteria to be used in developing requests for  
8 proposals which may provide for singular responsibility for  
9 design and construction, developer flexibility in material  
10 selection, construction techniques, and application of  
11 state-of-the-art improvements;

12           (b)~~(c)~~ Accelerated scheduling, including the  
13 development of plans, designs, and construction  
14 simultaneously; and

15           (c)~~(d)~~ Evaluation of proposals and award of contracts  
16 considering such factors as price, quality, and concept of the  
17 proposal.

18           Section 5. Section 255.31, Florida Statutes, is  
19 amended to read:

20           255.31 Authority to the Department of Management  
21 Services to provide fixed capital outlay appropriations  
22 management and project management services ~~manage construction~~  
23 ~~projects~~ for state agencies ~~and local governments~~.--

24           (1) The design, construction, erection, alteration,  
25 modification, repair, and demolition of all public and private  
26 buildings are governed by the Florida Building Code and the  
27 Florida Fire Prevention Code, which are to be enforced by  
28 local jurisdictions or local enforcement districts unless  
29 specifically exempted as provided in s. 553.80. However, the  
30 Department of Management Services shall provide the project  
31 management and administration services for the construction,

1 renovation, repair, modification, or demolition of buildings,  
2 utilities, parks, parking lots, or other facilities or  
3 improvements for projects for which the funds are appropriated  
4 to the department; provided that, with the exception of  
5 facilities constructed under the authority of chapters 944,  
6 945, and 985; the Governor's mansion and grounds thereof, as  
7 described in s. 272.18; and the Capitol Building and environs,  
8 being that part of the City of Tallahassee bounded on the  
9 north by Pensacola and Jefferson Streets, on the east by  
10 Monroe Street, on the south by Madison Street, and on the west  
11 by Duval Street, the department may not conduct plans reviews  
12 or inspection services for consistency with the Florida  
13 Building Code. The department's fees for such services shall  
14 be paid from such appropriations.

15 (2) The Department of Management Services may, upon  
16 request, enter into contracts with other state agencies under  
17 which the department may provide the project management,  
18 administration services, or assistance for the construction,  
19 renovation, repair, modification, or demolition of buildings,  
20 utilities, parks, parking lots, or other facilities or  
21 improvements for projects for which the funds are appropriated  
22 to other state agencies, provided that the department does not  
23 conduct plans reviews or inspection services for consistency  
24 with the Florida Building Code. The contracts shall provide  
25 for payment of fees to the department.

26 (3) This section shall not be construed to be in  
27 derogation of any authority conferred on the department by  
28 other provisions of law.

29 Section 6. Subsection (9) of section 255.503, Florida  
30 Statutes, is amended to read:

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1           255.503 Powers of the Department of Management  
2 Services.--The Department of Management Services shall have  
3 all the authority necessary to carry out and effectuate the  
4 purposes and provisions of this act, including, but not  
5 limited to, the authority to:  
6           (9) Engage the services of consultants for rendering  
7 professional and technical assistance and advice and to engage  
8 services of professionals in connection with the acquisition,  
9 disposition, management, or financing of any facility or the  
10 operation and activities of the Department of Management  
11 Services, including attorneys, auditors, consultants, and  
12 accountants.  
13           Section 7. This act shall take effect July 1, 2004.  
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15           \*\*\*\*\*  
16                                      SENATE SUMMARY  
17           Revises varied statutory provisions relating to the  
18 powers and duties of the Department of Management  
19 Services with respect to leasing private property for  
state agency use, guidelines for acquiring such property,  
20 standards for allocating space, and determining  
qualification of potential bidders. (See bill for  
21 details.)  
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