

By the Committee on Governmental Oversight and Productivity;
and Senator Atwater

302-2573-04

1 A bill to be entitled
2 An act relating to the leasing and sale of real
3 property by state agencies; amending s.
4 255.248, F.S.; creating and revising
5 definitions; providing exceptions; amending s.
6 255.249, F.S.; removing a requirement;
7 providing that the Department of Management
8 Services, rather than agencies acting on their
9 own behalf, can lease space for agencies;
10 providing that the department may retain a real
11 estate broker; providing requirements for real
12 estate broker services and for leases
13 negotiated by a broker; providing for review by
14 the Legislative Budget Commission; providing
15 exceptions; authorizing the department to
16 assign an agency to space vacated by another
17 agency; providing conditions under which an
18 agency may reject a proposed move; providing
19 for competitive solicitation of leases;
20 providing procedures; providing exceptions;
21 providing conditions for space allocation;
22 requiring adoption of a quality standard;
23 requiring an annual report for department's
24 enterprise plan; amending s. 255.25, F.S.;
25 removing a requirement that the department act
26 as a mediator; authorizing the department to
27 participate in large-scale leases; changing the
28 requirement for competitive bidding for leases
29 of real property for agencies to a requirement
30 for competitive solicitation; specifying
31 requirements for extension of a lease;

1 increasing the bond requirement for protests of
2 a lease solicitation; removing requirements for
3 review by the State Fire Marshal; removing
4 requirements for a flood plain analysis;
5 removing an exception regarding specialized
6 educational facilities; amending s. 255.25001,
7 F.S.; changing competitive bidding to
8 competitive solicitation; amending s. 255.2501,
9 F.S.; providing criteria for leasing space
10 financed by local government obligations;
11 amending s. 255.45, F.S.; requiring the
12 department to submit building plans to the
13 State Fire Marshal for a fire safety review;
14 requiring the department to review building
15 plans for compliance with flood plain
16 management; reenacting s. 633.085(1)(b), F.S.,
17 relating to fire safety in state office
18 buildings, to incorporate the amendment to s.
19 255.45, F.S., in a reference thereto; repealing
20 s. 270.27, F.S., relating to the sale of unused
21 public lands; providing for the future repeal
22 of s. 255.249(2)(b), F.S., relating to
23 authorization for the department to contract
24 for certain real estate broker services;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 255.248, Florida Statutes, is
30 amended to read:

31

1 255.248 Definitions, exceptions, and applications of
2 ss. 255.249 and 255.25.--

3 (1) The following definitions shall apply when used in
4 ss. 255.249 and 255.25:

5 (a)~~(1)~~ The term "state-owned ~~office~~ building" means
6 any real property building title to which is vested in the
7 state and which is used by one or more executive agencies
8 predominantly for administrative direction and support
9 functions.

10 (b) The term "privately owned building" means any real
11 property, the title to which is not vested in the state, and
12 which is leased for use by one or more executive agencies
13 predominantly for administrative direction and support
14 functions.

15 (c) The term "department" means the Department of
16 Management Services.~~This term excludes+~~

17 (2) Sections 255.249 and 255.25 do not apply to:

18 (a) District or area offices established for field
19 operations where law enforcement, military, inspections, road
20 operations, or tourist welcoming functions are performed.

21 (b) All educational facilities and institutions under
22 the supervision of the Department of Education or the Board of
23 Governors.

24 (c) All custodial facilities and institutions used
25 primarily for the care, custody, or treatment of inmates or
26 wards of the state.

27 (d) Buildings or spaces used by the Legislature or the
28 state courts for legislative activities.

29 (e) Buildings purchased or constructed from
30 agricultural or citrus trust funds.

31

1 ~~(2) The term "privately owned building" shall mean any~~
2 ~~building not owned by a governmental agency.~~

3 Section 2. Section 255.249, Florida Statutes, is
4 amended to read:

5 255.249 Department of Management Services;
6 responsibility; department rules.--

7 (1) The department has ~~of Management Services~~ shall
8 ~~have~~ responsibility and authority for the custodial and
9 preventive maintenance, repair, and allocation of space of all
10 buildings in the Florida Facilities Pool and the grounds
11 located adjacent thereto.

12 (2)(a) The department has the responsibility and
13 authority to procure and manage all leases of privately owned
14 buildings on behalf of any executive agency, except as set
15 forth in s. 255.248(2).

16 (b)1. The department may competitively solicit, under
17 chapter 287, the services of a real estate broker or brokers
18 licensed under chapter 475 to assist the department in
19 negotiating leases for privately owned buildings on behalf of
20 executive agencies. Compensation for a broker's negotiation or
21 renegotiation of any lease executed or renewed by the
22 department or by an executive agency:

23 a. May only be paid when the department demonstrates
24 in writing that the lease results in a cost savings to the
25 state or otherwise provides value to the state that could not
26 have been achieved without the broker's services; and

27 b. May include a market-based commission that
28 constitutes a specified percentage of the lease price and that
29 is paid by the owners of privately owned buildings that are
30 leased by the department or other executive agencies. The
31 department must document in writing the basis for its

1 determination of the market-based commission percentage. The
2 market-based commission must provide for a structured schedule
3 wherein the commission percentage declines as the square
4 footage leased increases.

5 2. Any contract for real estate broker services
6 executed by the department under this paragraph must contain:

7 a. Methodologies for establishing baselines for
8 performance measures and standards;

9 b. Performance measures and standards that must
10 include, but are not limited to, expectations for:

11 (I) The net cost savings to be achieved by a broker
12 for the state;

13 (II) A reduction in the average price per square foot
14 for full service and less than full service private space
15 leases negotiated by the broker compared to state-procured
16 private space leased by executive agencies;

17 (III) A reduction in the square footage of private
18 space leased by executive agencies;

19 (IV) Space per full-time equivalent employee for
20 leases negotiated by the broker compared to state-procured
21 private space leased by executive agencies;

22 (V) The number of executive agency employees relocated
23 from leased private space to state-owned buildings; and

24 (VI) Executive agency and private building owner
25 satisfaction with broker services and with the price, quality,
26 and location of leased private space negotiated by a broker;

27 c. Department procedures for monitoring and evaluating
28 a broker's performance;

29 d. Processes that require monthly reporting by a
30 broker on its achievement of the performance measures and
31 standards and on the amount and basis for any compensation

1 received or to be received by the broker under the contract;
2 and

3 e. Methods for resolving situations in which a broker
4 fails to achieve the performance measures and standards, which
5 must include, but are not limited to, withholding compensation
6 and contract termination.

7 3. All cost savings resulting from leases negotiated
8 or renegotiated by a real estate broker under contract with
9 the department shall be deposited in escrow for tenant
10 improvements to the leased space or deposited in the General
11 Revenue Fund.

12 4. Information on the costs and benefits of any lease
13 that has been negotiated or renegotiated by a real estate
14 broker under contract with the department shall be provided to
15 the chair and vice chair of the Legislative Budget Commission
16 if the annualized cost of the new or renegotiated lease is in
17 excess of \$1 million and if it represents a greater than 10
18 percent change in the annualized cost of the department's or
19 other executive agency's original lease. The head of the
20 department or an executive agency that provides information
21 under this subparagraph may be requested to make a
22 presentation at a future Legislative Budget Commission
23 meeting.

24 (c) This subsection does not apply to the Department
25 of Legal Affairs, the Department of Financial Services, or the
26 Department of Agriculture and Consumer Services, unless the
27 cabinet officer requests that the department perform the
28 service, or part thereof, for the executive agency. ~~The~~
29 department shall require any state agency planning to
30 terminate a lease for the purpose of occupying space in a new
31 state-owned office building, the funds for which are

1 ~~appropriated after June 30, 2000, to state why the proposed~~
2 ~~relocation is in the best interest of the state.~~

3 (3) The department may assign one or more executive
4 agencies to move into space vacated by another executive
5 agency. The executive agency that requested space may reject
6 the department's transfer of the executive agency into the
7 space based on excessive cost, unfavorable lease terms or
8 conditions, negative impact on employee productivity, security
9 concerns, poor location, poor building quality, insufficient
10 parking, excessive moving costs, or difficult access for
11 persons served by the executive agency. In order to reject the
12 transfer, the head of the executive agency must state in
13 writing the specific reason or reasons for rejecting the
14 vacated space.~~The department shall, to the extent feasible,~~
15 ~~coordinate the vacation of privately owned leased space with~~
16 ~~the expiration of the lease on that space and, when a lease is~~
17 ~~terminated before expiration of its base term, will make a~~
18 ~~reasonable effort to place another state agency in the space~~
19 ~~vacated. Any state agency may lease the space in any building~~
20 ~~that was subject to a lease terminated by a state agency for a~~
21 ~~period of time equal to the remainder of the base term without~~
22 ~~the requirement of competitive bidding.~~

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

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

27 (b) Procedures requiring the competitive solicitation
28 of, and procedures for, evaluating and accepting responses to
29 competitive solicitations ~~for soliciting and accepting~~
30 ~~competitive proposals for, leased space of 5,000 square feet~~
31 ~~or more in privately owned buildings., for evaluating the~~

1 ~~proposals received, for exemption from competitive bidding~~
2 ~~requirements of any~~ However, a lease the purpose of which is
3 to provide the provision of care and living space for persons
4 or a lease for emergency space needs as provided in s. 255.25
5 are exempt from the competitive solicitation requirement s.
6 255.25(10), and for the securing of at least three documented
7 quotes for a lease that is not required to be competitively
8 bid. The procedures:

9 1. May be simplified for a solicitation of less than
10 5,000 square feet;

11 2. Shall provide evaluation criteria applicable to the
12 evaluation of a bid, proposal, or reply; and

13 3. Shall provide that an executive agency that
14 requested space may reject the department's selection of space
15 for the executive agency based on excessive cost, unfavorable
16 lease terms or conditions, negative impact on employee
17 productivity, security concerns, poor location, poor building
18 quality, insufficient parking, excessive moving costs, or
19 difficult access for persons served by the executive agency,
20 if the head of the executive agency states in writing the
21 specific reason or reasons for the rejection. If the executive
22 agency rejects the space, the department is not required to
23 solicit new bids, proposals, or replies and may renegotiate
24 with prospective landlords who have previously replied to the
25 solicitation.

26 (c) Adoption of a standard method for determining
27 square footage or any other measurement used as the basis for
28 lease payments or other charges or determining space
29 allocation.

30 (d) Methods of allocating space in both state-owned
31 office buildings and privately owned buildings leased by

1 executive agencies ~~the state~~ based on use, personnel, and
2 office equipment. The space allocation method shall define
3 specific uses and the appropriate space to be allocated to the
4 uses. The space allocation method shall consider:

5 1. The need to accommodate persons with disabilities;

6 2. The security of the employees and the public;

7 3. The accommodation of public visitors of the
8 executive agency;

9 4. The special needs of executive agencies regarding
10 laboratory, storage, computer, telecommunications, training,
11 and other special needs spaces;

12 5. The investment in additional space when it can be
13 shown that gains in employee productivity will exceed the cost
14 of the additional space;

15 6. The allocation of space for employee wellness
16 programs, child care, cafeterias, and break areas; and

17 7. When applied to state-owned buildings, exceptions
18 to reasonably accommodate an inability to efficiently
19 reconfigure the space because of the design and age of the
20 building.

21 (e) Acceptable terms and conditions for inclusion in
22 lease agreements.

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

25 (g) A standard method for the assessment of rent to
26 executive ~~state~~ agencies and other authorized occupants of
27 state-owned ~~office~~ space, notwithstanding the source of funds.

28 (h) For full disclosure of the names and the extent of
29 interest of the owners holding a 4-percent or more interest in
30 any privately owned property leased to the state or in the
31 entity holding title to the property, for exemption from the

1 ~~such~~ disclosure of any beneficial interest which is
2 represented by stock in any corporation registered with the
3 Securities and Exchange Commission or registered under
4 ~~pursuant to~~ chapter 517, which stock is for sale to the
5 general public, and for exemption from the ~~such~~ disclosure of
6 any leasehold interest in property located outside the
7 territorial boundaries of the United States.

8 (i) For full disclosure of the names of all public
9 officials, agents, or employees holding any interest in any
10 privately owned property leased to the state or in the entity
11 holding title to the property, and the nature and extent of
12 their interest, for exemption from the ~~such~~ disclosure of any
13 beneficial interest which is represented by stock in any
14 corporation registered with the Securities and Exchange
15 Commission or registered under ~~pursuant to~~ chapter 517, which
16 stock is for sale to the general public, and for exemption
17 from the ~~such~~ disclosure of any leasehold interest in property
18 located outside the territorial boundaries of the United
19 States.

20 (j) A method for reporting leases for nominal or no
21 consideration.

22 (k) Adoption of the Building Owners and Managers
23 Association Metropolitan Base Building Classification, or
24 equivalent, as a standard method for rating the quality of
25 privately owned buildings. When practical, A or B class space
26 according to Building Owners and Managers Association
27 standards must be used.~~For a lease of less than 5,000 square~~
28 ~~feet, a method for certification by the agency head or the~~
29 ~~agency head's designated representative that all criteria for~~
30 ~~leasing have been fully complied with and for the filing of a~~
31 ~~copy of such lease and all supporting documents with the~~

1 ~~department for its review and approval as to technical~~
2 ~~sufficiency.~~

3 (5) The department of Management Services shall
4 prepare a form listing all conditions and requirements adopted
5 under ~~pursuant to~~ this chapter which must be met by any
6 executive state agency leasing any building or part thereof.
7 This form shall be certified by the executive agency head or
8 his or her ~~the agency head's~~ designated representative.

9 (6) On or before January 1, 2005, and annually
10 thereafter, the department shall submit a report to the
11 presiding officers of the Legislature which sets forth the
12 department's enterprise plan for the next 5 years for the use
13 of state-owned and state-leased space and for any acquisition,
14 financing, refinancing, or disposition of state real property
15 and improvements that the department is permitted by law to
16 execute. If the department intends to deviate from the
17 enterprise plan after submission of the annual report, the
18 department must provide notice to the presiding officers of
19 the Legislature at least 30 days prior to the execution of any
20 deviation.

21 Section 3. Section 255.25, Florida Statutes, is
22 amended to read:

23 255.25 Leasing ~~Approval required prior to construction~~
24 ~~or lease~~ of buildings.--

25 (1)(a) No executive state agency may lease space in a
26 private building that is to be constructed for state use
27 unless prior approval of the architectural design and
28 preliminary construction plans is first obtained from the
29 department of Management Services.

30 (b) During the term of existing leases, each executive
31 agency that has procured a lease in its name, and the

1 department for leases executed by the department, shall
2 monitor market conditions and shall initiate negotiations for
3 each lease of a privately owned building ~~held in the private~~
4 ~~sector~~ to effect the best overall lease terms reasonably
5 available to the state ~~that agency~~. Amendments to leases may
6 be permitted to modify any lease provisions or any other terms
7 or conditions, except to the extent specifically prohibited by
8 this chapter. ~~The Department of Management Services shall~~
9 ~~serve as a mediator in lease renegotiations if the agency and~~
10 ~~the lessor are unable to reach a compromise within 6 months of~~
11 ~~renegotiation and if either the agency or lessor requests the~~
12 ~~Department of Management Services' intervention.~~

13 (c) When specifically authorized by the Appropriations
14 Act and in accordance with s. 255.2501, if applicable, the
15 department ~~of Management Services~~ may enter into ~~approve~~ a
16 lease-purchase, sale-leaseback, or tax-exempt leveraged lease
17 contract or other financing technique for the acquisition,
18 renovation, or construction of a state fixed capital outlay
19 project when it is in the best interest of the state.

20 (d) The department, in order to seek economies of
21 scale and the opportunity to colocate executive agencies, may
22 competitively negotiate to procure new leases, renegotiate
23 existing leases, or otherwise consolidate existing leases into
24 a large scale lease or leases covering one or more privately
25 owned buildings. The department may adopt rules establishing
26 procedures to procure and manage large-scale leases and
27 provide a method for allocating lease costs among executive
28 agencies.

29 (2)(a) Except as provided in s. 255.2501, an executive
30 ~~no state~~ agency may not lease or occupy a state-owned building
31 or privately owned ~~a~~ building or any part thereof unless prior

1 approval of the lease conditions and of the need therefor is
2 first obtained from the department ~~of Management Services~~. A
3 ~~Any approved~~ lease may include an option to purchase or an
4 option to renew the lease, or both, upon ~~such~~ terms and
5 conditions acceptable to ~~as are established by~~ the department
6 ~~subject to final approval by the head of the Department of~~
7 ~~Management Services~~ and in compliance with s. 255.2502.

8 (b) The department and an executive agency allowed to
9 directly procure a ~~The approval of the Department of~~
10 ~~Management Services, except for technical sufficiency, need~~
11 ~~not be obtained for the lease or an extension of a lease must~~
12 comply of less than 5,000 square feet of space within a
13 privately owned building, provided the agency head or the
14 agency head's designated representative has certified
15 compliance with applicable leasing criteria as may be provided
16 under this section and pursuant to s. 255.249(4)(k) and shall
17 determine that the ~~has determined such lease is to be~~ in the
18 best interest of the state. ~~Such A lease that which~~ is for a
19 term extending beyond the end of a fiscal year is subject to
20 the provisions of ss. 216.311, 255.2502, and 255.2503.

21 (c) The department ~~of Management Services~~ shall adopt
22 by as a rule uniform leasing procedures for use by the
23 department and by executive agencies that may directly procure
24 space, which each state agency other than the Department of
25 Transportation. Each state agency shall ensure that the
26 leasing practices of that agency are in substantial compliance
27 with the uniform leasing rules adopted under this section and
28 ss. 255.249, 255.2502, and 255.2503.

29 (3)(a) ~~Except as provided in subsection (10), no state~~
30 ~~agency shall enter into a lease as lessee for the use of 5,000~~
31 ~~square feet or more of space in a privately owned building~~

1 ~~except upon advertisement for and receipt of competitive bids~~
2 ~~and award to the lowest and best bidder. The Department of~~
3 ~~Management Services shall have the authority to approve a~~
4 ~~lease for 5,000 square feet or more of space that covers more~~
5 ~~than 1 fiscal year, subject to the provisions of ss. 216.311,~~
6 ~~255.2501, 255.2502, and 255.2503, if such lease is, in the~~
7 ~~judgment of the department, in the best interests of the~~
8 ~~state. This paragraph does not apply to buildings or~~
9 ~~facilities of any size leased for the purpose of providing~~
10 ~~care and living space for persons.~~

11 (b) The department or an executive agency that may
12 procure its own space of Management Services may negotiate
13 with the owner of a privately owned building to enter into an
14 extension approve extensions of an existing lease of 5,000
15 square feet or more of space if the extension is such
16 extensions are determined to be in the best interests of the
17 state, but in no case shall the total of such extensions
18 exceed 11 months. When determining the best interests of the
19 state, the department or the executive agency must use an if
20 at the end of the 11th month an agency still needs that space,
21 it shall be procured by competitive bid in accordance with s.
22 255.249(4)(b). However, an agency that determines that it is
23 in its best interest to remain in the space it currently
24 occupies may negotiate a replacement lease with the lessor if
25 an independent comparative market analysis to show
26 demonstrates that the negotiated lease rate for the extension
27 is rates offered are within market rates for comparable the
28 space, that and the cost of the extension new lease does not
29 exceed the cost of a comparable space lease plus documented
30 moving costs, and that the space will adequately serve the
31 public. A present-value analysis and the consumer price index

1 shall be used in the calculation of lease costs. ~~The term of~~
2 ~~the replacement lease may not exceed the base term of the~~
3 ~~expiring lease.~~

4 (b)(c) Any person who files an action under s.
5 120.57(3)(b) protesting a decision or intended decision
6 pertaining to a competitive solicitation bid for space to be
7 leased by an executive the agency or the department under
8 pursuant to s. 120.57(3)(b) shall post with the executive
9 state agency or the department, as appropriate, at the time of
10 filing the formal written protest a bond payable to the
11 executive agency or the department in an amount equal to 1
12 percent of the estimated total rental of the basic lease
13 period or \$7,500~~\$5,000~~, whichever is greater, which bond
14 shall be conditioned upon the payment of all costs which may
15 be adjudged against the protester ~~him or her~~ in the
16 administrative hearing in which the action is brought and in
17 any subsequent appellate court proceeding. If the executive
18 agency or the department prevails after completion of the
19 administrative hearing process and any appellate court
20 proceedings, it shall recover all costs and charges which
21 shall be included in the final order or judgment, excluding
22 attorney's fees. Upon payment of the ~~such~~ costs and charges
23 by the person protesting the award, the bond shall be returned
24 to the person ~~him or her~~. If the person protesting the award
25 prevails, the bond shall be returned to that person and he or
26 she shall recover from the executive agency or the department
27 all costs and charges which shall be included in the final
28 order of judgment, excluding attorney's fees.

29 (c)(d) The executive agency or the department and the
30 lessor, when entering into a lease ~~for 5,000 or more square~~
31 ~~feet~~ of a privately owned building, shall, before the

1 effective date of the lease, agree upon and separately state
2 the cost of tenant improvements which may qualify for
3 reimbursement if the lease is terminated before the expiration
4 of its base term. ~~The department shall serve as mediator if~~
5 ~~the agency and the lessor are unable to agree.~~The amount
6 agreed upon and stated shall, if appropriated, be amortized
7 over the original base term of the lease on a straight-line
8 basis.

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

19 (4)(a) The department, or any executive agency
20 conducting its own leasing, may of Management Services shall
21 ~~not authorize any state agency to enter into a lease agreement~~
22 ~~for space in a privately owned building when suitable space is~~
23 ~~available in a state-owned building located in the same~~
24 ~~geographic region, unless except upon presentation to the~~
25 ~~department or executive agency prepares a of sufficient~~
26 ~~written justification of the need for, acceptable to the~~
27 ~~department, that a separate space is required in order to~~
28 ~~fulfill the statutory duties of the executive agency making~~
29 ~~such request.~~ The term "state-owned building" as used in this
30 subsection means any state-owned facility regardless of use or
31 control.

1 (b) The department ~~State agencies~~ shall cooperate with
2 local governmental units by using suitable, existing publicly
3 owned facilities, subject to the provisions of ss. 255.2501,
4 255.2502, and 255.2503. Executive agencies may use ~~utilize~~
5 unexpended funds appropriated for lease payments to pay the
6 local government a reasonable proportion of operating costs
7 attributable to the space used and to renovate space assigned
8 to the executive agency.†

9 ~~1. Pay their proportion of operating costs.~~

10 ~~2. Renovate applicable spaces.~~

11 ~~(5) Before construction or renovation of any~~
12 ~~state-owned building or state-leased space is commenced, the~~
13 ~~Department of Management Services shall ascertain, by~~
14 ~~submission of proposed plans to the Division of State Fire~~
15 ~~Marshal for review, that the proposed construction or~~
16 ~~renovation plan complies with the uniform firesafety standards~~
17 ~~required by the Division of State Fire Marshal. The review of~~
18 ~~construction or renovation plans for state-leased space shall~~
19 ~~be completed within 10 calendar days of receipt of the plans~~
20 ~~by the Division of State Fire Marshal. The review of~~
21 ~~construction or renovation plans for a state-owned building~~
22 ~~shall be completed within 30 calendar days of receipt of the~~
23 ~~plans by the Division of State Fire Marshal. The~~
24 ~~responsibility for submission and retrieval of the plans~~
25 ~~called for in this subsection shall not be imposed on the~~
26 ~~design architect or engineer, but shall be the responsibility~~
27 ~~of the two agencies. Whenever the Division of State Fire~~
28 ~~Marshal determines that a construction or renovation plan is~~
29 ~~not in compliance with such uniform firesafety standards, the~~
30 ~~Division of State Fire Marshal may issue an order to cease all~~
31 ~~construction or renovation activities until compliance is~~

1 ~~obtained, except those activities required to achieve such~~
2 ~~compliance. The Department of Management Services shall~~
3 ~~withhold approval of any proposed lease until the construction~~
4 ~~or renovation plan complies with the uniform firesafety~~
5 ~~standards of the Division of State Fire Marshal. The cost of~~
6 ~~all modifications or renovations made for the purpose of~~
7 ~~bringing leased property into compliance with the uniform~~
8 ~~firesafety standards shall be borne by the lessor.~~

9 ~~(6) Before construction or substantial improvement of~~
10 ~~any state-owned building is commenced, the Department of~~
11 ~~Management Services must ascertain that the proposed~~
12 ~~construction or substantial improvement complies with the~~
13 ~~flood plain management criteria for mitigation of flood~~
14 ~~hazards, as prescribed in the October 1, 1986, rules and~~
15 ~~regulations of the Federal Emergency Management Agency, and~~
16 ~~the department shall monitor the project to assure compliance~~
17 ~~with the criteria. In accordance with chapter 120, the~~
18 ~~Department of Management Services shall adopt any necessary~~
19 ~~rules to ensure that all such proposed state construction and~~
20 ~~substantial improvement of state buildings in designated~~
21 ~~flood-prone areas complies with the flood plain management~~
22 ~~criteria. Whenever the department determines that a~~
23 ~~construction or substantial improvement project is not in~~
24 ~~compliance with the established flood plain management~~
25 ~~criteria, the department may issue an order to cease all~~
26 ~~construction or improvement activities until compliance is~~
27 ~~obtained, except those activities required to achieve such~~
28 ~~compliance.~~

29 ~~(5)(7)~~ (5) This section does not apply to a any lease
30 having a term of less than 120 consecutive days for the
31 purpose of securing the one-time special use of the leased

1 property or. ~~This section does not apply~~ to any lease for
2 nominal or no consideration.

3 ~~(8) No agency shall enter into more than one lease for~~
4 ~~space in the same privately owned facility or complex within~~
5 ~~any 12-month period except upon the solicitation of~~
6 ~~competitive bids.~~

7 ~~(9) Specialized educational facilities, excluding~~
8 ~~classrooms, shall be exempt from the competitive bid~~
9 ~~requirements for leasing pursuant to this section if the~~
10 ~~executive head of any state agency certifies in writing that~~
11 ~~said facility is available from a single source and that the~~
12 ~~competitive bid requirements would be detrimental to the~~
13 ~~state. Such certification shall include documentation of~~
14 ~~evidence of steps taken to determine sole source status.~~

15 ~~(6)(10)~~ The department of Management Services may
16 approve emergency acquisition of space without competitive
17 solicitation bids if existing state-owned or state-leased
18 space is destroyed or rendered uninhabitable by an act of God,
19 fire, malicious destruction, or structural failure, or by
20 legal action, if the chief administrator of the executive
21 state agency or the chief administrator's designated
22 representative certifies in writing that no other
23 agency-controlled space is available to meet this emergency
24 need, but in no case shall the lease for such space exceed 11
25 months. If the lessor elects not to replace or renovate the
26 destroyed or uninhabitable facility, the executive agency or
27 department, as applicable, shall procure the needed space by
28 competitive solicitation bid in accordance with s.
29 255.249(4)(b). If the lessor elects to replace or renovate
30 the destroyed or uninhabitable facility and the construction
31 or renovations will not be complete at the end of the 11-month

1 lease, the executive agency or department may ~~modify the lease~~
2 ~~to extend the temporary lease it~~ on a month-to-month basis for
3 up to an additional 6 months to allow completion of ~~such~~
4 construction or renovations.

5 ~~(7)(11)~~ In any leasing of space that is accomplished
6 without competition, the individuals taking part in the
7 development or selection of criteria for evaluation, in the
8 evaluation, and in the award processes shall attest in writing
9 that they are independent of, and have no conflict of interest
10 in, the entities evaluated and selected.

11 Section 4. Section 255.25001, Florida Statutes, is
12 amended to read:

13 255.25001 Suspension or delay of specified functions,
14 programs, and requirements relating to governmental
15 operations.--Notwithstanding the provisions of:

16 (1) Section 946.504(3), as amended by chapter 92-279,
17 Laws of Florida, the Department of Management Services is
18 ~~shall not be~~ required to participate with the Department of
19 Corrections in the correctional work program (PRIDE) leasing
20 process.

21 (2) Sections 253.025 and 255.25, the Department of
22 Management Services may adopt ~~has the authority to promulgate~~
23 rules under ~~pursuant to~~ chapter 120 to use when ~~be used in~~
24 determining whether a lease-purchase of a state-owned office
25 building is in the best interests of the state, which rules
26 provide:

27 (a) Procedures executive ~~state~~ agencies will follow to
28 certify the need for a lease-purchase acquisition for a
29 state-owned office building to the Department of Management
30 Services and a notification procedure of the department's
31 decision regarding executive ~~state~~ agencies' requests for a

1 lease-purchase agreement. The certification process shall
2 include but not be limited to the following:
3 1. Current programmatic space requirements of the
4 state agency.
5 2. Future programmatic space requirements of the
6 executive ~~state~~ agency.
7 3. Time considerations in providing state-owned office
8 building space.
9 4. An analysis of existing leases affected by the
10 lease-purchase agreement.
11 (b) Procedures and document formats for the
12 ~~advertisement, competitive~~ solicitation ~~bid~~ process, including
13 format of submissions, and evaluation of lease-purchase
14 acquisition proposals for state-owned office buildings. The
15 evaluation process shall include but not be limited to the
16 following:
17 1. A consideration of the cost of comparable operating
18 leases.
19 2. The appraised value of the facility as required by
20 s. 253.025.
21 3. A present value analysis of the proposed payment
22 stream.
23 4. The cost of financing the facility to be acquired.
24 5. The cost to repair identified physical defects.
25 6. The cost to remove identified hazardous substances.
26 7. An energy analysis.
27 8. A determination of who is responsible for
28 management and maintenance activities.
29
30 In order to minimize the cost of the evaluation process, the
31 Department of Management Services may develop a multistage

1 evaluation process to identify the most cost-efficient
2 proposals for extensive evaluation. The studies developed as a
3 result of this evaluation process shall be considered
4 confidential and exempt from the provisions of s. 119.07(1) to
5 the same extent that appraisal reports are considered
6 confidential and exempt from the provisions of s. 119.07(1) as
7 provided in s. 253.025(6)(d).

8 (c) Acceptable terms and conditions for inclusion in
9 lease-purchase agreements, which shall include but not be
10 limited to:

11 1. The assignment of the lease-purchase agreement to
12 other governmental entities, including accumulated equity.

13 2. The ability of the acquiring executive ~~state~~ agency
14 to sublease a portion of the facility, not to exceed 25
15 percent, to other governmental entities. These subleases shall
16 provide for the recovery of the agencies' cost of operations
17 and maintenance.

18
19 The execution of a lease-purchase is conditioned upon a
20 finding by the Department of Management Services that it would
21 be in the best interests of the state. The language in this
22 subsection shall be considered specific authorization for a
23 lease-purchase pursuant to s. 255.25(1)(b) upon the Department
24 of Management Services' certification that the lease-purchase
25 is in the best interests of the state. Thereafter, the
26 executive agency is authorized to enter into a lease-purchase
27 agreement and to expend operating funds for lease-purchase
28 payments. Any facility which is acquired under ~~pursuant to~~
29 the processes authorized by this subsection shall be
30 considered to be a "state-owned office building" and a
31

1 "state-owned building" as those terms are applied in ss.
2 255.248-255.25.

3 (d) That any costs resulting from the processes
4 authorized by this subsection, including but not limited to
5 appraisals, environmental analyses, and any other studies
6 which may be required under these provisions, shall be borne
7 by the owner of the property which is the subject of the
8 proposed lease-purchase.

9 (3) Chapters 253 and 287, the Department of
10 Agriculture and Consumer Services may ~~shall be authorized to~~
11 sell any tangible personal property, real property, or
12 structures on leased or department-owned real property without
13 complying with other provisions of law or Florida Statutes,
14 with the proceeds being deposited into the Property Trust
15 Account in the General Inspection Trust Fund. Before ~~Prior to~~
16 finalizing any ~~such~~ sale, the department's proposed action
17 shall be subject to the notice and review procedures set forth
18 in s. 216.177, as amended by chapter 92-142, Laws of Florida.

19 Section 5. Subsection (2) of section 255.2501, Florida
20 Statutes, is amended to read:

21 255.2501 Lease of space financed with local government
22 obligations.--

23 (2) No lease, lease-purchase, sale-leaseback,
24 purchase, or rental of any office space, building, real
25 property and improvements thereto, or any other fixed capital
26 outlay project that is or is to be financed with local
27 government obligations of any type shall be requested for
28 approval in the Appropriations Act unless:

29 (a) The construction for the ~~such~~ project is to be or
30 has been competitively solicited ~~bid~~ unless the certificate of
31

1 occupancy for the ~~such~~ project was issued more than 3 years
2 before ~~prior to~~ the time the ~~such~~ request is made;

3 (b) The executive ~~branch~~ agency or department making
4 the request has competitively solicited ~~bid~~ its space needs
5 before ~~prior to~~ making the ~~such~~ request ~~and the project for~~
6 ~~which approval is sought was the lowest and best bidder for~~
7 ~~such needs~~; and

8 (c) The rent, lease payment, lease-purchase payment,
9 or other payment for the ~~such~~ project is not greater than an
10 amount equal to the same proportion of the debt service on the
11 local government obligations to be issued to finance or which
12 are outstanding that financed, as the case may be, the
13 facility or project for which approval is sought that the
14 executive agency or department seeking the ~~such~~ approval will
15 use ~~utilize~~ under the lease, lease-purchase, sale-leaseback,
16 purchase, or rental of the project in the facility or project
17 as compared to the entire facility or project that is to be or
18 was financed. This paragraph does ~~shall~~ not apply when the
19 certificate of occupancy for a facility or project was issued
20 more than 3 years before ~~prior to~~ the time the ~~such~~ request is
21 made.

22 Section 6. Section 255.45, Florida Statutes, is
23 amended to read:

24 255.45 Safety in ~~Correction of firesafety violations~~
25 ~~in certain~~ state-owned and state-leased property.--

26 (1) The Department of Management Services is
27 responsible for ensuring that firesafety violations that are
28 noted by the State Fire Marshal pursuant to s. 633.085 are
29 corrected as soon as practicable for all state-owned property
30 which is leased from the Department of Management Services.

31

1 (2) Before construction or renovation of any
2 state-owned building, or privately owned building to be
3 occupied by the state, is begun, the Department of Management
4 Services shall ascertain, by submission of proposed plans to
5 the Division of State Fire Marshal for review, that the
6 proposed construction or renovation plan complies with the
7 uniform fire safety standards required by the Division of
8 State Fire Marshal. The review of construction or renovation
9 plans for a privately owned building must be completed within
10 10 calendar days of receipt of the plans by the Division of
11 State Fire Marshal. The review of construction or renovation
12 plans for a state-owned building must be completed within 30
13 calendar days of receipt of the plans by the Division of State
14 Fire Marshal. The responsibility for submitting and retrieving
15 the plans called for in this subsection shall not be imposed
16 on the design architect or engineer, but is the responsibility
17 of the Department of Management Services. When the Division of
18 State Fire Marshal determines that a construction or
19 renovation plan is not in compliance with the uniform fire
20 safety standards, the Division of State Fire Marshal may issue
21 an order to cease all construction or renovation activities
22 until compliance is obtained, except those activities required
23 to achieve compliance. The Department of Management Services
24 shall withhold approval of any proposed lease until the
25 construction or renovation plans comply with the uniform fire
26 safety standards of the Division of State Fire Marshal. The
27 cost of all modifications or renovations made for the purpose
28 of bringing leased property into compliance with the uniform
29 fire safety standards shall be borne by the lessor.

30 (3) Before construction or substantial improvement of
31 any state-owned building is begun, the Department of

1 Management Services must ascertain that the proposed
2 construction or substantial improvement complies with the
3 flood plain management criteria for the mitigation of flood
4 hazards, as prescribed in the rules and regulations of the
5 Federal Emergency Management Agency issued October 1, 1986.
6 The department shall monitor the project to assure compliance
7 with the criteria. The Department of Management Services shall
8 adopt rules to ensure that all proposed state construction and
9 substantial improvements of state-owned buildings in
10 designated flood-prone areas comply with the flood plain
11 management criteria. If the department determines that a
12 construction or substantial improvement project is not in
13 compliance with the established flood plain management
14 criteria, the department may issue an order to cease all
15 construction or improvement activities until compliance is
16 obtained, except those activities required to achieve such
17 compliance.

18 Section 7. For the purpose of incorporating the
19 amendment made by this act to section 255.45, Florida
20 Statutes, in a reference thereto, paragraph (b) of subsection
21 (1) of section 633.085, Florida Statutes, is reenacted to
22 read:

23 633.085 Inspections of state buildings and premises;
24 tests of firesafety equipment; building plans to be
25 approved.--

26 (1)

27 (b) Except as provided in s. 255.45, the department
28 head is responsible for ensuring that deficiencies noted in
29 the inspection are corrected as soon as practicable.

30 Section 8. Section 270.27, Florida Statutes, is
31 repealed.

1 Section 9. Effective October 15, 2005, paragraph
2 (2)(b) of section 255.249, Florida Statutes, as created by
3 this act, is repealed.

4 Section 10. This act shall take effect July 1, 2004.

5

6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2722

8

9 Revises bill's definitions for "state-owned building" and
10 "privately owned building." Specifies requirements for real
estate broker contract and for payment of broker. Requires
11 deposit of cost savings due to broker in specified accounts.
Requires the Department of Management Services to submit
12 annual report to Legislature. Requires the department to adopt
a standard method for space allocation and for rating building
13 quality. Increases protest bond amount in s. 255.25, F.S.
Transfers s. 255.25(5) and (6), F.S., to s. 255.45, F.S. Makes
14 conforming changes in ss. 255.25001 and 255.2501, F.S.
Reenacts s. 633,085, F.S., to incorporate a reference. Repeals
15 s. 270.27, F.S., relating to the department's authority to
sell unused public lands. Provides for the future repeal of s.
16 255.249(2)(b), F.S.

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