

By the Committee on Ways and Means; and Senator Carlton

576-2104-06

1 A bill to be entitled
2 An act relating to state buildings and
3 facilities; amending s. 255.249, F.S.;
4 requiring that the department annually report
5 to the Executive Office of the Governor and the
6 Legislature certain information concerning
7 leases that are due to expire and any
8 amendments and supplements to and waivers of
9 the terms and conditions of lease agreements;
10 requiring that specified clauses be included in
11 the terms and conditions of a lease which may
12 not be amended, supplemented, or waived;
13 amending s. 255.25, F.S.; requiring that the
14 Department of Management Services approve the
15 terms of any lease by a state agency; requiring
16 an analysis if the department approves an
17 amendment or supplement to or waiver of a term
18 or condition of a lease agreement; requiring
19 that the department conduct a cost-benefit
20 analysis and obtain specific legal authority
21 before entering into certain leases; providing
22 requirements for the analysis; providing
23 legislative intent with respect to the use of
24 state-owned buildings; requiring that the
25 Department of Management Services create a plan
26 for fully using such buildings before leasing
27 private buildings; requiring an annual report
28 to the Legislature and the Governor; amending
29 s. 255.503, F.S.; requiring that the department
30 provide an analysis to the Legislature, the
31 Governor, and State Board of Administration

1 before recommending or taking action to dispose
2 of a facility within the Florida Facilities
3 Pool; providing for a delay in such disposition
4 if the President of the Senate or the Speaker
5 of the House of Representatives objects within
6 a specified time; providing an effective date.
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8 Be It Enacted by the Legislature of the State of Florida:
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10 Section 1. Subsection (3) and paragraph (e) of
11 subsection (4) of section 255.249, Florida Statutes, are
12 amended to read:

13 255.249 Department of Management Services;
14 responsibility; department rules.--

15 (3) The department shall, to the extent feasible,
16 coordinate the vacation of privately owned leased space with
17 the expiration of the lease on that space and, when a lease is
18 terminated before expiration of its base term, will make a
19 reasonable effort to place another state agency in the space
20 vacated. Any state agency may lease the space in any building
21 that was subject to a lease terminated by a state agency for a
22 period of time equal to the remainder of the base term without
23 the requirement of competitive bidding. The department shall
24 annually publish a report that lists, by agency, all leases
25 that are due to expire within 24 months. The annual report
26 must include the following information for each lease:
27 location; size of leased space; current cost per leased square
28 foot; lease expiration date; and a determination of whether
29 sufficient state-owned office space will be available at the
30 expiration of the lease to house affected employees. The
31 report must also include a list of amendments and supplements

1 to and waivers of terms and conditions in lease agreements
2 which have been approved pursuant to s. 255.25(2)(a) during
3 the previous 12 months and an associated comprehensive
4 analysis, including financial implications, showing that any
5 amendment, supplement, or waiver is in the state's long-term
6 best interest. The department shall furnish this report to the
7 Executive Office of the Governor and the Legislature by
8 September 15 of each year.

9 (4) The department shall promulgate rules pursuant to
10 chapter 120 providing:

11 (e) Acceptable terms and conditions for inclusion in
12 lease agreements. Such terms and conditions must include, at a
13 minimum, the following clauses, which may not be amended,
14 supplemented, or waived:

15 1. As provided in s. 255.2502, "The State of Florida's
16 performance and obligation to pay under this contract is
17 contingent upon an annual appropriation by the Legislature."

18 2. "The Lessee shall have the right to terminate,
19 without penalty, this lease in the event a State-owned
20 building becomes available to the Lessee for occupancy during
21 the term of said lease for the purposes for which this space
22 is being leased in the County of _____, Florida, upon
23 giving 6 months' advance written notice to the Lessor by
24 Certified Mail, Return Receipt Requested."

25 Section 2. Subsections (2) and (4) of section 255.25,
26 Florida Statutes, are amended to read:

27 255.25 Approval required prior to construction or
28 lease of buildings.--

29 (2)(a) Except as provided in ss. 255.249 and s-
30 255.2501, a ~~no~~ state agency may not lease a building or any
31 part thereof unless prior approval of the lease terms and

1 | conditions and of the need therefor is first obtained from the
2 | Department of Management Services. The department may not
3 | approve any term or condition in a lease agreement which has
4 | been amended, supplemented, or waived unless a comprehensive
5 | analysis, including financial implications, demonstrates that
6 | such amendment, supplement, or waiver is in the state's
7 | long-term best interest. Any approved lease may include an
8 | option to purchase or an option to renew the lease, or both,
9 | upon such terms and conditions as are established by the
10 | department subject to final approval by the head of the
11 | Department of Management Services and s. 255.2502.

12 | **(b)** Before the Department of Management Services
13 | enters into a lease on behalf of one or more state agencies of
14 | privately owned office space equal to or in excess of 100,000
15 | square feet or executes two or more leases with the same
16 | private entity within a 1-year period which in combination
17 | equal or exceed 100,000 square feet, the department must
18 | conduct a cost-benefit analysis to determine if the lease is
19 | in the state's best interest. The Department of Management
20 | Services may not enter into a lease described in this
21 | paragraph without specific legal authority. Nothing in this
22 | section shall be construed to provide such authority. The
23 | analyses must consider:

24 | 1. The cost to lease versus the cost to buy and the
25 | cost to build.

26 | 2. The sufficiency of tenant-improvement funds
27 | provided by the landlord to:

28 | a. Adequately ensure that the leased building can be
29 | maintained at or improved to a "B" classification on the
30 | Building Owners and Managers Association (BOMA) Metropolitan
31 |

1 Base Building Classification for the duration of the lease,
2 including option years;

3 b. Meet the workspace-allocation standard of 180
4 square feet per full-time equivalent employee; and

5 c. Meet future agency needs for reconfiguring space,
6 replacing paint and carpet, and updating technology during the
7 duration of the lease, including option years.

8 3. The fiscal impact of each modification or deletion
9 of a traditional or standard provision of the state lease
10 agreement which could increase the state's long-term costs.

11 (c)(b) The approval of the Department of Management
12 Services, except for technical sufficiency, need not be
13 obtained for the lease of less than 5,000 square feet of space
14 within a privately owned building, provided the agency head or
15 the agency head's designated representative has certified
16 compliance with applicable leasing criteria as may be provided
17 pursuant to s. 255.249(4)(k) and has determined such lease to
18 be in the best interest of the state. Such a lease which is
19 for a term extending beyond the end of a fiscal year is
20 subject to the provisions of ss. 216.311, 255.2502, and
21 255.2503.

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

29 (4)(a) Because the state has a substantial financial
30 investment in state-owned buildings, it is legislative policy
31 and intent that when state-owned buildings meet the needs of

1 state agencies, agencies must fully use such buildings before
2 leasing privately owned buildings. By September 15, 2006, the
3 Department of Management Services shall create a 5-year plan
4 for implementing this policy. The department shall update this
5 plan annually, detailing proposed departmental actions to meet
6 the plan's goals. The department shall furnish this plan to
7 the President of the Senate, the Speaker of the House of
8 Representatives, and the Executive Office of the Governor by
9 September 15 of each year.

10 (b) The Department of Management Services shall not
11 authorize any state agency to enter into a lease agreement for
12 space in a privately owned building when suitable space is
13 available in a state-owned building located in the same
14 geographic region, except upon presentation to the department
15 of sufficient written justification, acceptable to the
16 department, that a separate space is required in order to
17 fulfill the statutory duties of the agency making such
18 request. The term "state-owned building" as used in this
19 subsection means any state-owned facility regardless of use or
20 control.

21 ~~(c)~~(b) State agencies shall cooperate with local
22 governmental units by using suitable, existing publicly owned
23 facilities, subject to the provisions of ss. 255.2501,
24 255.2502, and 255.2503. Agencies may utilize unexpended funds
25 appropriated for lease payments to:

- 26 1. Pay their proportion of operating costs.
27 2. Renovate applicable spaces.

28 Section 3. Subsection (7) of section 255.503, Florida
29 Statutes, is amended to read:

30 255.503 Powers of the Department of Management
31 Services.--The Department of Management Services shall have

1 all the authority necessary to carry out and effectuate the
2 purposes and provisions of this act, including, but not
3 limited to, the authority to:

4 (7) Sell, lease, release, or otherwise dispose of
5 facilities in the pool in accordance with applicable law.

6 (a) One hundred and twenty days before the department
7 recommends to the Division of State Lands of the Department of
8 Environmental Protection the disposition of or takes any
9 binding action to dispose of any facility within the Florida
10 Facilities Pool, the department shall provide to the President
11 of the Senate, the Speaker of the House of Representatives,
12 the Executive Office of the Governor, and the Division of Bond
13 Finance of the State Board of Administration an analysis of
14 the proposed facility disposition. The analysis must include:

15 1. The cost benefit of the proposed facility
16 disposition, including the facility's current operating
17 expenses, condition, and market value, and viable alternatives
18 for housing affected state employees; and

19 2. The effect of the proposed facility disposition on
20 the financial status of the Florida Facilities Pool, including
21 the effect on rental rates.

22 (b) At any time during the first 90 days of the
23 120-day period, the President of the Senate or the Speaker of
24 the House of Representatives may object in writing to the
25 disposition of the facility. Such objection shall result in
26 the delay of the disposition until after completion of the
27 next regular legislative session commencing after the end of
28 the 90-day period.

29 Section 4. This act shall take effect July 1, 2006.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 848

4 The Committee Substitute for Senate Bill 848:

- 5 -- Requires the Department of Management Services (DMS) to
6 provide an annual report of leases due to expire within
7 24 months and the financial impact of terms in new leases
8 that have been amended, supplemented or waived.
9 -- Requires the DMS to promulgate rules for private leases
10 that require inclusion of a non-appropriation clause and
11 a six month notice clause for movement into state owned
12 space.
13 -- Requires the DMS to evaluate whether amending,
14 supplementing or waiving a lease clause is in the state's
15 long term best interest prior to execution of the lease.
16 -- For leases equal to or greater than 100,000 square feet,
17 requires the DMS to conduct a lease verses buy analysis
18 of the sufficiency of tenant improvement funds, and the
19 fiscal impact of modified or deleted lease provisions
20 that increase the state's long-term costs.
21 -- Requires the DMS to provide a five-year plan for state
22 owned buildings.
23 -- Requires the DMS to notice and submit a cost-benefit
24 analysis to the Governor, Legislature and State Board of
25 Administration prior to recommending the disposition of
26 buildings in the Florida Facilities Pool.
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