

585-550-07

1 A bill to be entitled
2 An act relating to the leasing of private
3 property by state agencies; amending s.
4 255.248, F.S.; defining the term "competitive
5 solicitation"; amending s. 255.249, F.S.;
6 removing the expiration of provisions requiring
7 that the Department of Management Services
8 annually report to the Governor and the
9 Legislature certain information concerning
10 leases that are due to expire and amendments
11 and supplements to and waivers of the terms and
12 conditions of lease agreements; requiring that
13 the Department of Management Services adopt
14 rules for soliciting and accepting competitive
15 solicitations for certain leased space, for
16 exempting the lease of care and living space or
17 emergency space from competitive-solicitation
18 requirements, and for securing at least three
19 quotes for a lease that is not required to be
20 competitively solicited; removing the
21 expiration of provisions requiring that
22 specified clauses, which may not be amended,
23 supplemented, or waived, be included in the
24 terms and conditions of a lease; amending s.
25 255.25, F.S.; removing the expiration of
26 provisions requiring that the department
27 approve the terms of a lease by a state agency;
28 requiring an analysis if the department
29 approves an amendment or supplement to or
30 waiver of a term or condition of a lease
31 agreement; prohibiting a state agency from

1 entering into certain leases of space in a
2 privately owned building except upon
3 advertisement for and receipt of competitive
4 solicitations; providing exceptions; providing
5 requirements for the use of invitations to bid,
6 requests for proposals, and invitations to
7 negotiate; providing criteria for awarding
8 contracts; providing criteria for protesting an
9 agency decision or intended decision pertaining
10 to a competitive solicitation for leased space;
11 removing the expiration of provisions providing
12 legislative intent with respect to the use of
13 state-owned buildings; requiring that the
14 department create a plan for fully using such
15 buildings before leasing private buildings;
16 requiring an annual report to the Legislature
17 and the Governor; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 255.248, Florida Statutes, is
22 amended to read:

23 255.248 Definitions; ss. 255.249 and 255.25.--~~As The~~
24 ~~following definitions shall apply when~~ used in ss. 255.249 and
25 255.25, the term:

26 (1) ~~The term~~ "State-owned office building" means any
27 building title to which is vested in the state and which is
28 used by one or more executive agencies predominantly for
29 administrative direction and support functions. This term
30 excludes:
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1 (a) District or area offices established for field
2 operations where law enforcement, military, inspections, road
3 operations, or tourist welcoming functions are performed.

4 (b) All educational facilities and institutions under
5 the supervision of the Department of Education.

6 (c) All custodial facilities and institutions used
7 primarily for the care, custody, or treatment of wards of the
8 state.

9 (d) Buildings or spaces used for legislative
10 activities.

11 (e) Buildings purchased or constructed from
12 agricultural or citrus trust funds.

13 (2) ~~The term~~ "Privately owned building" means shall
14 ~~mean~~ any building not owned by a governmental agency.

15 (3) "Competitive solicitation" means an invitation to
16 bid, a request for proposals, or an invitation to negotiate.

17 Section 2. Subsections (3) and (4) of section 255.249,
18 Florida Statutes, are amended to read:

19 255.249 Department of Management Services;
20 responsibility; department rules.--

21 (3)(a) The department shall, to the extent feasible,
22 coordinate the vacation of privately owned leased space with
23 the expiration of the lease on that space and, when a lease is
24 terminated before expiration of its base term, will make a
25 reasonable effort to place another state agency in the space
26 vacated. Any state agency may lease the space in any building
27 that was subject to a lease terminated by a state agency for a
28 period of time equal to the remainder of the base term without
29 the requirement of competitive bidding.

30 (b) The department shall annually publish a report
31 that lists, by agency, all leases that are due to expire

1 | within 24 months. The annual report must include the following
2 | information for each lease: location; size of leased space;
3 | current cost per leased square foot; lease expiration date;
4 | and a determination of whether sufficient state-owned office
5 | space will be available at the expiration of the lease to
6 | house affected employees. The report must also include a list
7 | of amendments and supplements to and waivers of terms and
8 | conditions in lease agreements that have been approved
9 | pursuant to s. 255.25(2)(a) during the previous 12 months and
10 | an associated comprehensive analysis, including financial
11 | implications, showing that any amendment, supplement, or
12 | waiver is in the state's long-term best interest. The
13 | department shall furnish this report to the Executive Office
14 | of the Governor and the Legislature by September 15 of each
15 | year. ~~This paragraph expires July 1, 2007.~~

16 | (4) The department shall adopt ~~promulgate~~ rules
17 | pursuant to chapter 120 providing:

18 | (a) Methods for accomplishing the duties outlined in
19 | subsection (1).

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

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1 (c) A standard method for determining square footage
2 or any other measurement used as the basis for lease payments
3 or other charges.

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

7 (e)1. Acceptable terms and conditions for inclusion in
8 lease agreements.

9 2. Such terms and conditions shall include, at a
10 minimum, the following clauses, which may not be amended,
11 supplemented, or waived:

12 a. As provided in s. 255.2502, "The State of Florida's
13 performance and obligation to pay under this contract is
14 contingent upon an annual appropriation by the Legislature."

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

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23 ~~This subparagraph expires July 1, 2007.~~

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

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

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

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

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

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

22 | (k) For a lease of less than 5,000 square feet, a
23 | method for certification by the agency head or the agency
24 | head's designated representative that all criteria for leasing
25 | have been fully complied with and for the filing of a copy of
26 | such lease and all supporting documents with the department
27 | for its review and approval as to technical sufficiency.

28 | Section 3. Paragraph (d) of subsection (2), subsection
29 | (3), and paragraph (c) of subsection (4) of section 255.25,
30 | Florida Statutes, are amended to read:

31 |

1 255.25 Approval required prior to construction or
2 lease of buildings.--

3 (2)

4 (d) Notwithstanding paragraph (a) and except as
5 provided in ss. 255.249 and 255.2501, a state agency may not
6 lease a building or any part thereof unless prior approval of
7 the lease terms and conditions and of the need therefor is
8 first obtained from the Department of Management Services. The
9 department may not approve any term or condition in a lease
10 agreement which has been amended, supplemented, or waived
11 unless a comprehensive analysis, including financial
12 implications, demonstrates that such amendment, supplement, or
13 waiver is in the state's long-term best interest. Any approved
14 lease may include an option to purchase or an option to renew
15 the lease, or both, upon such terms and conditions as are
16 established by the department subject to final approval by the
17 head of the Department of Management Services and the
18 provisions of s. 255.2502. ~~This paragraph expires July 1,~~
19 ~~2007.~~

20 (3)(a) Except as provided in subsection (10), ~~a~~ ~~no~~
21 state agency may not ~~shall~~ enter into a lease as lessee for
22 the use of 5,000 square feet or more of space in a privately
23 owned building except upon advertisement for and receipt of
24 competitive solicitations ~~bids~~ and ~~award to the lowest and~~
25 ~~best bidder.~~

26 1.a. An invitation to bid shall be made available
27 simultaneously to all vendors and must include a detailed
28 description of the space sought; the time and date for the
29 receipt of bids and of the public opening; and all contractual
30 terms and conditions applicable to the procurement, including
31 the criteria to be used in determining acceptability of the

1 bid. If the agency contemplates renewal of the contract, that
2 fact must be stated in the invitation to bid. The bid must
3 include the price for each year for which the contract may be
4 renewed. Evaluation of bids shall include consideration of the
5 total cost for each year as submitted by the vendor. Criteria
6 that were not set forth in the invitation to bid may not be
7 used in determining acceptability of the bid.

8 b. The contract shall be awarded with reasonable
9 promptness by written notice to the responsible and responsive
10 vendor that submits the lowest responsive bid. This bid must
11 be determined in writing to meet the requirements and criteria
12 set forth in the invitation to bid.

13 2.a. If an agency determines in writing that the use
14 of an invitation to bid is not practicable, leased space shall
15 be procured by competitive sealed proposals. A request for
16 proposals shall be made available simultaneously to all
17 vendors and must include a statement of the space sought; the
18 time and date for the receipt of proposals and of the public
19 opening; and all contractual terms and conditions applicable
20 to the procurement, including the criteria, which must
21 include, but need not be limited to, price, to be used in
22 determining acceptability of the proposal. The relative
23 importance of price and other evaluation criteria shall be
24 indicated. If the agency contemplates renewal of the contract,
25 that fact must be stated in the request for proposals. The
26 proposal must include the price for each year for which the
27 contract may be renewed. Evaluation of proposals shall include
28 consideration of the total cost for each year as submitted by
29 the vendor.

30 b. The contract shall be awarded to the responsible
31 and responsive vendor whose proposal is determined in writing

1 to be the most advantageous to the state, taking into
2 consideration the price and the other criteria set forth in
3 the request for proposals. The contract file must contain
4 documentation supporting the basis on which the award is made.

5 3.a. If the agency determines in writing that the use
6 of an invitation to bid or a request for proposals will not
7 result in the best value to the state, the agency may procure
8 leased space by competitive sealed replies. The agency's
9 written determination must specify reasons that explain why
10 negotiation may be necessary in order for the state to achieve
11 the best value and must be approved in writing by the agency
12 head or his or her designee prior to the advertisement of an
13 invitation to negotiate. Cost savings related to the agency
14 procurement process are not sufficient justification for using
15 an invitation to negotiate. An invitation to negotiate shall
16 be made available to all vendors simultaneously and must
17 include a statement of the space sought; the time and date for
18 the receipt of replies and of the public opening; and all
19 terms and conditions applicable to the procurement, including
20 the criteria to be used in determining the acceptability of
21 the reply. If the agency contemplates renewal of the contract,
22 that fact must be stated in the invitation to negotiate. The
23 reply must include the price for each year for which the
24 contract may be renewed.

25 b. The agency shall evaluate and rank responsive
26 replies against all evaluation criteria set forth in the
27 invitation to negotiate and shall select, based on the
28 ranking, one or more vendors with which to commence
29 negotiations. After negotiations are conducted, the agency
30 shall award the contract to the responsible and responsive
31 vendor that the agency determines will provide the best value

1 to the state. The contract file must contain a short, plain
2 statement that explains the basis for vendor selection and
3 sets forth the vendor's deliverables and price pursuant to the
4 contract, and an explanation of how these deliverables and
5 price provide the best value to the state.

6 (b) The Department of Management Services shall have
7 the authority to approve a lease for 5,000 square feet or more
8 of space that covers more than 1 fiscal year, subject to the
9 provisions of ss. 216.311, 255.2501, 255.2502, and 255.2503,
10 if such lease is, in the judgment of the department, in the
11 best interests of the state. This paragraph does not apply to
12 buildings or facilities of any size leased for the purpose of
13 providing care and living space for persons.

14 (c)(b) The Department of Management Services may
15 approve extensions of an existing lease of 5,000 square feet
16 or more of space if such extensions are determined to be in
17 the best interests of the state, but in no case shall the
18 total of such extensions exceed 11 months. If at the end of
19 the 11th month an agency still needs that space, it shall be
20 procured by competitive bid in accordance with s.
21 255.249(4)(b). However, an agency that determines that it is
22 in its best interest to remain in the space it currently
23 occupies may negotiate a replacement lease with the lessor if
24 an independent comparative market analysis demonstrates that
25 the rates offered are within market rates for the space and
26 the cost of the new lease does not exceed the cost of a
27 comparable lease plus documented moving costs. A present-value
28 analysis and the consumer price index shall be used in the
29 calculation of lease costs. The term of the replacement lease
30 may not exceed the base term of the expiring lease.

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

22 ~~(e)(d)~~ The agency and the lessor, when entering into a
23 lease for 5,000 or more square feet of a privately owned
24 building, shall, before the effective date of the lease, agree
25 upon and separately state the cost of tenant improvements
26 which may qualify for reimbursement if the lease is terminated
27 before the expiration of its base term. The department shall
28 serve as mediator if the agency and the lessor are unable to
29 agree. The amount agreed upon and stated shall, if
30 appropriated, be amortized over the original base term of the
31 lease on a straight-line basis.

1 ~~(f)(e)~~ The unamortized portion of tenant improvements,
2 if appropriated, shall ~~will~~ be paid in equal monthly
3 installments over the remaining term of the lease. If any
4 portion of the original leased premises is occupied after
5 termination but during the original term by a tenant that does
6 not require material changes to the premises, the repayment of
7 the cost of tenant improvements applicable to the occupied but
8 unchanged portion shall be abated during occupancy. The
9 portion of the repayment to be abated shall be based on the
10 ratio of leased space to unleased space.

11 (4)

12 (c) Because the state has a substantial financial
13 investment in state-owned buildings, it is legislative policy
14 and intent that when state-owned buildings meet the needs of
15 state agencies, agencies must fully use such buildings before
16 leasing privately owned buildings. By September 15, 2006, the
17 Department of Management Services shall create a 5-year plan
18 for implementing this policy. The department shall update this
19 plan annually, detailing proposed departmental actions to meet
20 the plan's goals. The department shall furnish this plan to
21 the President of the Senate, the Speaker of the House of
22 Representatives, and the Executive Office of the Governor by
23 September 15 of each year. ~~This paragraph expires July 1,~~
24 ~~2007.~~

25 Section 4. This act shall take effect July 1, 2007.
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SENATE SUMMARY

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3 Defines the term "competitive solicitation" for purposes
4 of the leasing of private property by state agencies.
5 Removes the expiration of provisions requiring that the
6 Department of Management Services annually report to the
7 Governor and Legislature certain information concerning
8 leases. Requires that the department adopt rules. Removes
9 the expiration of provisions requiring that specified
10 clauses be included in the terms and conditions of a
11 lease. Removes the expiration of provisions requiring
12 that the department approve the terms of a lease by a
13 state agency. Prohibits a state agency from entering into
14 a lease of 5,000 square feet or more of space in a
15 privately owned building except upon advertisement for
16 and receipt of competitive solicitations. Provides
17 certain exceptions. Provides requirements for the use of
18 invitations to bid, requests for proposals, and
19 invitations to negotiate. Provides criteria for awarding
20 contracts. Provides criteria for protesting an agency
21 decision or intended decision pertaining to a competitive
22 solicitation for leased space. Removes the expiration of
23 provisions providing legislative intent with respect to
24 the use of state-owned buildings. Requires the department
25 to submit an annual report to the Governor and
26 Legislature. (See bill for details.)
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