

By the Committee on Governmental Operations

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.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
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."

22  
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:

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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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2  
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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