

CHAPTER 2013-152

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 1145

An act relating to state-owned or state-leased space; amending s. 216.0152, F.S.; revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by the Department of Management Services; revising provisions relating to a report detailing an inventory of state-owned facilities; amending s. 253.031, F.S.; clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund; amending s. 253.034, F.S.; revising provisions relating to decisions by the board to surplus lands; revising the valuation of lands that are subject to certain requirements; requiring a state agency to submit a plan if a building or parcel is offered for use to the agency; requiring the board of trustees to adopt rules; amending s. 255.248, F.S.; defining the terms “managing agency” and “tenant broker”; amending s. 255.249, F.S.; revising the responsibilities of the Department of Management Services with respect to state-owned buildings; prohibiting a state agency from leasing space in a private building under certain circumstances; requiring an agency to notify the department of an early termination of a lease within a certain timeframe; authorizing the department to direct state agencies to occupy space in a state-owned building; revising the contents of the master leasing report; authorizing state agencies to use the services of a tenant broker to provide certain information to the department; requiring the title entity or managing agency to report any vacant or underutilized space to the department; amending s. 255.25, F.S.; revising requirements for the construction or lease of certain building space; revising an exemption that allows certain agencies to negotiate a replacement lease under certain circumstances; amending s. 255.252, F.S.; specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements; amending s. 255.254, F.S.; revising provisions relating to requirements for energy performance analysis for certain buildings; amending 255.257, F.S.; requiring all state-owned facilities to report energy consumption and cost data; amending ss. 110.171 and 985.682, F.S.; conforming cross-references; providing effective dates.

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

Section 1. Section 216.0152, Florida Statutes, is amended to read:

216.0152 Inventory of state-owned facilities or state-occupied facilities.

(1) The Department of Management Services shall develop and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by a state ~~any~~ agency of the state, the judicial branch, or the water management districts. The inventory data shall be provided annually by July 1 by the owning or operating agency in a format prescribed

by the department and must shall include the location, occupying agency, ownership, size, condition assessment, valuations, operating costs, maintenance record, age, parking and employee facilities, building uses, full-time equivalent occupancy, known restrictions or historic designations, leases or subleases, associated revenues, and other information as required ~~by~~ in a rule adopted by the department. The department shall use this data for determining maintenance needs, conducting strategic analyses, including, but not limited to, analyzing and identifying candidates for surplus, valuation, and disposition, and life-cycle cost evaluations of the facility. Inventory data shall be provided to the department on or before July 1 of each year ~~by the owning or operating agency in a format prescribed by the department.~~ The inventory need not include a condition assessment or maintenance record of facilities not owned by a state agency, the judicial branch, or a water management district. The term "facility," as used in this section, means buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.

(a) For reporting purposes, the Department of Transportation shall develop and maintain an inventory of the transportation facilities of the state transportation system. The Department of Transportation shall also identify and dispose of surplus property pursuant to ss. 337.25 and 339.04.

(b) The Board of Governors of the State University System and the Department of Education, respectively, shall develop and maintain an inventory, in the manner prescribed by the Department of Management Services, of all state university and community college facilities and, by July 1 of each year, provide this inventory shall make the data available in a format acceptable to the Department of Management Services. ~~By March 15, 2011, the department shall adopt rules pursuant to ss. 120.536 and 120.54 to administer this section.~~

~~(2) For the purpose of assessing needed repairs and renovations of facilities, the Department of Management Services shall update its inventory with condition information for facilities of 3,000 square feet or more and cause to be updated the other inventories required by subsection (1) at least once every 5 years, but the inventories shall record acquisitions of new facilities and significant changes in existing facilities as they occur. The Department of Management Services shall provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch shall, in the manner prescribed by the Department of Management Services, report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility shall be updated at least every 5 years.~~

~~(2)(3)~~ (3) The Department of Management Services and the Department of Environmental Protection shall, by October 1 of each year, every 3 years, publish a complete report detailing the this inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state

transportation system. The annual report of state-owned real property recommended for disposition required under s. 216.0153 must be included in this report and shall publish an annual update of the report. The department shall furnish the updated report to the Executive Office of the Governor and the Legislature no later than September 15 of each year.

(3) The Department of Management Services shall adopt rules to administer this section.

Section 2. Subsection (8) of section 253.031, Florida Statutes, is amended to read:

253.031 Land office; custody of documents concerning land; moneys; plats.—

(8) The board shall keep a suitable seal of office. An impression of this seal shall be made upon the deeds conveying lands sold by the state, by the Board of Education, and by the Board of Trustees of the Internal Improvement Trust Fund of this state; and all such deeds shall be personally signed by the ~~officers or trustees~~ or their agents as authorized under s. 253.431, making the same and impressed with the said seal and are shall be operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds entitles ~~shall entitle~~ the same to record and to be received in evidence in all courts.

Section 3. Subsections (6) and (15) of section 253.034, Florida Statutes, are amended to read:

253.034 State-owned lands; uses.—

(6) The Board of Trustees of the Internal Improvement Trust Fund shall determine which lands, the title to which is vested in the board, may be surplused. For conservation lands, the board shall determine whether ~~make a determination that~~ the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board shall determine whether ~~make a determination that~~ the lands are no longer needed and may dispose of them by an affirmative vote of at least three members.

(a) For the purposes of this subsection, all lands acquired by the state ~~before~~ prior to July 1, 1999, using proceeds from the Preservation 2000 bonds, the Conservation and Recreation Lands Trust Fund, the Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board; ~~which lands are identified as core parcels or within original project boundaries~~ are; ~~shall be deemed to have been acquired for conservation purposes.~~

(b) For any lands purchased by the state on or after July 1, 1999, ~~before a determination shall be made by the board prior to acquisition, the board must determine which~~ as to those parcels must that shall be designated as having been acquired for conservation purposes. No Lands acquired for use by the Department of Corrections, the Department of Management Services for use as state offices, the Department of Transportation, except those specifically managed for conservation or recreation purposes, or the State University System or the Florida Community College System may not shall be designated as having been purchased for conservation purposes.

(c) At least every 10 years, as a component of each land management plan or land use plan and in a form and manner prescribed by rule by the board, each manager shall evaluate and indicate to the board those lands that are not being used for the purpose for which they were originally leased. For conservation lands, the council shall review and ~~shall~~ recommend to the board whether such lands should be retained in public ownership or disposed of by the board. For nonconservation lands, the division shall review such lands and ~~shall~~ recommend to the board whether such lands should be retained in public ownership or disposed of by the board.

(d) Lands owned by the board which are not actively managed by any state agency or for which a land management plan has not been completed pursuant to subsection (5) must ~~shall~~ be reviewed by the council or its successor for its recommendation as to whether such lands should be disposed of by the board.

(e) ~~Before~~ ~~Prior to~~ any decision by the board to surplus lands, the Acquisition and Restoration Council shall review and make recommendations to the board concerning the request for surplusings. The council shall determine whether the request for surplusings is compatible with the resource values of and management objectives for such lands.

(f) In reviewing lands owned by the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The council shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. The provisions of this paragraph in no way limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for a period of 45 days. Permissible uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; governmental, judicial, or recreational centers; and affordable housing meeting the criteria of s. 420.0004(3). County or local government requests for surplus lands shall be expedited throughout the surplusings process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, ~~then~~ any surplusings determination involving other governmental agencies shall be made when ~~upon~~ the board decides ~~deciding~~ the best public use of the lands. Surplus properties in which governmental agencies have expressed no interest must ~~shall~~ then be available for sale on the private market.

(g)1. The sale price of lands determined to be surplus pursuant to this subsection and s. 253.82 shall be determined by the division, which shall consider and shall take into consideration an appraisal of the property, or, if when the estimated value of the land is \$500,000 or less than \$100,000, a comparable sales analysis or a broker's opinion of value. ~~If the appraisal referenced in this paragraph yields a value equal to or greater than \$1 million,~~ The division, ~~in its sole discretion,~~ may require a second appraisal. The individual or entity that requests ~~requesting~~ to purchase the surplus parcel shall pay all appraisal costs associated with determining the property's value, if any.

1.2.a. A written valuation of land determined to be surplus pursuant to this subsection and s. 253.82, and related documents used to form the valuation or which pertain to the valuation, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

a.b. The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the board.

b.e. ~~Before~~ Prior to expiration of the exemption, the division may disclose confidential and exempt appraisals, valuations, or valuation information regarding surplus land:

(I) During negotiations for the sale or exchange of the land.

(II) During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of such effort or process.

(III) When the passage of time has made the conclusions of value invalid.

(IV) When negotiations or marketing efforts concerning the land are concluded.

2.3. A unit of government that acquires title to lands hereunder for less than appraised value may not sell or transfer title to all or any portion of the lands to any private owner for ~~a period of~~ 10 years. Any unit of government seeking to transfer or sell lands pursuant to this paragraph must ~~shall~~ first allow the board of trustees to reacquire such lands for the price at which the board sold such lands.

(h) Parcels with a market value over \$500,000 must be initially offered for sale by competitive bid. The division may use agents, as authorized by s. 253.431, for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of \$500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

~~(i)(h)~~ After reviewing the recommendations of the council, the board shall determine whether lands identified for surplus are to be held for other public purposes or ~~whether such lands~~ are no longer needed. The board may require an agency to release its interest in such lands. A state For an agency, county, or local government that has requested the use of a property that was to be declared as surplus, ~~said agency~~ must secure have the property under lease within 90 days after being notified that it may use such property ~~6 months of the date of expiration of the notice provisions required under this subsection and s. 253.111.~~

~~(j)(i)~~ Requests for surplusing may be made by any public or private entity or person. All requests shall be submitted to the lead managing agency for review and recommendation to the council or its successor. Lead managing agencies shall have 90 days to review such requests and make recommendations. Any surplusing requests that have not been acted upon within the 90-day time period shall be immediately scheduled for hearing at the next regularly scheduled meeting of the council or its successor. Requests for surplusing pursuant to this paragraph are ~~shall not be~~ required to be offered to local or state governments as provided in paragraph (f).

~~(k)(j)~~ Proceeds from any sale of surplus lands pursuant to this subsection shall be deposited into the fund from which such lands were acquired. However, if the fund from which the lands were originally acquired no longer exists, such proceeds shall be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands before prior to the lands were being declared surplus. Funds received from the sale of surplus nonconservation lands, or lands that were acquired by gift, by donation, or for no consideration, shall be deposited into the Internal Improvement Trust Fund.

~~(l)(k)~~ Notwithstanding the provisions of this subsection, ~~no~~ such disposition of land may not ~~shall be~~ made if it such ~~such~~ disposition would have the effect of causing all or any portion of the interest on any revenue bonds issued to lose the exclusion from gross income for federal income tax purposes.

~~(m)(l)~~ The sale of filled, formerly submerged land that does not exceed 5 acres in area is not subject to review by the council or its successor.

~~(n)(m)~~ The board may adopt rules to administer ~~implement the provisions of this section,~~ which may include procedures for administering surplus land requests and criteria for when the division may approve requests to surplus nonconservation lands on behalf of the board.

(15) Before a building or parcel of land is offered for lease, ~~sublease,~~ or sale to a local or federal unit of government or a private party, it shall first be offered for lease to state agencies, state universities, and Florida College System institutions ~~community colleges,~~ with priority consideration given to state universities and Florida College System institutions ~~community colleges.~~ Within 60 days after the offer for lease of a surplus building or parcel, a state university or Florida College System institution that requests

the lease community college must submit a plan for review and approval by the Board of Trustees of the Internal Improvement Trust Fund regarding the intended use, including future use, of the building or parcel of land before approval of a lease. Within 60 days after the offer for lease of a surplus building or parcel, a state agency that requests the lease of such facility or parcel must submit a plan for review and approval by the board of trustees regarding the intended use. The state agency plan must, at a minimum, include the proposed use of the facility or parcel, the estimated cost of renovation, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot otherwise be met, and other criteria developed by rule by the board of trustees. The board or its designee shall compare the estimated value of the building or parcel to any submitted business plan to determine if the lease or sale is in the best interest of the state. The board of trustees shall adopt rules pursuant to chapter 120 for the implementation of this section.

Section 4. Section 255.248, Florida Statutes, is amended to read:

255.248 Definitions; ~~ss. 255.249 and 255.25.~~—As used in this section and ss. 255.249-255.25 ~~255.249 and 255.25~~, the term:

(1) “Best leasing value” means the highest overall value to the state based on objective factors that include, but are not limited to, rental rate, renewal rate, operational and maintenance costs, tenant-improvement allowance, location, lease term, condition of facility, landlord responsibility, amenities, and parking.

(2) “Competitive solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate.

(3) “Department” means the Department of Management Services.

(4) “Managing agency” means an agency that serves as the title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building.

(5)(4) “Privately owned building” means any building not owned by a governmental agency.

(6)(5) “Responsible lessor” means a lessor that who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

(7)(6) “Responsive bid,” “responsive proposal,” or “responsive reply” means a bid or proposal, or reply submitted by a responsive and responsible lessor, which conforms in all material respects to the solicitation.

(8)(7) “Responsive lessor” means a lessor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

~~(9)~~(8) “State-owned office building” means any building whose title to ~~which~~ is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. The ~~This~~ term excludes:

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

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

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

(d) Buildings or spaces used for legislative activities.

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

(10) “Tenant broker” means a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

Section 5. Section 255.249, Florida Statutes, is amended to read:

255.249 Department of Management Services; responsibility; department rules.—

(1) The department shall have responsibility and authority for the operation, custodial care, and preventive maintenance, repair, alteration, modification, and allocation of space ~~for~~ of all buildings in the Florida Facilities Pool and adjacent the grounds ~~located adjacent thereto~~.

(2) A state agency may not lease space in a private building that is to be constructed for state use without first obtaining prior approval of the architectural design and preliminary construction from the department.

~~(3)~~(2) The department shall require a ~~any~~ state agency planning to terminate a lease for the purpose of occupying space in a new state-owned office building, ~~the funds for which are appropriated after June 30, 2000,~~ to state why the proposed relocation is in the best interest of the state.

(4)~~(3)~~(a) An agency that intends to terminate a lease of privately owned space before the expiration of its base term, must notify the department 90 days before the termination. The department shall, to the extent feasible, coordinate the vacation of privately owned leased space with the expiration of the lease on that space and, when a lease is terminated before expiration of its base term, will make a reasonable effort to place another state agency in the space vacated. A ~~Any~~ state agency may lease the space in any building

that was subject to a lease terminated by a state agency for a period of time equal to the remainder of the base term without the requirement of competitive solicitation.

(5) The department may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by the Department of Environmental Protection. The Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services are excluded from this subsection. However, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services may elect to comply with the provisions of this subsection in whole or in part. Any relocation of an agency at the direction of the department shall be implemented within existing appropriations of the agency and shall not require a transfer of any funds pursuant to chapter 216.

~~(6)(b)~~ The department shall develop and implement a strategic leasing plan. The strategic leasing plan must ~~shall~~ forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space.

~~(7)(e)~~ The department shall annually publish a master leasing report that includes the strategic leasing plan created under subsection (6). The department shall annually submit ~~furnish~~ the master leasing report to the Executive Office of the Governor and the Legislature by October 1. The report must provide ~~September 15 of each year which provides the following information:~~

~~(a)1-~~ A list, by agency and by geographic market, of all leases that are due to expire within 24 months.

~~(b)2-~~ Details of each lease, including location, size, cost per leased square foot, lease-expiration date, and a determination of whether sufficient state-owned office space will be available at the expiration of the lease to accommodate affected employees.

~~(c)3-~~ A list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2)(a) during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state’s long-term best interest.

~~(d)4-~~ Financial impacts to the Florida Facilities Pool rental rate due to the sale, removal, acquisition, or construction of pool facilities.

~~(e)5-~~ Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio. Changes to occupancy costs in leased space by market and changes to space consumption by agency and by market.

(f)6. An analysis of portfolio supply and demand.

(g)7. Cost-benefit analyses of acquisition, build, and consolidation opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and building.

(h) Recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.

(i)8. The updated plan required by s. 255.25(4)(c).

(8)(d) Annually, by June 30; of each year,

(a) Each state agency shall annually provide to the department all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, business case analyses related to consolidation plans by an agency, a telework program under s. 110.171, and current occupancy and relocation costs, inclusive of furnishings, fixtures and equipment, data, and communications. State agencies may use the services of a tenant broker in preparing this information.

(b) The title entity or managing agency shall report to the department any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying the vacant or underutilized space. The title entity or managing agency shall also notify the department of any significant changes to its occupancy for the coming fiscal year. The Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services are excluded from this subsection. However, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services may elect to comply with the provisions of this subsection in whole or in part.

~~(9)(4) The department shall adopt rules pursuant to chapter 120 providing:~~

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

(b) Procedures for soliciting and accepting competitive solicitations for leased space of 5,000 square feet or more in privately owned buildings, for evaluating the proposals received, for exemption from competitive solicitations requirements of any lease for the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), and for the securing of at least three documented quotes for a lease that is not required to be competitively solicited.

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

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

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

~~2.~~ At a minimum, such terms and conditions must shall include, ~~at a minimum~~, the following clauses, which may not be amended, supplemented, or waived:

~~1.a.~~ As provided in s. 255.2502, “The State of Florida’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”

~~2.b.~~ “The lessee ~~has shall~~ have the right to terminate this lease, without penalty, ~~if this lease in the event~~ a state-owned building becomes available to the lessee for occupancy and the lessee has given upon giving 6 months’ advance written notice to the lessor by certified mail, return receipt requested.”

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

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

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

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

~~(i)(j)~~ A method for reporting leases for nominal or no consideration.

~~(j)(k)~~ For a lease of less than 5,000 square feet, a method for certification by the agency head or the agency head’s designated representative that all

criteria for leasing have been fully complied with and for the filing of a copy of such lease and all supporting documents with the department for its review and approval as to technical sufficiency and whether it is in the best interests of the state.

~~(k)(4)~~ A standardized format for state agency reporting of the information required by paragraph ~~(8)(a)~~ ~~(3)(d)~~.

~~(10)(5)~~ The department shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any building or part thereof. Before executing any lease, this form must shall be certified by the agency head or the agency head's designated representative and submitted to the department.

~~(11)(6)~~ The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan under subsection (6). The contract ~~must shall~~ be procured pursuant to s. 287.057. The vendor ~~that is~~ awarded the contract shall be compensated ~~by the department~~, subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. A ~~The~~ real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 6. Paragraphs (a), (b), (c), (d), and (f) of subsection (3) and subsections (1), (2), (5), (6), (7), (9), (10), and (11) of section 255.25, Florida Statutes, are amended to read:

255.25 Approval required before ~~prior to~~ construction or lease of buildings.—

~~(1)(a)~~—A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department.

~~(b)~~ During the term of existing leases, each agency shall consult with the department regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency.

~~(a)~~ Amendments to leases may be permitted to modify any lease provisions or any other terms or conditions unless, ~~except to the extent specifically prohibited~~ under ~~by~~ this chapter.

~~(b)~~ The department shall serve as a mediator in lease-renewal negotiations if the agency and the lessor are unable to reach a compromise within 6 months after renegotiation and if either the agency or lessor requests intervention by the department.

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

(2)(a) Except as provided in ss. 255.249 and ~~s.~~ 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need for the lease ~~therefor~~ is first obtained from the department. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(a)(b) For the lease of less than 5,000 square feet of space, including space leased for nominal or no consideration, a state agency must notify the department at least 90 ~~30~~ days before the execution of the lease. The department shall review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region. If the department determines that space is not available, the department shall determine whether the state agency lease is in the best interests of the state. If the department determines that the execution of the lease is not in the best interests of the state, the department shall notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~and the presiding officers of each house of the Legislature~~ of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ ss. 216.311, 255.2502, and 255.2503.

(b)(e) The department shall adopt ~~as a rule~~ uniform leasing procedures by rule for use by each state agency ~~other than the Department of Transportation~~. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(c)(d) ~~Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease terms and conditions and of the need therefor is first obtained from the department.~~ The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department, ~~of Management Services~~ and the provisions of s. 255.2502.

(3)(a) Except as provided in subsection (10), a state agency may not enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.

1.a. An invitation to bid ~~must~~ shall be made available simultaneously to all lessors and ~~must~~ include a detailed description of the space sought; the time and date for the receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining ~~the~~ the acceptability of the bid. If the agency contemplates ~~renewing~~ renewal of the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed. Evaluation of bids ~~must~~ shall include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in the invitation to bid may not be used in determining ~~the~~ the acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor that submits the lowest responsive bid. ~~The contract file must contain a written determination that the bid meets~~ This bid must be determined in writing to meet the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an invitation to bid is not practicable, leased space shall be procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all lessors and must include a statement of the space sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include, but need not be limited to, price, to be used in determining ~~the~~ the acceptability of the proposal. The relative importance of price and other evaluation criteria ~~must~~ shall be indicated. If the agency contemplates ~~renewing~~ renewal of the contract, that fact must be stated in the request for proposals. The proposal must include the price for each year for which the contract may be renewed. Evaluation of proposals ~~must~~ shall include consideration of the total cost for each year as submitted by the lessor.

b. The contract shall be awarded to the responsible and responsive lessor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for proposals. The contract file must contain documentation supporting the basis on which the award is made.

3.a. If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best leasing value to the state, the agency may procure leased space by competitive sealed replies. The agency's written determination must specify reasons ~~that explain~~ why negotiation may be necessary in order for the state to achieve the best leasing value and must be approved in writing by the agency head or his or

her designee ~~before~~ prior to the advertisement of an invitation to negotiate. Cost savings related to the agency procurement process are not sufficient justification for using an invitation to negotiate. An invitation to negotiate shall be made available to all lessors simultaneously and must include a statement of the space sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the agency contemplates renewing ~~renewal~~ of the contract, that fact must be stated in the invitation to negotiate. The reply must include the price for each year for which the contract may be renewed.

b. The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and shall select, based on the ranking, one or more lessors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive lessor that the agency determines will provide the best leasing value to the state. The contract file must contain a short, plain statement that explains the basis for lessor selection and sets forth the lessor's deliverables and price pursuant to the contract, and an explanation of how these deliverables and price provide the best leasing value to the state.

(b) The department of ~~Management Services~~ shall have the authority to approve a lease for 5,000 square feet or more of space which ~~that~~ covers more than 12 consecutive months ~~1 fiscal year~~, subject to the provisions of ss. 216.311, 255.2501, 255.2502, and 255.2503, if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. This paragraph does not apply to buildings or facilities of any size leased for the purpose of providing care and living space to individuals ~~for persons~~.

(c) The department may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interests of the state; ~~however, but in no case shall~~ the total of such extensions may not exceed 11 months. If at the end of the 11th month an agency still needs that space, it must ~~shall~~ be procured by competitive bid in accordance with s. 255.249(9)(b) ~~255.249(4)(b)~~. However, if the Department of Agriculture and Consumer Services, the Department of Financial Services, or the Department of Legal Affairs an agency that determines that it is in its best interest to remain in the space it currently occupies, it may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease. For those agencies for which the department may approve lease actions, the department may approve a replacement lease with a lessor for an agency to remain in the space it currently occupies if such lease is, in the judgment of

the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. The term of the replacement lease may not exceed the base term of the expiring lease. Any relocation of an agency at the direction of the department shall be within existing appropriations and shall not require a transfer of any funds pursuant to chapter 216.

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

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

(5) Before construction or renovation of any state-owned building or state-leased space is commenced, the department of ~~Management Services~~ shall ~~determine ascertain, through the~~ determine by submission of proposed plans to the Division of State Fire Marshal for review, ~~whether that~~ whether that the proposed construction or renovation plan complies with the uniform firesafety standards required by the division of ~~State Fire Marshal~~. The review of construction or renovation plans for state-leased space ~~must shall~~ must be completed within 10 calendar days ~~after of~~ after receipt of the plans by the division of ~~State Fire Marshal~~. The review of construction or renovation plans for a state-owned building ~~must shall~~ must be completed within 30 calendar days ~~after of~~ after receipt of the plans by the division of ~~State Fire Marshal~~. The responsibility for submission and retrieval of the plans ~~may called for in this subsection shall~~ shall not be imposed on the design architect or engineer, but ~~is shall be~~ is the responsibility of the two agencies. ~~If Whenever~~ Whenever the division of ~~State Fire Marshal~~ determines that a construction or renovation plan is not

in compliance with such uniform firesafety standards, the division of State Fire Marshal may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve such compliance. The lessor shall provide the department with of Management Services documentation certifying that the facility meets all of shall withhold approval of any proposed lease until the construction or renovation plan complies with the uniform firesafety standards of the Division of State Fire Marshal. The cost of all modifications or renovations made for the purpose of bringing leased property into compliance with the uniform firesafety standards are shall be borne by the lessor. The state may not take occupancy without the division's final approval.

(6) Before construction or substantial improvement of any state-owned building is commenced, the department of ~~Management Services~~ must ~~determine~~ ascertain that the proposed construction or substantial improvement complies with the flood plain management criteria for mitigation of flood hazards, as prescribed in the October 1, 1986, rules and regulations of the Federal Emergency Management Agency, and the department shall monitor the project to assure compliance with the criteria. In accordance with chapter 120, The department of Management Services shall adopt rules any necessary rules to ensure that all such proposed state construction and substantial improvement of state buildings in designated flood-prone areas complies with the flood plain management criteria. If Whenever the department determines that a construction or substantial improvement project is not in compliance with such with the established flood plain management criteria, the department may issue an order to cease all construction or improvement activities until compliance is obtained, except those activities required to achieve such compliance.

(7) This section does not apply to any lease having a term of less than 120 consecutive days for the purpose of securing the one-time special use of the leased property. ~~This section does not apply to any lease for nominal or no consideration.~~

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

(10) The department of ~~Management Services~~ may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, or if the agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action and if the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no

other agency-controlled space is available to meet this emergency need; ~~however, but in no case shall~~ the lease for such space may not exceed 11 months. If the lessor elects not to replace or renovate the destroyed or uninhabitable facility, the agency shall procure the needed space by competitive bid in accordance with s. ~~255.249(9)(b) 255.249(4)(b)~~. If the lessor elects to replace or renovate the destroyed or uninhabitable facility and the construction or renovations will not be complete at the end of the 11-month lease, the agency may modify the lease to extend it on a month-to-month basis for up to an additional 6 months to allow completion of such construction or renovations.

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

Section 7. Subsection (4) of section 255.252, Florida Statutes, is amended to read:

255.252 Findings and intent.—

(4) In addition to designing and constructing new buildings to be energy-efficient, it is the policy of the state to operate and maintain state facilities in a manner that minimizes energy consumption and maximizes building sustainability and to operate facilities leased by the state so as to minimize energy use. It is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code. State agencies are encouraged to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state agency and the private firm or cogeneration contracts and that otherwise permit the state to lower its net energy costs. Such energy contracts may be funded from the operating budget. The vendor for such energy contracts may be selected in accordance with s. 287.055.

Section 8. Effective July 1, 2014, subsection (1) of section 255.254, Florida Statutes, is amended to read:

255.254 No facility constructed or leased without life-cycle costs.—

(1) ~~A~~ No state agency may not shall lease, construct, or have constructed, within limits prescribed in this section, a facility without having secured from the department an evaluation of life-cycle costs based on sustainable building ratings. ~~Furthermore,~~ Construction shall proceed only upon disclosing to the department, for the facility chosen, the life-cycle costs as determined in s. 255.255, the facility's sustainable building rating goal, and the capitalization of the initial construction costs of the building. The life-cycle costs and the sustainable building rating goal shall be primary considerations in the selection of a building design. For leased facilities

~~larger buildings more than 2,000 5,000 square feet in area within a given building boundary, an energy performance analysis that calculates consisting of a projection of the total annual energy consumption and energy costs in dollars per square foot of major energy-consuming equipment and systems based on actual expenses from the last 3 years and projected forward for the term of the proposed lease shall be performed. The analysis must also compare the energy performance of the proposed lease to lease shall only be made where there is a showing that the energy costs incurred by the state are minimal compared to available like facilities. A lease may not be finalized until the energy performance analysis has been approved by the department. A lease agreement for any building leased by the state from a private sector entity shall include provisions for monthly energy use data to be collected and submitted monthly to the department by the owner of the building.~~

Section 9. Effective July 1, 2014, subsection (1) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(1) ENERGY CONSUMPTION AND COST DATA.— Each state agency shall collect data on energy consumption and cost ~~for all. The data gathered shall be on~~ state-owned facilities and metered state-leased facilities of 5,000 ~~net square feet or more.~~ These data will be used in the computation of the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data shall be reported annually to the department in a format prescribed by the department.

Section 10. Subsection (7) of section 110.171, Florida Statutes, is amended to read:

110.171 State employee telework program.—

(7) Agencies that have a telework program shall establish and track performance measures that support telework program analysis and report data annually to the department in accordance with s. ~~255.249(8)~~ 255.249(3)(d). Such measures must include, but need not be limited to, those that quantify financial impacts associated with changes in office space requirements resulting from the telework program. Agencies operating in office space owned or managed by the department shall consult the department to ensure consistency with the strategic leasing plan required under s. ~~255.249(6)~~ 255.249(3)(b).

Section 11. Paragraph (b) of subsection (15) of section 985.682, Florida Statutes, is amended to read:

985.682 Siting of facilities; study; criteria.—

(15)

(b) Notwithstanding s. 255.25(1)(b), the department may enter into lease-purchase agreements to provide juvenile justice facilities for the housing of committed youths, contingent upon available funds. The facilities provided through such agreements must ~~shall~~ meet the program plan and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, notwithstanding ~~the provisions of s. 255.25(3)(a), a no-such~~ lease agreement may not be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder except if ~~when~~ contracting with other governmental entities.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2013.

Approved by the Governor June 7, 2013.

Filed in Office Secretary of State June 7, 2013.