FLORIDA STATUTES CHAPTER 255
PUBLIC PROPERTY AND PUBLICLY OWNED BUILDINGS

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History.—s. 1, ch. 6184, 1911; RGS 1203; CGL 1680.

255.02 Boards authorized to replace buildings destroyed by fire.—The Department of Management Services or any board or person having the direct supervision and control of any state building or state property may have rebuilt or replaced, out of the proceeds from the fire insurance on such buildings or property, any buildings or property owned by the state, which may be destroyed in whole or in part by fire.

History.—s. 1, ch. 6518, 1913; RGS 1204; CGL 1681; s. 2, ch. 63-204; ss. 15, 22, 35, ch. 69-106; s. 174, ch. 92-279; s. 55, ch. 92-326; s. 30, ch. 2007-217.

255.03 Proceeds of insurance to be paid into State Treasury; disbursement of funds.—

(1) The proceeds from the insurance of any state building or state property covered by insurance which may be destroyed in whole or in part by fire, or other damage, shall be paid into the State Treasury and constitute a fund for the rebuilding or replacing of such property, and the Chief Financial Officer may draw his or her warrant for such amounts, not to exceed the proceeds so paid in, as may be approved by the board or persons having the direct supervision and control of such buildings or property for the purpose of rebuilding or replacing the same.

(2) The provisions of this section shall not apply to proceeds received from insurance carried by a lessee of a donated building which was under lease at the time of donation and is not to be replaced. Such proceeds received by a board or agency of the state may be used by that board or agency for any purpose or function authorized by law.

History.—s. 2, ch. 6518, 1913; RGS 1205; CGL 1682; s. 1, ch. 61-140; s. 145, ch. 95-148; s. 273, ch. 2003-261.

255.04 Preference to home industries in building public buildings.—Every official board in the state, whether of the state, a county, or a municipality, which may be charged with the duty of erecting or constructing any public administrative or institutional building shall give preference, in the purchase of material and in letting contracts for the construction of such building, to materialmen, contractors, builders, architects, and laborers who reside within the state, whenever such material can be purchased or the services of such materialmen, contractors, builders, architects, and laborers can be employed at no greater expense than that which would obtain if such purchase was made from, or contract let or employment given to, a person residing beyond the limits of the state. However, this section in no way prohibits the right of any such official board to compare the quality of materials proposed for purchase and to compare the qualifications, character, responsibility, and fitness of materialmen, contractors, builders, and architects proposed for employment in its consideration of the purchase of materials or employment of persons. Notwithstanding the foregoing, no county official, board of county

commissioners, school board, city council or city council members, or other public official, state board, or state agency charged with the letting of contracts or purchase of materials for the construction, modification, alteration, or repair of any publicly owned facility may specify the use of materials or systems by a sole source, unless:
(1) The governmental body, after consideration of all available alternative materials and systems, determines that the specification of a sole material or system is justifiable based upon its cost or interchangeability;
(2) The sole source specification has been recommended by the architect or engineer of record; and
(3) The consideration by, and the justifications of, the governmental body are documented, in writing, in the project file.
History.—s. 1, ch. 9146, 1923; CGL 1686; s. 2, ch. 83-266; s. 1, ch. 84-288; s. 146, ch. 95-148.
255.041 Separate specifications for building contracts.—Every officer, board, department, or commission charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction, or altering of buildings for the state, when the entire cost of such work shall exceed $10,000, may have prepared separate specifications for each of the following branches of work to be performed:
(1) Heating and ventilating and accessories.
(2) Plumbing and gas fitting and accessories.
(3) Electrical installations.
(4) Air-conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories.

All such specifications may be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the state or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, may award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work; provided, however, that all or any part of the work specified in the above subdivisions may be awarded to the same contractor.

History.—s. 1, ch. 25397, 1949; s. 26, ch. 2016-10.
255.042 Shelter in public buildings.—
(1) It shall be the policy of the state that fallout protection be incorporated to the fullest practical extent in all public buildings of the state and its political subdivisions, which would have a floor area capable of sheltering 100 or more persons in order to provide protection against radiation hazards for the greatest number of persons, including employees of state and local government, in the event of nuclear attack.
(2) Every officer, department, board, agency or commission of the state, or of the political subdivisions thereof, responsible for the preparation of, or contracting for, plans and specifications for new public buildings, or for the substantial modification of or additions to existing public buildings, may require that the architect, architect-engineer firm, or other person or persons involved in the design of such buildings, provide a minimum protection factor of 40-to-1 or such protection as is possible within available funds in such design, or provide for consideration at the same time as the basic plan, alternate plans affording this protection.

(3) The Division of Emergency Management shall, in those cases in which the architect-engineer firm does not possess the specialized training required for the inclusion of fallout protection in building design and upon request from the architect-engineer concerned or the responsible state or local agency, provide, at no cost to the architect-engineer or agency, professional development service to increase fallout protection through shelter slanting and cost-reduction techniques.
(4) Nothing in this section establishes a mandatory requirement for the incorporation of fallout shelter in the construction of, modification of, or addition to the public buildings concerned. It is mandatory, however, that the incorporation of such protection be given every consideration through acceptable shelter slanting and cost-reduction techniques. The responsible state or local official shall determine whether cost, or other related factors, precludes or makes impracticable the incorporation of fallout shelter in public buildings. Further, the Division of Emergency Management may waive the requirement for consideration of shelter in those cases where presently available shelter spaces equal or exceed the requirements of the area concerned.
(5) Nothing in this act shall apply to school buildings erected by the school board.
History.—s. 1, ch. 67-88; ss. 18, 35, ch. 69-106; s. 1, ch. 69-300; s. 25, ch. 81-167; s. 23, ch. 83-55; s. 116, ch. 2011-142.
255.043 Art in state buildings.—
(1) Each appropriation for the original construction of a state building which provides public access shall include an amount of up to 0.5 percent of the total appropriation for the construction of the building, not to exceed $100,000, to be used for the acquisition of works of art produced by, but not limited to, Florida artists or craftspersons. Those works of art acquired shall be displayed for viewing in public areas in the interior or on the grounds or the exterior of the building and not in private offices or areas with limited public access.
(2) The Department of Management Services or other state agencies receiving appropriations for original constructions shall notify the Florida Council on Arts and Culture and the user agency of any construction project which is eligible under the provisions of this section. The Department of Management Services or other state agency shall determine the amount to be made available for purchase or commission of works of art for each project and shall report these amounts to the Florida Council on Arts and Culture and the user agency. Payments therefor shall be made from funds appropriated for fixed capital outlay according to law.
(3) The selection of artists or craftspersons shall be the responsibility of the user agency. The final approval of any recommendation for the purchase of or commissioning of works of art shall be consistent with the art selection process pursuant to rule promulgated by the Department of State. The approval of any invoice for payment for any purchase of or commissioning of works of art shall be the responsibility of the user agency.
(4) The Department of State shall be authorized to promulgate rules to implement this section.
History.—s. 1, ch. 79-188; s. 125, ch. 83-217; s. 1, ch. 90-224; s. 13, ch. 90-267; s. 5, ch. 91-429; s. 175, ch. 92-279; s. 55, ch. 92-326; s. 147, ch. 95-148; s. 2, ch. 95-235; s. 1, ch. 2000-208; s. 31, ch. 2007-217; s. 38, ch. 2010-5.
255.045 Cleanup after events held on public property.—
(1) Any person who sponsors or promotes an event to be held on or within any public property or facility in the state must reasonably protect such property or facility and, after the event, must provide for all necessary cleanup, repair, and restoration of such property or facility to its condition prior to the event, so that such public property or facility is suitable for normal use.

The cleanup, repair, and restoration must be accomplished within 15 days after the date the event is concluded.
(2) This section does not supersede any laws, rules, ordinances, or properly adopted policies the requirements of which are more stringent than the requirements imposed by this section.
(3) A violation of this section is a noncriminal violation, punishable by a fine not to exceed $500 per day, to begin on the day after the 15-day cleanup period has expired. The imposition of the fine against any person does not abrogate that person's duty to pay any cleanup or restoration costs resulting from the event.
History.—ss. 1, 2, 3, ch. 89-73.
255.047 Publicly owned or operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; booking business records; confidentiality.—
(1) As used in this section:
(a) "Booking business records" means client calendars, client lists, exhibitor lists, and marketing files. The term does not include contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event.
(b) "Client calendar" means a schedule of events and a listing of the space reserved for such events that have been scheduled or tentatively scheduled to be held on a date more than 24 months in the future from whatever date is the current date.
(c) "Client list" means a list of names, addresses, and contact persons for selected, prequalified, and potential clients.
(d) "Exhibitor list" means a list of names, addresses, and contact persons for individual exhibitors at an exhibition.
(e) "Marketing file" means proprietary information on the booking history, location, attendance, space requirement, and other qualifying information for a potential client.
(2) The booking business records of a publicly owned or publicly operated convention center, sports stadium, sports arena, coliseum, or auditorium are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Nothing in this section shall prohibit the Department of Revenue from obtaining any booking business records or related information at the department's request if necessary for the department to administer its duties.
History.—s. 1, ch. 90-63; s. 1, ch. 95-118; s. 110, ch. 96-406.
255.05 Bond of contractor constructing public buildings; form; action by claimants.—
(1) A person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company.
(a) The bond must state on its front page:
1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity.
2. The contract number assigned by the contracting public entity.

3. The bond number assigned by the surety.
4. A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.
(b) Before commencing the work or before recommencing the work after a default or abandonment, the contractor shall provide to the public entity a certified copy of the recorded bond. Notwithstanding the terms of the contract or any other law governing prompt payment for construction services, the public entity may not make a payment to the contractor until the contractor has complied with this paragraph. This paragraph applies to contracts entered into on or after October 1, 2012.
(c) The bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract. A claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a copy of the contract and the recorded bond. The claimant shall have a cause of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action may not involve the public authority in any expense.
(d) When the work is done for the state and the contract is for $100,000 or less, no payment and performance bond shall be required. At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, a person entering into such a contract that is for $200,000 or less may be exempted from executing the payment and performance bond. When such work is done for the state, the Secretary of Management Services may delegate to state agencies the authority to exempt any person entering into such a contract amounting to more than $100,000 but less than $200,000 from executing the payment and performance bond. If an exemption is granted, the officer or official is not personally liable to persons suffering loss because of granting such exemption. The Department of Management Services shall maintain information on the number of requests by state agencies for delegation of authority to waive the bond requirements by agency and project number and whether any request for delegation was denied and the justification for the denial.
(e) Any provision in a payment bond issued on or after October 1, 2012, furnished for public work contracts as provided by this subsection which further restricts the classes of persons protected by the bond, which restricts the venue of any proceeding relating to such bond, which limits or expands the effective duration of the bond, or which adds conditions precedent to the enforcement of a claim against the bond beyond those provided in this section is unenforceable.
(f) The Department of Management Services shall adopt rules with respect to all contracts for $200,000 or less, to provide:
1. Procedures for retaining up to 10 percent of each request for payment submitted by a contractor and procedures for determining disbursements from the amount retained on a pro rata basis to laborers, materialmen, and subcontractors, as defined in s. 713.01.
2. Procedures for requiring certification from laborers, materialmen, and subcontractors, as defined in s. 713.01, before final payment to the contractor that such laborers, materialmen, and subcontractors have no claims against the contractor resulting from the completion of the work provided for in the contract.

The state is not liable to any laborer, materialman, or subcontractor for any amounts greater than the pro rata share as determined under this section.

(g)1. The amount of the bond shall equal the contract price, except that for a contract in excess of $250 million, if the state, county, municipality, political subdivision, or other public entity finds that a bond in the amount of the contract price is not reasonably available, the public owner shall set the amount of the bond at the largest amount reasonably available, but not less than $250 million.
2. For construction-management or design-build contracts, if the public owner does not include in the bond amount the cost of design or other nonconstruction services, the bond may not be conditioned on performance of such services or payment to persons furnishing such services. Notwithstanding paragraphs (c) and (e), such a bond may exclude persons furnishing such services from the classes of persons protected by the bond.
(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: (Name and address of claimant)

You are notified that the undersigned contests your notice of nonpayment, dated , , and served on the undersigned on , , and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on , .

Signed: (Contractor or Attorney)

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and on the surety. The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a

claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: (name of contractor and address)

(name of surety and address)

The undersigned claimant notifies you that:

1. Claimant has furnished (describe labor, services, or materials) for the improvement of the real property identified as (property description) . The corresponding amount unpaid to date is $, of which $ is unpaid retainage.

2. Claimant has been paid to date the amount of $ for previously furnishing (describe labor, services, or materials) for this improvement.

3. Claimant expects to furnish (describe labor, services, or materials) for this improvement in the future (if known), and the corresponding amount expected to become due is $ (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on , .

(signature and address of claimant)

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and subscribed before me this day of , (year) , by (name of signatory) .

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced

(b) When a person is required to execute a waiver of his or her right to make a claim against the payment bond in exchange for, or to induce payment of, a progress payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM
AGAINST THE PAYMENT BOND
(PROGRESS PAYMENT)

The undersigned, in consideration of the sum of $, hereby waives its right to claim against the payment bond for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) , for improvements to the following described project:

(description of project)

This waiver does not cover any retention or any labor, services, or materials furnished after the date specified.

DATED ON , .

(Claimant)

By:

(c) When a person is required to execute a waiver of his or her right to make a claim against the payment bond, in exchange for, or to induce payment of, the final payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM
AGAINST THE PAYMENT BOND
(FINAL PAYMENT)

The undersigned, in consideration of the final payment in the amount of $, hereby waives its right to claim against the payment bond for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) , for improvements to the following described project:

(description of project)

DATED ON , .

(Claimant)

By:

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c).
(e) A claimant who executes a waiver in exchange for a check may condition the waiver on payment of the check.
(f) A waiver that is not substantially similar to the forms in this subsection is enforceable in accordance with its terms.
(3) The bond required in subsection (1) may be in substantially the following form:

PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number)

BY THIS BOND, We , as Principal and , a corporation, as Surety, are bound to , herein called Owner, in the sum of $, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated , , between Principal and Owner for construction of , the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and

3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON , .

(Name of Principal)

By (As Attorney in Fact)

(Name of Surety)

(4) The payment bond provisions of all bonds required by subsection (1) shall be construed and deemed statutory payment bonds furnished pursuant to this section and such bonds shall not under any circumstances be converted into common law bonds.
(5) In addition to the provisions of chapter 47, any action authorized under this section may be brought in the county in which the public building or public work is being constructed or repaired. This subsection shall not apply to an action instituted prior to May 17, 1977.
(6) All payment bond forms used by a public owner and all payment bonds executed pursuant to this section by a surety shall make reference to this section by number, shall contain reference to the notice and time limitation provisions in subsections (2) and (10), and shall comply with the requirements of paragraph (1)(a).
(7) In lieu of the bond required by this section, a contractor may file with the state, county, city, or other political authority an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in part II of chapter 625. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this section. The determination of the value of an alternative form of security shall be made by the appropriate state, county, city, or other political subdivision.
(8) When a contractor has furnished a payment bond pursuant to this section, he or she may, when the state, county, municipality, political subdivision, or other public authority makes any payment to the contractor or directly to a claimant, serve a written demand on any claimant who is not in privity with the contractor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known, as of the date of the statement by the claimant. Any such demand to a claimant who is not in privity with the contractor must be served

on the claimant at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by the claimant. The failure or refusal to furnish the statement does not deprive the claimant of his or her rights under the bond if the demand is not served at the address of the claimant or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the claimant who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a claimant and none of the information regarding the account has changed since the claimant's last response to a demand, the failure or refusal to furnish such statement does not deprive the claimant of his or her rights under the bond. The negligent inclusion or omission of any information deprives the claimant of his or her rights under the bond to the extent that the contractor can demonstrate prejudice from such act or omission by the claimant. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed before the date the demand for statement of account is received by the claimant.

(9) On any public works project for which the public authority requires a performance and payment bond, suits at law and in equity may be brought and maintained by and against the public authority on any contract claim arising from breach of an express provision or an implied covenant of a written agreement or a written directive issued by the public authority pursuant to the written agreement. In any such suit, the public authority and the contractor shall have all of the same rights and obligations as a private person under a like contract except that no liability may be based on an oral modification of either the written contract or written directive. Nothing herein shall be construed to waive the sovereign immunity of the state and its political subdivisions from equitable claims and equitable remedies. The provisions of this subsection shall apply only to contracts entered into on or after July 1, 1999.

(10) An action, except an action for recovery of retainage, must be instituted against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies. An action for recovery of retainage must be instituted against the contractor or the surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies; however, such an action may not be instituted until one of the following conditions is satisfied:

(a) The public entity has paid out the claimant's retainage to the contractor, and the time provided under s. 218.735 or s. 255.073(3) for payment of that retainage to the claimant has expired;

(b) The claimant has completed all work required under its contract and 70 days have passed since the contractor sent its final payment request to the public entity; or

(c) At least 160 days have passed since reaching substantial completion of the construction services purchased, as defined in the contract, or if not defined in the contract, since reaching beneficial occupancy or use of the project.

(d) The claimant has asked the contractor, in writing, for any of the following information and the contractor has failed to respond to the claimant's request, in writing, within 10 days after receipt of the request:

1. Whether the project has reached substantial completion, as that term is defined in the contract, or if not defined in the contract, if beneficial occupancy or use of the project has occurred.
2. Whether the contractor has received payment of the claimant's retainage, and if so, the date the retainage was received by the contractor.
3. Whether the contractor has sent its final payment request to the public entity, and if so, the date on which the final payment request was sent.

If none of the conditions described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d) is satisfied and an action for recovery of retainage cannot be instituted within the 1-year limitation period set forth in this subsection, this limitation period shall be extended until 120 days after one of these conditions is satisfied.

(11) When a contractor furnishes and records a payment and performance bond for a public works project in accordance with this section and provides the public authority with a written consent from the surety regarding the project or payment in question, the public authority may not condition its payment to the contractor on the production of a release, waiver, or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the surety, the payment bond, or the public authority for payments due on labor, services, or materials furnished on the public works project. The surety may, in a writing served on the public authority, revoke its consent or direct that the public authority withhold a specified amount from a payment, which shall be effective upon receipt. This subsection applies to contracts entered into on or after October 1, 2012.
History.—s. 1, ch. 6867, 1915; RGS 3533; s. 1, ch. 10035, 1925; CGL 5397; s. 1, ch. 59-491; s. 1, ch. 63-437; s. 1, ch. 71-47; ss. 1, 2, ch. 77-40; s. 1, ch. 77-78; s. 1, ch. 77-81; s. 1, ch. 80-32; s. 1, ch. 80-54; s. 1, ch. 82-196; s. 2, ch. 84-288; s. 2, ch. 85-130; s. 2, ch. 88-397; s. 21, ch. 90-109; s. 4, ch. 91-162; s. 176, ch. 92-279; s. 2, ch. 92-286; s. 55, ch. 92-326; s. 1, ch. 93-96; s. 5, ch. 94-322; s. 849, ch. 95-148; s. 25, ch. 95-196; s. 1, ch. 97-219; s. 1, ch. 98-135; s. 20, ch. 99-6; s. 33, ch. 99-13; s. 4, ch. 99-345; s. 2, ch. 99-386; s. 2, ch. 2001-118; s. 3, ch. 2001-211; s. 1, ch. 2005-218; s. 1, ch. 2005-227; s. 13, ch. 2005-230; s. 1, ch. 2007-159; s. 1, ch. 2007-221; s. 2, ch. 2012-211; s. 1, ch. 2019-94.
255.051 Public bids; check or draft as good faith deposit.—Whenever any form of bid of the state or any county or municipality thereof or any department or agency of the state, county or municipality or any other public body or institution shall specify that a good faith deposit shall be made by way of a certified check accompanying such bid, such requirement shall be satisfied by the bidder depositing in lieu of such certified check a cashier's check, treasurer's check or bank draft of any national or state bank.
History.—s. 1, ch. 27999, 1953.
255.0515 Bids for state contracts; substitution of subcontractors.—With respect to state contracts let pursuant to competitive bidding, whether under chapter 1013, relating to educational facilities, or this chapter, relating to public buildings, the contractor shall not remove or replace subcontractors listed in the bid subsequent to the lists being made public at the bid opening, except upon good cause shown.
History.—s. 1, ch. 78-389; s. 928, ch. 2002-387.
255.0516 Bid protests by educational boards.—With respect to state contracts and bids pursuant to competitive bidding, whether under chapter 1013, relating to educational facilities, or

under this chapter, relating to public buildings, if a school board, a community college board of trustees, or a state university board of trustees uses procedures pursuant to chapter 120 for bid protests, the board may require the protestor to post a bond amounting to:
(1) Twenty-five thousand dollars or 2 percent of the lowest accepted bid, whichever is greater, for projects valued over $500,000; and
(2) Five percent of the lowest accepted bid for all other projects,

conditioned upon payment of all costs and fees which may be adjudged against the protestor in the administrative hearing. If at the hearing the agency prevails, it shall recover all costs and attorney's fees from the protestor; if the protestor prevails, the protestor shall recover from the agency all costs and attorney's fees.

History.—s. 27, ch. 95-269; s. 929, ch. 2002-387.
255.0517 Owner-controlled insurance programs for public construction projects.—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to a public agency that may provide one or more of the following types of insurance coverage for any contractor or subcontractor working at specified or multiple contracted work sites of a public construction project: general liability, property damage excluding coverage for damage to real property, workers' compensation, employer's liability, or pollution liability coverage.
(b) "Specified contracted work site" means construction being performed during one or more fiscal years at one site or a series of contiguous sites separated only by a street, roadway, waterway, or railroad right-of-way or along a single continuous system.
(c) "Multiple contracted work site" means construction being performed at multiple sites during one or more fiscal years that is part of an ongoing capital infrastructure improvement program or involves the construction of one or more public schools.
(d) "Capital infrastructure improvement program" means a public agency program involving the construction of a public service, system, facility, or other public work, including, but not limited to, potable water, wastewater, reclaimed water, stormwater, drainage, streets or roads, intermodal transportation, electric service, gas service, airport services, or seaport services, and services, systems, facilities, or other public works incidental thereto.
(2) PURCHASE REQUIREMENTS.—A state agency, political subdivision, state university, community college, airport authority, or other public agency in this state, or any instrumentality thereof, may only purchase an owner-controlled insurance program in connection with a public construction project if it is determined necessary and in the best interest of the public agency and if all of the following conditions are met:
(a) The estimated total cost of the project is:
1. Seventy-five million dollars or more;
2. Thirty million dollars or more, if the project is for the construction or renovation of two or more public schools during a fiscal year; or
3. Ten million dollars or more, if the project is for the construction or renovation of one public school, regardless of whether the project's duration extends beyond a fiscal year.
(b) The program maintains completed operations insurance coverage for a term during which the coverage is reasonably commercially available, as determined by the public agency, but for no less than 10 years.

(c) The bid or proposal specifications for the project clearly specify, for all bidders or proposers, the insurance coverage provided under the program and the minimum safety requirements that must be met.
(d) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that the contractor or subcontractor believes is necessary for protection against any liability arising out of the contract. The cost of the additional insurance must be disclosed to the public agency.
(e) The program does not include surety insurance.
(f) The public agency may only purchase an owner-controlled insurance policy that has a deductible or self-insured retention if the deductible or self-insured retention does not exceed $1 million per occurrence. Contractors, including any owner or principal acting as a general contractor, and subcontractors performing work under a construction project insured by an owner-controlled insurance program are not required to individually satisfy eligibility requirements for large deductible workers' compensation rating plans. Such contractors and subcontractors may combine their payrolls under the owner-controlled insurance program for workers' compensation coverage as long as the minimum deductible for the construction project is $100,000 or more and the standard estimated premium for the construction project is $500,000 or more.
(g) The public agency is responsible for payment of the applicable deductibles of all claims.
(3) CAPITAL INFRASTRUCTURE IMPROVEMENT PROGRAM.—The construction of a single public agency service, system, facility, or other public work may not be combined with the construction of another public agency service, system, facility, or other public work to satisfy the amount specified in subparagraph (2)(a)1. unless the multiple services, systems, facilities, or other public works are part of:
(a) A capital infrastructure improvement program that will be performed under a single prime contract; or
(b) An interrelated capital infrastructure improvement program that interconnects the housing or transportation of persons or cargo arriving via an airport or seaport, and the combined estimated costs of the construction projects exceed $125 million.
(4) EXEMPTIONS.—This section does not apply to the following projects:
(a) Any project of the Department of Transportation which is authorized under s. 337.11;
(b) Any existing project or projects of a public agency which are the subject of an ongoing, owner-controlled insurance program issued before October 1, 2004;
(c) Any project of a public agency which is advertised by the public agency before October 1, 2004, for the purpose of receiving bids or proposals for the project; or
(d) Any project or projects of a public agency which are committed to an ongoing, owner-controlled insurance program issued before October 1, 2007.
History.—s. 1, ch. 2004-377; s. 1, ch. 2007-218.
255.0518 Public bids; bid opening.—Notwithstanding s. 119.071(1)(b), the state or any county or municipality thereof or any department or agency of the state, county, or municipality or any other public body or institution shall:
(1) When opening sealed bids or the portion of any sealed bids that include the prices submitted that are received pursuant to a competitive solicitation for construction or repairs on a public building or public work, open the sealed bids at a public meeting conducted in compliance with s. 286.011.
(2) Announce at that meeting the name of each bidder and the price submitted in the bid.

(3) Make available upon request the name of each bidder and the price submitted in the bid.
History.—s. 2, ch. 2012-13; s. 3, ch. 2012-211.
255.052 Substitution of securities for amounts retained on public contracts.—
(1) Under any contract made or awarded by the state or any county, city, or political subdivision thereof, or other public authority, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the Chief Financial Officer:
(a) United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;
(b) Bonds or notes of the State of Florida; or
(c) Bonds of any political subdivision in the state; or
(d) Cash delivered to the State Treasury for the Treasury Cash Deposit Trust Fund; or
(e) Certificates of deposit from state or national banks or state or federal savings and loan associations in the state. Certificates of deposit shall possess the eligibility characteristics defined in s. 625.52.

No amount shall be withdrawn in excess of the market value of the securities listed in paragraphs (a), (b), and (c) at the time of withdrawal or of the par value of such securities, whichever is lower.

(2) The Chief Financial Officer shall regularly collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the Chief Financial Officer shall deliver each coupon as it matures to the contractor.
(3) Any amount deducted by the state or by any county, city, or political subdivision thereof, or by other public authority, pursuant to the terms of the contract, from the amounts retained for payments due the contractor shall be deducted, first from that portion of the amounts retained for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons, or income only from those securities which remain after such amount has been deducted.

Nothing in this section shall be construed to require the state or any county, city, or political subdivision thereof, or other public authority, to allow the contractor to withdraw the whole or any portion of the amount retained for payments to the contractor except pursuant to the terms of the contract.

History.—s. 1, ch. 70-70; s. 1, ch. 74-253; s. 5, ch. 92-87; s. 274, ch. 2003-261.
255.0525 Advertising for competitive bids or proposals.—
(1) The solicitation of competitive bids or proposals for any state construction project that is projected to cost more than $200,000 shall be publicly advertised once in the Florida Administrative Register at least 21 days prior to the established bid opening. For state construction projects that are projected to cost more than $500,000, the advertisement shall be published in the Florida Administrative Register at least 30 days prior to the established bid opening and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The bids or proposals shall be received and opened publicly at the

location, date, and time established in the bid or proposal advertisement. In cases of emergency, the Secretary of Management Services may alter the procedures required in this section in any manner that is reasonable under the emergency circumstances.
(2) The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement. In cases of emergency, the procedures required in this section may be altered by the local governmental entity in any manner that is reasonable under the emergency circumstances.
(3) If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.
(4) A construction project may not be divided into more than one project for the purpose of evading the requirements in this section.
(5) As used in this section, the term "emergency" means an unexpected turn of events that causes:
(a) An immediate danger to the public health or safety;
(b) An immediate danger of loss of public or private property; or
(c) An interruption in the delivery of an essential governmental service.
History.—s. 26, ch. 95-196; s. 40, ch. 95-269; s. 21, ch. 2013-14.
255.065 Public-private partnerships; public records and public meetings exemptions.—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.
(b) "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand.
(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.
(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.
(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.
(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.
(g) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.
(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.
(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
3. A water, wastewater, or surface water management facility or other related infrastructure; or
4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

(j) "Responsible public entity" means a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a responsible public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.
2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.
3. There may be state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.
4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such

financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.
(3) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for a qualifying project and may thereafter enter into a comprehensive agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.
(a)1. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section.
2. A private entity that submits an unsolicited proposal to a responsible public entity must concurrently pay an initial application fee, as determined by the responsible public entity. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.
3. If the initial application fee does not cover the responsible public entity's costs to evaluate the unsolicited proposal, the responsible public entity must request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The responsible public entity may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.
4. If the responsible public entity does not evaluate the unsolicited proposal, the responsible public entity must return the application fee.
5. If the responsible public entity chooses to evaluate an unsolicited proposal involving architecture, engineering, or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect, or an engineer licensed in this state qualified to perform the review, and such professional shall advise the responsible public entity through completion of the design and construction of the project.
(b) The responsible public entity may request a proposal from private entities for a qualifying project or, if the responsible public entity receives an unsolicited proposal for a qualifying project and the responsible public entity intends to enter into a comprehensive agreement for the project described in the unsolicited proposal, the responsible public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity on a project-by-project basis based upon the complexity of the qualifying project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. If approved by a majority vote of the responsible public entity's governing body, the responsible public entity may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.
(c) If the solicited qualifying project provided in paragraph (b) includes design work, the solicitation must include a design criteria package prepared by an architect, a landscape architect, or an engineer licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify reasonably specific criteria for the

qualifying project such as the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the qualifying project; cost or budget estimates; design and construction schedules; and site development and utility requirements. The licensed design professional who prepares the design criteria package shall be retained to serve the responsible public entity through completion of the design and construction of the project.

(d) Before approving a comprehensive agreement, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.
2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.
3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the responsible public entity.
4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
5. Will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9); the qualifying project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.
(f) Additional material or information that the responsible public entity reasonably requests.

Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.

(5) PROJECT QUALIFICATION AND PROCESS.—
(a) The private entity, or the applicable party or parties of the private entity's team, must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.
(b) The responsible public entity must:
1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.
2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.
3. Ensure that the comprehensive agreement addresses termination upon a material default of the comprehensive agreement.
(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.
(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.
(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:
1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.
(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.
(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.
(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.
(6) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:
(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
(b) Establish the process and timing of the negotiation of the comprehensive agreement.
(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.
(7) COMPREHENSIVE AGREEMENT.—
(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:
1. Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.
2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.
3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the comprehensive agreement.
4. Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the

form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.
5. Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.
6. Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.
7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.
8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.
9. Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.
(b) The comprehensive agreement may include:
1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.
2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.
3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.
(8) FEES.—A comprehensive agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the comprehensive agreement:
(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through a comprehensive agreement with a private entity.
(b) The comprehensive agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.
(c) The responsible public entity may lease existing fee-for-use facilities through a comprehensive agreement.
(d) Any revenues must be authorized by and applied in the manner set forth in the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses may be returned to the responsible public entity over the life of the comprehensive agreement.
(9) FINANCING.—
(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.
(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.
(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing of the responsible public entity by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity, and any such provision is void.
(10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—
(a) The private entity shall:
1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.
2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.
3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.
4. Comply with the comprehensive agreement and any lease or service contract.
(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.
(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.
(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(12) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) DEPARTMENT OF MANAGEMENT SERVICES.—

(a) A responsible public entity may provide a copy of its comprehensive agreement to the Department of Management Services. A responsible public entity must redact any confidential or exempt information from the copy of the comprehensive agreement before providing it to the Department of Management Services.

(b) The Department of Management Services may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing comprehensive agreements with other responsible public entities.

(c) This subsection does not require a responsible public entity to provide a copy of its comprehensive agreement to the Department of Management Services.

(14) CONSTRUCTION.—

(a) This section shall be liberally construed to effectuate the purposes of this section.

(b) This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing body of a county, municipality, special district, or municipal hospital or health care system including those contained in acts of the Legislature.

(c) This section does not affect any agreement or existing relationship with a supporting organization involving such governing body or system in effect as of January 1, 2013.

(d) This section provides an alternative method and does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project pursuant to other statutory or constitutional authority.

(e) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating

and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.
(f) This section does not waive any requirement of s. 287.055.
(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—
(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).
(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.
2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.
3. An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.
(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.
(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.
2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.
b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.
c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.
d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.
(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.
History.—s. 2, ch. 2013-223; s. 1, ch. 2016-153; s. 1, ch. 2016-154.
Note.—Former s. 287.05712.
255.0705 Popular name.—Sections 255.0705-255.078 may be cited as the "Florida Prompt Payment Act."
History.—s. 4, ch. 2005-230.

255.071 Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.—

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements.

(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days after the date the labor, services, or materials were furnished and payment for such labor, services, or materials became due, or within the time limitations set forth in s. 255.073(3), whichever last occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).

(3) Any person providing labor, services, or materials for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work improvements to real property may file a verified complaint alleging:

(a) The existence of a contract for providing such labor, services, or materials to improve real property.

(b) A description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract.

(c) The amount of the contract price.

(d) The amount, if any, paid pursuant to the contract.

(e) The amount that remains unpaid pursuant to the contract and the amount thereof that is undisputed.

(f) That the undisputed amount has remained due and payable pursuant to the contract for more than 30 days after the date the labor or services were accepted or the materials were received.

(g) That the person against whom the complaint was filed has received payment on account of the labor, services, or materials described in the complaint and, as of the date the complaint was filed, has failed to make payment within the time limitations set forth in s. 255.073(3).

(4) After service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice. The person providing labor, services, or materials is entitled to the following remedies to the extent of the undisputed amount due for labor or services performed or materials supplied, and upon proof of each allegation in the complaint:

(a) An accounting of the use of any such payment from the person who received such payment.

(b) A temporary injunction against the person who received the payment, subject to the bond requirements specified in the Florida Rules of Civil Procedure.

(c) Prejudgment attachment against the person who received the payment, in accordance with each of the requirements of chapter 76.

(d) Such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law.

(5) The remedies specified in subsection (4) must be granted without regard to any other remedy at law and without regard to whether or not irreparable damage has occurred or will occur.

(6) The remedies specified in subsection (4) do not apply:

(a) To the extent of a bona fide dispute regarding any portion of the contract price.

(b) In the event the plaintiff has committed a material breach of the contract which would relieve the defendant from the obligations under the contract.
(7) The prevailing party in any proceeding under this section is entitled to recover costs, including a reasonable attorney's fee, at trial and on appeal.
(8) The provisions of this section shall also apply to any contract between a subcontractor and a sub-subcontractor or supplier and any contract between a sub-subcontractor and supplier on any project for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work.
History.—s. 1, ch. 93-141; s. 5, ch. 2005-230.
255.072 Definitions.—As used in ss. 255.073-255.078, the term:
(1) "Agent" means project architect, project engineer, or any other agency or person acting on behalf of a public entity.
(2) "Construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.
(3) "Contractor" means any person who contracts directly with a public entity to provide construction services.
(4) "Payment request" means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the public entity to which the payment request is submitted.
(5) "Public entity" means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, but does not include a local governmental entity as defined in s. 218.72.
(6) "Purchase" means the purchase of construction services.
History.—s. 6, ch. 2005-230.
255.073 Timely payment for purchases of construction services.—
(1) Except as otherwise provided in ss. 255.072-255.078, s. 215.422 governs the timely payment for construction services by a public entity.
(2) If a public entity disputes a portion of a payment request, the undisputed portion must be timely paid.
(3) When a contractor receives payment from a public entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. This subsection does not prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this subsection.
(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate specified in s. 215.422. After July 1, 2006, such payments shall bear interest at the rate of 1 percent per month, to the extent that the Chief

Financial Officer's replacement project for the state's accounting and cash management systems is operational for the particular affected public entity. After January 1, 2007, all such payments due from public entity shall bear interest at the rate of 1 percent per month.
History.—s. 7, ch. 2005-230.
255.074 Procedures for calculation of payment due dates.—
(1) Each public entity shall establish procedures whereby each payment request received by the public entity is marked as received on the date on which it is delivered to an agent or employee of the public entity or of a facility or office of the public entity.
(2) If the terms under which a purchase is made allow for partial deliveries and a payment request is submitted for a partial delivery, the time for payment for the partial delivery must be calculated from the time of the partial delivery and the submission of the payment request.
(3) A public entity must submit a payment request to the Chief Financial Officer for payment no more than 20 days after receipt of the payment request.
History.—s. 8, ch. 2005-230.
255.075 Mandatory interest.—A contract between a public entity and a contractor may not prohibit the collection of late payment interest charges authorized under s. 255.073(4).
History.—s. 9, ch. 2005-230.
255.076 Award of court costs and attorney's fees.—In an action to recover amounts due for construction services purchased by a public entity, the court shall award court costs and reasonable attorney's fees, including fees incurred through any appeal, to the prevailing party, if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party's claim to those amounts.
History.—s. 10, ch. 2005-230.
255.077 Project closeout and payment of retainage.—
(1) Each contract for construction services between a public entity and a contractor must provide for the development of a list of items required to render complete, satisfactory, and acceptable the construction services purchased by the public entity. The contract must specify the process for the development of the list, including responsibilities of the public entity and the contractor in developing and reviewing the list and a reasonable time for developing the list, as follows:
(a) For construction projects having an estimated cost of less than $10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use; or
(b) For construction projects having an estimated cost of $10 million or more, within 30 calendar days, unless otherwise extended by contract not to exceed 60 calendar days, after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.
(2) If the contract between the public entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a multiphased project, the contract must provide for the development of a list of items required to render complete, satisfactory, and acceptable all the construction services purchased pursuant to the contract for each building, structure, or phase of the project within the time limitations provided in subsection (1).

(3) The failure to include any corrective work or pending items not yet completed on the list developed pursuant to subsection (1) or subsection (2) does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.
(4) Upon completion of all items on the list, the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the public entity may continue to withhold an amount not to exceed 150 percent of the total costs to complete such items.
(5) All items that require correction under the contract and that are identified after the preparation and delivery of the list remain the obligation of the contractor as defined by the contract.
(6) Warranty items may not affect the final payment of retainage as provided in this section or as provided in the contract between the contractor and its subcontractors and suppliers.
(7) Retainage may not be held by a public entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a public entity or a contractor for a project or group of projects, and the final payment of retainage as provided in this section may not be delayed pending a final audit by the public entity's or contractor's insurance provider.
(8) If a public entity fails to comply with its responsibilities to develop the list required under subsection (1) or subsection (2), as defined in the contract, within the time limitations provided in subsection (1), the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078. The public entity need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the public entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if s. 255.078(6) applies.
History.—s. 11, ch. 2005-230.
255.078 Public construction retainage.—
(1) With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 10 percent of the payment as retainage until 50-percent completion of such services.
(2) After 50-percent completion of the construction services purchased pursuant to the contract, the public entity must reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this section, the term "50-percent completion" has the meaning set forth in the contract between the public entity and the contractor or, if not defined in the contract, the point at which the public entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract.
(3) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that

determination, and the contractor may not request the release of such retained funds from the public entity.
(4) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the public entity a payment request for up to one-half of the retainage held by the public entity. The public entity shall promptly make payment to the contractor, unless the public entity has grounds, pursuant to subsection (6), for withholding the payment of retainage. If the public entity makes payment of retainage to the contractor under this subsection which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.
(5) Neither this section nor s. 255.077 prohibits a public entity from withholding retainage at a rate less than 10 percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the public entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a public entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.
(6) Neither this section nor s. 255.077 requires the public entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the public entity or contractor.
(7) The same time limits for payment of a payment request apply regardless of whether the payment request is for, or includes, retainage.
(8) Subsections (1)-(4) do not apply to construction services purchased by a public entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Florida Prompt Payment Act.
(9) This section does not apply to any construction services purchased by a public entity if the total cost of the construction services purchased as identified in the contract is $200,000 or less.
History.—s. 12, ch. 2005-230.
255.099 Preference to state residents.—
(1) Each contract for construction that is funded by state funds must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. A contract for construction funded by local funds may contain such a provision.
(a) As used in this section, the term “substantially equal qualifications” means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.
(b) A contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor’s employment needs in the state’s job bank system.
(2) No contract shall be let to any person refusing to execute an agreement containing the provisions required by this section. However, in work involving the expenditure of federal aid funds, this section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines,

or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.
History.—s. 50, ch. 2010-147; s. 117, ch. 2011-142.
255.0991 Contracts for construction services; prohibited local government preferences.—
(1) For purposes of this section, the term:
(a) "Competitive solicitation" has the same meaning as in s. 255.248.
(b) "State-appropriated funds" means all funds appropriated in the General Appropriations Act, excluding federal funds.
(2) For a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:
(a) The contractor's maintaining an office or place of business within a particular local jurisdiction;
(b) The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
(c) The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.
(3) For any competitive solicitation that meets the criteria in subsection (2), a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by subsection (2).
(4) Except as provided in subsection (2), this section does not prevent a state college, county, municipality, school district, or other political subdivision of the state from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.
History.—s. 1, ch. 2015-63.
255.0992 Public works projects; prohibited governmental actions.—
(1) As used in this section, the term:
(a) "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
(b) "Public works project" means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.
(2)(a) Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in such project:
1. Pay employees a predetermined amount of wages or prescribe any wage rate;

2. Provide employees a specified type, amount, or rate of employee benefits;
3. Control, limit, or expand staffing; or
4. Recruit, train, or hire employees from a designated, restricted, or single source.

(b) The state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project. This paragraph does not apply to vendors listed under ss. 287.133 and 287.134.

(3) This section does not apply to contracts executed under chapter 337.

History.—s. 1, ch. 2017-113.

255.101 Contracts for public construction works; utilization of minority business enterprises.—

(1) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions which are charged with the letting of contracts for public works and for the construction of public bridges, buildings, and other structures shall operate in accordance with s. 287.093, except that all contracts for the construction of state facilities should comply with provisions in s. 287.09451, and rules adopted pursuant thereto, for the utilization of minority business enterprises. When construction is financed in whole or in part from federal funds and where federal provisions for utilization of minority business enterprises apply, this section shall not apply.

(2) Counties, municipalities, and special districts as defined in chapter 189, or other political subdivisions of the state are encouraged to be sensitive to the effect of job-size barriers on minority businesses. To this end, these governmental entities are encouraged to competitively award public construction projects exceeding $100,000.

History.—ss. 6, 26, ch. 94-322; s. 41, ch. 2001-61.

255.102 Contractor utilization of minority business enterprises.—

(1) Agencies shall consider the use of price preferences, weighted preference formulas, or other preferences for construction contracts, as determined appropriate by the Office of Supplier Diversity to increase minority participation.

(2) The Office of Supplier Diversity, in collaboration with the Board of Governors of the State University System, shall adopt rules to determine what is a "good faith effort" for purposes of contractor compliance with minority participation goals established for competitively awarded building and construction projects. Pro forma efforts shall not be considered good faith. Factors which shall be considered by the state agency in determining whether a contractor has made good faith efforts shall include, but not be limited to:

(a) Whether the contractor attended any presolicitation or prebid meetings that were scheduled by the agency to inform minority business enterprises of contracting and subcontracting opportunities.

(b) Whether the contractor advertised in general circulation, trade association, or minority-focus media concerning the subcontracting opportunities.

(c) Whether the contractor provided written notice to all relevant subcontractors listed on the minority vendor list for that locality and statewide as provided by the agency as of the date of issuance of the invitation to bid, that their interest in the contract was being solicited in sufficient time to allow the minority business enterprises to participate effectively.

(d) Whether the contractor followed up initial solicitations of interest by contacting minority business enterprises, the Office of Supplier Diversity, or minority persons who responded and provided detailed information about prebid meetings, access to plans, specifications, contractor's

project manager, subcontractor bonding, if any, payment schedule, bid addenda, and other assistance provided by the contractor to enhance minority business enterprise participation.
(e) Whether the contractor selected portions of the work to be performed by minority business enterprises in order to increase the likelihood of meeting the minority business enterprise procurement goals, including, where appropriate, breaking down contracts into economically feasible units to facilitate minority business enterprise participation under reasonable and economical conditions of performance.
(f) Whether the contractor provided the Office of Supplier Diversity as well as interested minority business enterprises or minority persons with adequate information about the plans, specifications, and requirements of the contract or the availability of jobs at a time no later than when such information was provided to other subcontractors.
(g) Whether the contractor negotiated in good faith with interested minority business enterprises or minority persons, not rejecting minority business enterprises or minority persons as unqualified without sound reasons based on a thorough investigation of their capabilities or imposing implausible conditions of performance on the contract.
(h) Whether the contractor diligently seeks to replace a minority business enterprise subcontractor that is unable to perform successfully with another minority business enterprise.
(i) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.
(3) If an agency considers any other criteria in determining whether a contractor has made a good faith effort, the agency shall adopt such criteria in accordance with s. 120.54, and, where required by that section, by rule, after May 31, 1994. In adopting such criteria, the agency shall identify the specific factors in as objective a manner as possible to be used to assess a contractor's performance against said criteria.
(4) Notwithstanding the provisions of s. 287.09451 to the contrary, agencies shall monitor good faith efforts of contractors in competitively awarded building and construction projects, in accordance with rules established pursuant to this section. It is the responsibility of the contractor to exercise good faith efforts in accordance with rules established pursuant to this section, and to provide documentation necessary to assess efforts to include minority business participation.
History.—ss. 7, 26, ch. 94-322; s. 59, ch. 96-410; s. 10, ch. 98-279; s. 8, ch. 2000-286; s. 42, ch. 2001-61; s. 32, ch. 2007-217.
255.103 Construction management or program management entities.—
(1) As used in this section, the term "governmental entity" means a county, municipality, school district, special district as defined in chapter 189, or political subdivision of the state.
(2) A governmental entity may select a construction management entity, pursuant to the process provided by s. 287.055, which is to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed, as required by law. The construction management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the governmental entity, the construction management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a

guaranteed completion date, in which case, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a governmental entity under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the governmental entity, after competitive negotiations, may require the construction management entity to provide for a separate guaranteed maximum price or a separate lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(3) A governmental entity may select a program management entity, pursuant to the process provided by s. 287.055, which is to be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services. The program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed as required by law. The program management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the governmental entity, the program management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold design and construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a governmental entity under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the governmental entity, after competitive negotiations, may require the program management entity to provide for a separate guaranteed maximum price or a lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(4) A governmental entity's authority under subsections (2) and (3) includes entering into a continuing contract for construction projects, pursuant to the process provided in s. 287.055, in which the estimated construction cost of each individual project under the contract does not exceed $2 million. For purposes of this subsection, the term "continuing contract" means a contract with a construction management or program management entity for work during a defined period on construction projects described by type which may or may not be identified at the time of entering into the contract.

(5) This section does not prohibit a local government from procuring construction management services, including the services of a program management entity, pursuant to the requirements of s. 255.20.

History.—s. 2, ch. 2007-159; s. 2, ch. 2009-227.

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally

accepted cost-accounting principles to cost more than $75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost in excess of $250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) The provisions of this subsection do not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve

the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on

small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d) If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.
3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(j) A county, municipality, special district as defined in s. 189.012, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(k) A local government that owns or operates a port identified in s. 403.021(9)(b) is exempt from this section when performing repairs or maintenance on the port's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(l) A local government that owns or operates a public transit system as defined in s. 343.52, a public transportation system as defined in s. 343.62, or a mass transit system described in s. 349.04(1)(b) is exempt from this section when performing repairs or maintenance on the buildings, structures, or public construction works of the public transit system, public transportation system, or mass transit system using the local government's own services, employees, and equipment.

(m) Any contractor may be considered ineligible to bid by the governmental entity if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

(2) The threshold amount of $300,000 for construction or $75,000 for electrical work, as specified in subsection (1), must be adjusted by the percentage change in the Engineering News-Record's Building Cost Index from January 1, 2009, to January 1 of the year in which the project is scheduled to begin.

(3)(a) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.
(b) This subsection does not apply:
1. To plywood specified for monolithic concrete forms.
2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.
3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.
4. To transportation projects for which federal aid funds are available.
(4) Any qualified contractor or vendor who could have been awarded the project had the project been competitively bid has standing to challenge a local government's actions to determine if the local government has complied with this section. The prevailing party in such action is entitled to recover its reasonable attorney's fees.
History.—s. 1, ch. 61-495; s. 1, ch. 94-175; s. 4, ch. 95-310; s. 5, ch. 95-341; s. 1, ch. 99-181; s. 62, ch. 2002-20; s. 9, ch. 2003-286; s. 1, ch. 2009-210; s. 54, ch. 2012-30; s. 4, ch. 2013-193; s. 81, ch. 2014-22.
255.21 Special facilities for physically disabled.—Any building or facility intended for use by the general public which, in whole or in part, is constructed or altered or operated as a lessee, by or on behalf of the state or any political subdivision, municipality, or special district thereof or any public administrative board or authority of the state shall, with respect to the altered or newly constructed or leased portion of such building or facility, comply with standards and specifications established by part II of chapter 553.
History.—s. 1, ch. 65-493; s. 1, ch. 72-281; s. 1, ch. 73-255; s. 82, ch. 77-104; s. 1, ch. 78-166; s. 7, ch. 89-97; s. 177, ch. 92-279; s. 55, ch. 92-326; s. 16, ch. 97-296; s. 135, ch. 2000-141; s. 37, ch. 2001-186; s. 6, ch. 2001-372; s. 26, ch. 2012-5.
255.211 Special symbol may be displayed.—All state-owned buildings providing facilities for wheelchair users, including, but not limited to, entrance and exit facilities, shall display at all entrances the internationally recognized symbol for wheelchair users.
History.—s. 1, ch. 70-403.
255.22 Reconveyance of lands not used for purpose specified.—
(1) In the event any party owning adjoining land conveys real property, without receipt of valuable consideration, to any municipality or county for a specific purpose or use and if such county or municipality fails to use such property for such purpose for a period of 60 consecutive months or, with respect to property conveyed on or after October 1, 1984, fails to use such property for such purpose for a period of 60 consecutive months or identify during the 60-month period the proposed use of such property in a comprehensive plan or other public facilities plan, then, upon written demand of the grantor, or grantor's successors in title owning such adjoining land, the municipality or county may execute and deliver a quitclaim deed to the party making such demand provided such party is the owner of land adjoining such property on at least one side. No such quitclaim deed shall be delivered hereunder unless the specific purpose or use to be made of the property was disclosed to the grantee at the time of delivery of the conveyance or

appeared in the conveyance or in an official record of the county; provided, however, that as to any such conveyance after July 1, 1967, the specific purpose or use must appear of record.
(2) In the event the purpose for which the property was conveyed required physical improvement or construction on such property or the maintenance thereof, any such municipality or county that fails to construct, improve, or maintain such property for the period specified in subsection (1) shall be conclusively deemed to have abandoned the property for the purpose for which it was conveyed, unless, with respect to property conveyed on or after October 1, 1984, the proposed use of such property has been identified in a comprehensive plan or other public facilities plan of the municipality or county during the 60-month period specified in subsection (1).
History.—ss. 1, 2, ch. 67-383; ss. 1, 2, 3, ch. 84-366; s. 42, ch. 93-164; s. 3, ch. 94-175; s. 3, ch. 95-297; s. 16, ch. 95-310.
Note.—Consolidation of s. 255.22 and former s. 255.23.
255.248 Definitions.—As used in this section and ss. 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) "Privately owned building" means any building not owned by a governmental agency.
(6) "Responsible lessor" means a lessor that has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
(7) "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) "Responsive lessor" means a lessor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.
(9) "State-owned office building" means any building whose title is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. The 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.

History.—s. 3, ch. 75-70; s. 61, ch. 85-349; s. 1, ch. 2007-220; s. 4, ch. 2013-152.

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

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

(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) The department shall require a state agency planning to terminate a lease for the purpose of occupying space in a new state-owned office building to state why the proposed relocation is in the best interest of the state.

(4) 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 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 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) The department shall develop and implement a strategic leasing plan. The strategic leasing plan must 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) The department shall annually publish a master leasing report that includes the strategic leasing plan created under subsection (6). The department shall annually submit the leasing report to the Executive Office of the Governor and the Legislature by October 1. The report must provide:

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

(b) 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) 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) 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) Financial impacts to the Florida Facilities Pool rental rate due to the sale, removal, acquisition, or construction of pool facilities.
(e) 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) An analysis of portfolio supply and demand.
(g) 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) The updated plan required by s. 255.25(4)(c).
(8) Annually, by June 30:
(a) Each state agency shall 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) The department shall adopt rules 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 proposals received, for exemption from competitive solicitations requirements of any lease for the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), and for securing 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) Acceptable terms and conditions for inclusion in lease agreements. At a minimum, such terms and conditions must include the following clauses, which may not be amended, supplemented, or waived:
1. 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. "The lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months' advance written notice to the lessor by certified mail, return receipt requested."
(f) 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) For full disclosure of the names and the extent of interest of the owners holding a 4 percent or more interest in 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 is represented by stock in a corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517 which 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) 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 is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517 which 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) A method for reporting leases for nominal or no consideration.
(j) 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 filing 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) A standardized format for state agency reporting of the information required by paragraph (8)(a).
(10) 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 be certified by the agency head or the agency head's designated representative and submitted to the department.
(11) 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 be procured pursuant to s. 287.057. The vendor awarded the contract shall be compensated subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. A 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.
History.—s. 4, ch. 75-70; s. 2, ch. 78-166; s. 168, ch. 81-259; s. 34, ch. 85-349; s. 2, ch. 90-224; s. 148, ch. 95-148; s. 1, ch. 95-342; s. 11, ch. 98-279; s. 21, ch. 99-399; s. 2, ch. 2000-172; s. 19, ch. 2006-26; ss. 16, 17, 54, ch. 2007-73; s. 2, ch. 2007-220; s. 15, ch. 2008-227; s. 2, ch. 2009-77; s. 10, ch. 2010-151; s. 14, ch. 2012-215; s. 5, ch. 2013-152.
255.25 Approval required before construction or lease of buildings.—
(1) 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 other terms or conditions unless specifically prohibited under 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 the agency or lessor requests intervention by the department.
(c) If 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 it is in the best interest of the state.
(2) 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 conditions and of the need for the lease is first obtained from the department. An 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 and s. 255.2502.
(a) 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 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 of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ss. 216.311, 255.2502, and 255.2503.
(b) The department shall adopt uniform leasing procedures by rule for use by each state agency. 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) 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 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, 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 be made available simultaneously to all lessors and 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 acceptability of the bid. If the agency contemplates renewing 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 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 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 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 acceptability of the proposal. The relative importance of price and other evaluation criteria must be indicated. If the agency contemplates renewing 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 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 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 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 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 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 shall have the authority to approve a lease for 5,000 square feet or more of space which covers more than 12 consecutive months, subject to 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.

(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, 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 be procured by competitive bid in accordance with s. 255.249(9)(b). However, if the Department of Agriculture and Consumer Services, the Department of Financial Services, or the Department of Legal Affairs 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 conditioned on 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 be included in the final order or judgment, excluding attorney 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 be included in the final order of judgment, excluding attorney fees.

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

(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 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 be based on the ratio of leased space to unleased space.

(g) Notwithstanding s. 287.056(1), a state agency may, at the sole discretion of the agency head or his or her designee, use the services of a tenant broker to assist with a competitive solicitation undertaken by the agency. In making its determination whether to use a tenant broker, a state agency shall consult with the department. A state agency may not use the services of a tenant broker unless the tenant broker is under a term contract with the state which complies with paragraph (h). If a state agency uses the services of a tenant broker with respect to a transaction, the agency may not enter into a lease with any landlord to which the tenant broker is providing brokerage services for that transaction.

(h) The Department of Management Services may, pursuant to s. 287.042(2)(a), procure a term contract for real estate consulting and brokerage services. A state agency may not purchase services from the contract unless the contract has been procured under s. 287.057(1) after March 1, 2007, and contains the following provisions or requirements:

1. Awarded brokers must maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers that are licensed in this state under chapter 475 and that have 3 or more years of experience in the market served. The contract may be made with up to three tenant brokers in order to serve the marketplace in the north, central, and south areas of the state.

2. Each contracted tenant broker shall work under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department shall provide training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers must comply with all applicable provisions of s. 475.278.

5. Real estate consultants and tenant brokers shall be compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under s. 215.20. All terms relating to the compensation of the real estate consultant or tenant broker shall be specified in the term contract and may not be supplemented or modified by the state agency using the contract.

6. The department shall conduct periodic customer-satisfaction surveys.

7. Each state agency shall report the following information to the department:

a. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per FTE.

b. The quality of space leased and the adequacy of tenant-improvement funds.

c. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

d. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

e. The lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

(4)(a) The department shall not authorize any state agency to enter into a lease agreement for space in a privately owned building when suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to

fulfill the statutory duties of the agency making such request. The term "state-owned building" as used in this subsection means any state-owned facility regardless of use or control.
(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to the provisions of ss. 255.2501, 255.2502, and 255.2503. Agencies may utilize unexpended funds appropriated for lease payments to:
1. Pay their proportion of operating costs.
2. Renovate applicable spaces.
(c) Because the state has a substantial financial investment in state-owned buildings, it is legislative policy and intent that when state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before leasing privately owned buildings. By September 15, 2006, the Department of Management Services shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals, and shall furnish this plan annually as part of the master leasing report.
(5) Before construction or renovation of any state-owned building or state-leased space is commenced, the department shall determine, through the submission of proposed plans to the Division of State Fire Marshal for review, whether the proposed construction or renovation plan complies with the uniform firesafety standards required by the division. The review of construction or renovation plans for state-leased space must be completed within 10 calendar days after receipt of the plans by the division. The review of construction or renovation plans for a state-owned building must be completed within 30 calendar days after receipt of the plans by the division. The responsibility for submission and retrieval of the plans may not be imposed on the design architect or engineer, but is the responsibility of the two agencies. If the division determines that a construction or renovation plan is not in compliance with uniform firesafety standards, the division may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve compliance. The lessor shall provide the department with documentation certifying that the facility meets all of the uniform firesafety standards. The cost of all modifications or renovations made for the purpose of bringing leased property into compliance with the uniform firesafety standards is 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 must determine 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. The department shall adopt rules necessary to ensure that all proposed state construction and substantial improvement of state buildings in designated flood-prone areas complies with the flood plain management criteria. If the department determines that a construction or substantial improvement project is not in compliance with such 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.
(8) An agency may not enter into more than one lease for space in the same privately owned facility or complex within any 12-month period except upon competitive solicitation.

(9) Specialized educational facilities, excluding classrooms, are exempt from the competitive bid requirements for leasing pursuant to this section if the executive head of a state agency certifies in writing that the facility is available from a single source and that the competitive bid requirements would be detrimental to the state. Such certification must include documentation of evidence of steps taken to determine sole-source status.
(10) The department 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 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, 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). 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 6 months to allow completion of such construction or renovations.
(11) In any leasing of space which occurs without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes must attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.
History.—s. 22, ch. 69-106; s. 5, ch. 75-70; s. 12, ch. 75-151; s. 1, ch. 77-174; s. 2, ch. 77-280; s. 3, ch. 78-166; s. 1, ch. 80-55; s. 1, ch. 80-294; s. 1, ch. 81-25; s. 1, ch. 82-191; s. 3, ch. 84-143; s. 9, ch. 84-321; s. 35, ch. 85-349; s. 2, ch. 88-202; s. 8, ch. 88-409; s. 3, ch. 90-224; s. 179, ch. 92-279; s. 55, ch. 92-326; s. 12, ch. 94-265; s. 3, ch. 94-333; s. 850, ch. 95-148; s. 44, ch. 96-399; s. 60, ch. 96-410; s. 22, ch. 97-94; s. 12, ch. 98-279; s. 22, ch. 99-399; s. 14, ch. 2000-141; s. 3, ch. 2000-172; s. 43, ch. 2001-61; s. 34, ch. 2001-186; s. 1, ch. 2001-267; s. 3, ch. 2001-372; s. 20, ch. 2006-26; ss. 18, 19, 54, ch. 2007-73; s. 3, ch. 2007-220; s. 3, ch. 2009-77; s. 11, ch. 2010-151; s. 6, ch. 2013-152.
255.25001 Department of Management Services not required to participate in PRIDE leasing process; Department of Agriculture and Consumer Services authorized to sell property without complying with specified laws.—Notwithstanding the provisions of:
(1) Section 946.504(3), as amended by chapter 92-279, Laws of Florida, the Department of Management Services shall not be required to participate with the Department of Corrections in the correctional work program (PRIDE) leasing process.
(2) Chapters 253 and 287, the Department of Agriculture and Consumer Services shall be authorized to sell any tangible personal property, real property, or structures on leased or department-owned real property without complying with other provisions of law or Florida Statutes, with the proceeds being deposited into the Property Trust Account in the General Inspection Trust Fund. Prior to finalizing any such sale, the department's proposed action shall be subject to the notice and review procedures set forth in s. 216.177, as amended by chapter 92-142, Laws of Florida.
History.—s. 8, ch. 92-316; s. 15, ch. 94-240; s. 111, ch. 96-406; s. 13, ch. 98-279; s. 32, ch. 2007-5; s. 51, ch. 2012-116; s. 38, ch. 2014-53; s. 3, ch. 2016-11.
255.2501 Lease of space financed with local government obligations.—

(1) Except when specifically authorized by the Appropriations Act, no executive agency, department, public officer or employee shall enter any contract on behalf of the state, the term of which contract is more than 5 years, including any and all renewal periods and including any and all leases which constitute a series of leases, for the lease, lease-purchase, sale-leaseback, purchase, or rental of any office space, building, real property and improvements thereto, or any other fixed capital outlay project, any of which is or is to be financed with local government obligations of any type.
(2) No lease, lease-purchase, sale-leaseback, purchase, or rental of any office space, building, real property and improvements thereto, or any other fixed capital outlay project that is or is to be financed with local government obligations of any type shall be requested for approval in the Appropriations Act unless:
(a) The construction for such project is to be or has been competitively bid unless the certificate of occupancy for such project was issued more than 3 years prior to the time such request is made;
(b) The executive branch agency or department making the request has competitively bid its space needs prior to making such request and the project for which approval is sought was the lowest and best bidder for such needs; and
(c) The rent, lease payment, lease-purchase payment, or other payment for such project is not greater than an amount equal to the same proportion of the debt service on the local government obligations to be issued to finance or which are outstanding that financed, as the case may be, the facility or project for which approval is sought that the executive agency or department seeking such approval will utilize under the lease, lease-purchase, sale-leaseback, purchase, or rental of the project in the facility or project as compared to the entire facility or project that is to be or was financed. This paragraph shall not apply when the certificate of occupancy for a facility or project was issued more than 3 years prior to the time such request is made.
(3) Any project approved pursuant to this section shall be subject to the requirements of ss. 255.2502 and 255.2503.
(4) Any contract entered on behalf of the state by any executive agency, department, public officer or employee in violation of this section shall be null and void.
History.—s. 9, ch. 88-409.
255.2502 Contracts which require annual appropriation; contingency statement.—No executive branch department or agency, public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of 1 fiscal year, including any and all renewal periods and including all leases which constitute a series of leases unless the following statement is included in the contract: “The State of Florida’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.” The foregoing statement shall not be amended, supplemented, or waived, and shall be printed in type at least as large as any other type appearing on the contract. Any contract in violation of this section shall be null and void.
History.—s. 10, ch. 88-409.
255.2503 Contracts for lease of buildings; prohibited provisions.—No executive agency or department, public officer or employee may enter any lease, contract, rental agreement, lease-purchase agreement, purchase agreement, or sale-leaseback agreement on behalf of the state that requires the state agency or department, public officer or employee to refrain from making legislative budget or fixed capital outlay requests for alternate space other than that in any such

lease, rental agreement, lease-purchase agreement, purchase agreement, or sale-leaseback agreement. Any contract in violation of this section shall be null and void. This section shall not apply to any facility financed under the Florida Building and Facilities Act.
History.—s. 11, ch. 88-409.
255.251 Energy Conservation and Sustainable Buildings Act; short title.—This act shall be cited as the "Florida Energy Conservation and Sustainable Buildings Act."
History.—s. 1, ch. 74-187; s. 16, ch. 2008-227.
255.252 Findings and intent.—
(1) Operating and maintenance expenditures associated with energy equipment and with energy consumed in state-financed and leased buildings represent a significant cost over the life of a building. Energy conserved by appropriate building design not only reduces the demand for energy but also reduces costs for building operation. The size, design, orientation, and operability of windows, the ratio of ventilating air to air heated or cooled, the level of lighting consonant with space-use requirements, the handling of occupancy loads, and the ability to zone off areas not requiring equivalent levels of heating or cooling are but a few of the considerations necessary to conserving energy.
(2) Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.
(3) In order for energy-efficiency and sustainable materials considerations to become a function of building design and a model for future application in the private sector, it is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code. It is further the policy of the state, if economically feasible, to retrofit existing state-owned buildings in a manner that minimizes the consumption of energy used in the operation and maintenance of such buildings.
(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.
(5) Each state agency occupying space within buildings owned or managed by the Department of Management Services must identify and compile a list of projects determined to be suitable for a guaranteed energy, water, and wastewater performance savings contract pursuant to s. 489.145. The list of projects compiled by each state agency shall be submitted to the Department of Management Services by December 31, 2008, and must include all criteria used to determine suitability. The list of projects shall be developed from the list of state-owned facilities more than 5,000 square feet in area and for which the state agency is responsible for paying the expenses of

utilities and other operating expenses as they relate to energy use. In consultation with the head of each state agency, by July 1, 2009, the department shall prioritize all projects deemed suitable by each state agency and shall develop an energy-efficiency project schedule based on factors such as project magnitude, efficiency and effectiveness of energy conservation measures to be implemented, and other factors that may prove to be advantageous to pursue. The schedule shall provide the deadline for guaranteed energy, water, and wastewater performance savings contract improvements to be made to the state-owned buildings.
History.—s. 2, ch. 74-187; s. 1, ch. 78-26; s. 1, ch. 80-286; s. 1, ch. 85-256; s. 3, ch. 90-320; s. 17, ch. 2008-227; s. 3, ch. 2011-222; s. 7, ch. 2013-152.
255.253 Definitions; ss. 255.251-255.2575.—
(1) "Department" means the Department of Management Services.
(2) "Facility" means a building or other structure.
(3) "Energy performance index or indices" (EPI) means a number describing the energy requirements at the building boundary of a facility, per square foot of floor space or per cubic foot of occupied volume, as appropriate under defined internal and external ambient conditions over an entire seasonal cycle. As experience develops on the energy performance achieved with state building, the indices (EPI) will serve as a measure of building performance with respect to energy consumption.
(4) "Life-cycle costs" means the cost of owning, operating, and maintaining the facility over the life of the structure. This may be expressed as an annual cost for each year of the facility's use.
(5) "Shared savings financing" means the financing of energy conservation measures and maintenance services through a private firm which may own any purchased equipment for the duration of a contract, which shall not exceed 10 years unless so authorized by the department. Such contract shall specify that the private firm will be recompensed either out of a negotiated portion of the savings resulting from the conservation measures and maintenance services provided by the private firm or, in the case of a cogeneration project, through the payment of a rate for energy lower than would otherwise have been paid for the same energy from current sources.
(6) "Sustainable building" means a building that is healthy and comfortable for its occupants and is economical to operate while conserving resources, including energy, water, and raw materials and land, and minimizing the generation and use of toxic materials and waste in its design, construction, landscaping, and operation.
(7) "Sustainable building rating or national model green building code" means a rating system established by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the International Green Construction Code (IGCC), the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department.
History.—s. 3, ch. 74-187; s. 2, ch. 85-256; s. 36, ch. 85-349; s. 180, ch. 92-279; s. 55, ch. 92-326; s. 14, ch. 98-279; s. 18, ch. 2008-227; s. 4, ch. 2011-222.
255.254 No facility constructed or leased without life-cycle costs.—
(1) A state agency may not 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. 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 than 2,000 square feet in area within a given building boundary, an energy performance analysis that calculates the total annual energy consumption and energy costs per square foot shall be performed. The analysis must also compare the energy performance of the proposed lease to like facilities. A lease may not be finalized until the energy performance analysis has been approved by the department.

(2) No state agency shall initiate construction or have construction initiated, prior to approval thereof by the department, on a facility or self-contained unit of any facility, the design and construction of which incorporates or contemplates the use of an energy system other than a solar energy system when the life-cycle costs analysis prepared by the department has determined that a solar energy system is the most cost-efficient energy system for the facility or unit.

(3) After September 30, 1985, when any state agency must replace or supplement major items of energy-consuming equipment in existing state-owned or leased facilities or any self-contained unit of any facility with other major items of energy-consuming equipment, the selection of such items shall be made on the basis of a life-cycle cost analysis of alternatives in accordance with rules promulgated by the department under s. 255.255.

History.—s. 4, ch. 74-187; s. 1, ch. 78-27; s. 4, ch. 85-256; s. 37, ch. 85-349; s. 15, ch. 98-279; s. 19, ch. 2008-227; s. 8, ch. 2013-152; s. 27, ch. 2016-10.

255.255 Life-cycle costs.—

(1) The department shall adopt rules and procedures, including energy conservation performance guidelines based on sustainable building ratings, for conducting a life-cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned facilities and for developing energy performance indices to evaluate the efficiency of energy utilization for competing designs in the construction of state-financed and leased facilities.

(2) Such life-cycle costs shall be the sum of:

(a) The reasonably expected fuel costs over the life of the building, as determined by the department, that are required to maintain illumination, power, temperature, humidity, and ventilation and all other energy-consuming equipment in a facility, and

(b) The reasonable costs of probable maintenance, including labor and materials, and operation of the building.

(3) To determine the life-cycle costs as defined in paragraph (2)(b), the department shall promulgate rules that shall include, but not be limited to:

(a) The orientation and integration of the facility with respect to its physical site.

(b) The amount and type of glass employed in the facility and the directions of exposure.

(c) The effect of insulation incorporated into the facility design and the effect on solar utilization of the properties of external surfaces.

(d) The variable occupancy and operating conditions of the facility and subportions of the facility.

(e) An energy consumption analysis of the major equipment of the facility's heating, ventilating, and cooling system, lighting system, hot water system, and all other major energy-consuming equipment and systems as appropriate. This analysis shall include:

1. The comparison of alternative systems.

2. A projection of the annual energy consumption of major energy-consuming equipment and systems for a range of operation of the facility over the life of the facility.
3. The evaluation of the energy consumption of component equipment in each system, considering the operation of such components at other than full or rated outputs.
(4) Such rules shall be based on the best currently available methods of analysis, including such as those of the National Institute of Standards and Technology, the Department of Housing and Urban Development, and other federal agencies and professional societies and materials developed by the department. Provisions shall be made for an annual updating of rules and standards as required.
History.—s. 5, ch. 74-187; s. 5, ch. 85-256; s. 4, ch. 90-320; s. 16, ch. 98-279; s. 20, ch. 2008-227.
255.256 Energy performance index.—The department shall promulgate rules for energy performance indices as defined in s. 255.253(3) to audit and evaluate competing design proposals submitted to the state.
History.—s. 6, ch. 74-187.
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 state-owned facilities and metered state-leased facilities. 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.
(2) ENERGY MANAGEMENT COORDINATORS.—Each state agency, the Florida Public Service Commission, the Department of Military Affairs, and the judicial branch shall appoint a coordinator whose responsibility shall be to advise the head of the state agency on matters relating to energy consumption in facilities under the control of that head or in space occupied by the various units comprising that state agency, in vehicles operated by that state agency, and in other energy-consuming activities of the state agency. The coordinator shall implement the energy management program agreed upon by the state agency concerned and assist the department in the development of the State Energy Management Plan.
(3) CONTENTS OF THE STATE ENERGY MANAGEMENT PLAN.—The Department of Management Services, in coordination with the Department of Agriculture and Consumer Services, shall further develop the state energy management plan consisting of, but not limited to, the following elements:
(a) Data-gathering requirements;
(b) Building energy audit procedures;
(c) Uniform data analysis and reporting procedures;
(d) Employee energy education program measures;
(e) Energy consumption reduction techniques;
(f) Training program for state agency energy management coordinators; and
(g) Guidelines for building managers.

The plan shall include a description of actions that state agencies shall take to reduce consumption of electricity and nonrenewable energy sources used for space heating and cooling, ventilation, lighting, water heating, and transportation.

(4) ADOPTION OF STANDARDS.—
(a) Each state agency shall use a sustainable building rating system or a national model green building code for each new building and renovation to an existing building.
(b) No state agency shall enter into new leasing agreements for office space that does not meet Energy Star building standards, except when the appropriate state agency head determines that no other viable or cost-effective alternative exists.
(c) All state agencies shall develop energy conservation measures and guidelines for new and existing office space where state agencies occupy more than 5,000 square feet. These conservation measures shall focus on programs that may reduce energy consumption and, when established, provide a net reduction in occupancy costs.
History.—s. 2, ch. 78-26; s. 115, ch. 79-190; s. 38, ch. 85-349; s. 3, ch. 91-113; s. 17, ch. 98-279; s. 23, ch. 99-399; s. 1, ch. 2001-259; s. 21, ch. 2008-227; s. 5, ch. 2011-222; s. 8, ch. 2012-117; s. 9, ch. 2013-152; s. 6, ch. 2013-193.
255.2575 Energy-efficient and sustainable buildings.—
(1) The Legislature declares that there is an important state interest in promoting the construction of energy-efficient and sustainable buildings. Government leadership in promoting these standards is vital to demonstrate the state's commitment to energy conservation, saving taxpayers money, and raising public awareness of energy rating systems.
(2) All county, municipal, school district, water management district, state university, Florida College System institution, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code. This section applies to all county, municipal, school district, water management district, state university, Florida College System institution, and state court buildings the architectural plans of which are commenced after July 1, 2008.
(3) St. Petersburg College may work with the Florida College System and may consult with the University of Florida to provide training and educational opportunities that will ensure that green building rating system certifying agents (accredited professionals who possess a knowledge and understanding of green building processes, practices, and principles) are available to work with the entities specified in subsection (2) as they construct public buildings to meet green building rating system standards. St. Petersburg College may work with the construction industry to develop an online continuing education curriculum for use statewide by builders constructing energy-efficient and sustainable public sector buildings and students interested in the college's Green/Sustainability Track in its Management and Organization Leadership area of study. The curriculum developed may be offered by St. Petersburg College or in cooperation with other programs at other Florida College System institutions.
(4)(a) All state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.
(b) This subsection does not apply:
1. To plywood specified for monolithic concrete forms.
2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.

3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.
4. To transportation projects for which federal aid funds are available.
History.—s. 22, ch. 2008-227; s. 6, ch. 2011-222; s. 35, ch. 2013-15; s. 5, ch. 2013-193.
255.259 Florida-friendly landscaping on public property.—
(1) The Legislature finds that water conservation and water quality protection and restoration are increasingly critical to the continuance of an adequate water supply and healthy surface and ground waters. The Legislature further finds that "Florida-friendly landscaping," as defined in s. 373.185, can contribute significantly to water conservation and water quality protection and restoration. Finally, the Legislature finds that state government has the responsibility to promote Florida-friendly landscaping as a water conservation and water quality protection and restoration measure by using such landscaping on public property associated with publicly owned buildings or facilities.
(2) As used in this section, "publicly owned buildings or facilities" means construction projects under the purview of the Department of Management Services. The term does not include environmentally endangered land or roads and highway construction under the purview of the Department of Transportation.
(3) The Department of Management Services, in consultation with the Department of Environmental Protection, shall adopt rules and guidelines for the required use of Florida-friendly landscaping on public property associated with publicly owned buildings or facilities constructed after June 30, 2009. The Department of Management Services shall also develop a 5-year program for phasing in the use of Florida-friendly landscaping on public property associated with publicly owned buildings or facilities constructed before July 1, 2009. In accomplishing these tasks, the Department of Management Services shall take into account the standards provided in s. 373.185. The Department of Transportation shall implement Florida-friendly landscaping pursuant to s. 335.167.
(4)(a) The Legislature finds that the use of Florida-friendly landscaping and other water use and pollution prevention measures to conserve or protect the state's water resources serves a compelling public interest and that the participation of homeowners' associations and local governments is essential to the state's efforts in water conservation and water quality protection and restoration.
(b) A deed restriction or covenant may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.
(c) A local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land.
History.—s. 1, ch. 91-41; s. 1, ch. 91-68; s. 182, ch. 92-279; s. 55, ch. 92-326; s. 89, ch. 94-356; s. 4, ch. 2001-252; s. 23, ch. 2009-243.
255.28 Department authority to acquire land with or for facility thereon.—
(1) For the purposes of this section:
(a) "Agency" means any state board, commission, department, division, or bureau.
(b) "Party" means any individual, partnership, corporation, association, or other business entity which is licensed by the Department of State to do business in the state.

(c) "Building" or "facility" means those construction projects under the purview of the Department of Management Services. It shall not include environmentally endangered land, recreational land, or roads and highway construction under the purview of the Department of Transportation.
(d) "Department" means the Department of Management Services.
(2) The department may acquire lands by gift, donation, or dedication or otherwise enter into agreements with any person, the Federal Government, or any other agency for acquiring such lands for constructing a building or other state facility thereon. Lands shall be acquired by the department in accordance with acquisition procedures for state lands provided for in s. 253.025.
(3) In administering such authority, the department may enter into a contract with a party who shall be authorized to assist in the purchase of land containing, or to be used for constructing, a building or other facility thereon.
(4) The department shall prescribe, by administrative rule, procedures for adequate public notice concerning all acquisitions of land or construction of a building or facility by any state agency.
History.—ss. 6, 7, ch. 75-243; s. 11, ch. 79-255; s. 183, ch. 92-279; s. 55, ch. 92-326.
255.29 Construction contracts; department rules.—The Department of Management Services shall establish, through the adoption of administrative rules as provided in chapter 120:
(1) Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
(2) Procedures for awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which the Department of Management Services declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder.
(3) Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state.
(4) Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state. The procedures shall include, but are not limited to:
(a) Prequalification of bidders;
(b) Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
(c) Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
(d) Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.
History.—s. 8, ch. 75-243; s. 10, ch. 84-321; s. 184, ch. 92-279; s. 55, ch. 92-326; s. 10, ch. 97-100.
255.30 Fixed capital outlay projects; department rules; delegation of supervisory authority; delegation of responsibility for accounting records.—

(1) The Department of Management Services shall make and adopt rules pursuant to chapter 120 in order to establish a procedure for delegating to state agencies its supervisory authority as it relates to the repair, alteration, and construction of fixed capital outlay projects.
(2) The department may delegate the responsibility for maintaining appropriate accounting records to the agency for which any fixed capital outlay appropriation is made.
History.—s. 9, ch. 75-243; s. 1, ch. 83-341; s. 39, ch. 85-349; s. 185, ch. 92-279; s. 55, ch. 92-326.
255.31 Authority to the Department of Management Services to manage construction projects for state and local governments.—
(1) The design, construction, erection, alteration, modification, repair, and demolition of all public and private buildings are governed by the Florida Building Code and the Florida Fire Prevention Code, which are to be enforced by local jurisdictions or local enforcement districts unless specifically exempted as provided in s. 553.80. However, the Department of Management Services shall provide the project management and administration services for the construction, renovation, repair, modification, or demolition of buildings, utilities, parks, parking lots, or other facilities or improvements for projects for which the funds are appropriated to the department; provided that, with the exception of facilities constructed under the authority of chapters 944, 945, and 985; the Governor's mansion and grounds thereof, as described in s. 272.18; and the Capitol Building and environs, being that part of the City of Tallahassee bounded on the north by Pensacola and Jefferson Streets, on the east by Monroe Street, on the south by Madison Street, and on the west by Duval Street, the department may not conduct plans reviews or inspection services for consistency with the Florida Building Code. The department's fees for such services shall be paid from such appropriations.
(2) The Department of Management Services may, upon request, enter into contracts with other state agencies under which the department may provide the project management, administration services, or assistance for the construction, renovation, repair, modification, or demolition of buildings, utilities, parks, parking lots, or other facilities or improvements for projects for which the funds are appropriated to other state agencies, provided that the department does not conduct plans reviews or inspection services for consistency with the Florida Building Code. The contracts shall provide for payment of fees to the department.
(3) This section shall not be construed to be in derogation of any authority conferred on the department by other provisions of law.
History.—s. 1, ch. 92-112; s. 14, ch. 95-143; s. 19, ch. 98-279; s. 15, ch. 2000-141; ss. 3, 34, ch. 2001-186; s. 2, ch. 2001-267; s. 1, ch. 2001-283; s. 3, ch. 2001-372.
255.32 State construction management contracting.—
(1) As used in this section, the term:
(a) "Construction management entity" means a licensed general contractor or a licensed building contractor, as defined in s. 489.105, who coordinates and supervises a construction project from the conceptual development stage through final construction, including the scheduling, selection, contracting with, and directing of specialty trade contractors, and the value engineering of a project.
(b) "Construction project" means any planned or unforeseen fixed capital outlay activity authorized under s. 255.31. A construction project may include:
1. A grouping of minor construction, rehabilitation, or renovation activities.
2. A grouping of substantially similar construction, rehabilitation, or renovation activities.

(c) "Continuing contract" means a contract with a construction management entity for work during a defined time period on construction projects described by type, which may or may not be identified at the time of entering into the contract.
(d) "Department" means the Department of Management Services.
(2) To assist in the management of state construction projects, the department may select and contract with construction management entities that:
(a) Are competitively selected by the department pursuant to s. 287.055; and
(b) Agree to follow the advertising and competitive bidding procedures that the department is required to follow if the department is managing the construction project directly.
(3) The department's authority under subsection (2) includes entering into a continuing contract for construction projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million.
(4) The department may require the construction management entity, after having been selected for a construction project and after competitive negotiations, to offer a guaranteed maximum price and a guaranteed completion date. If so required, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. If a project solicited by the department pursuant to s. 287.055 includes a grouping of construction, rehabilitation, or renovation activities or substantially similar construction, rehabilitation, or renovation activities costing up to $1 million, the department may require the construction management entity to provide a separate guaranteed maximum price and a separate guaranteed completion date for each grouping included in the project.
(5) The department shall adopt rules for state agencies using the services of construction management entities under contract with the department.
History.—s. 1, ch. 2009-227.
255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental entities; prohibition.—The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.
History.—s. 47, ch. 83-174.
255.45 Correction of firesafety violations in certain state-owned property.—The Department of Management Services is responsible for ensuring that firesafety violations that are noted by the State Fire Marshal pursuant to s. 633.218 are corrected as soon as practicable for all state-owned property which is leased from the Department of Management Services.
History.—s. 4, ch. 84-143; s. 40, ch. 85-349; s. 186, ch. 92-279; s. 55, ch. 92-326; s. 20, ch. 98-279; s. 130, ch. 2013-183.
255.451 Electronic firesafety and security system.—The management responsibility of the electronic firesafety and security system located within the Capitol and any system associated therewith is vested in the Department of Management Services.
History.—s. 5, ch. 84-143; s. 41, ch. 85-349; s. 187, ch. 92-279; s. 55, ch. 92-326; s. 21, ch. 98-279.
255.501 Building and Facilities Act; short title.—Sections 255.501-255.525 shall be known and may be cited as the "Florida Building and Facilities Act."
History.—s. 1, ch. 85-349.
255.502 Definitions; ss. 255.501-255.525.—As used in this act, the following words and terms shall have the following meanings unless the context otherwise requires:

(1) “Acquire or acquisition” means to purchase, to erect, to build, to construct, to reconstruct, to replace, to extend, to better, to equip, to develop, to rehabilitate, to remodel, to enlarge, to furnish, to repair, or to improve a facility, in each case to the extent same constitute capital expenditures under applicable law.
(2) “Acquisition costs” means all reasonable and necessary costs incurred in the acquisition of a facility, which costs may include, but are not limited to:
(a) The cost of acquiring real property and any buildings thereon, including payments for options, deposits, or contracts to purchase properties.
(b) The cost of site preparation, demolition, and development.
(c) Any expenses relating to the issuance of the obligations by the division in the name and on behalf of the Department of Management Services, including, but not limited to, private placement fees, underwriting fees, original issue discounts, rating agency fees, and other necessary fees.
(d) Fees in connection with the planning, execution, and financing of a project, such as those of architects, engineers, attorneys, feasibility consultants, financial advisers, accountants, and the Department of Management Services, including the allocable portions of direct costs of the Department of Management Services and the lessee agencies.
(e) The cost of studies, surveys, plans, permits, insurance, interest, financing, taxes and assessments, and other operating and carrying costs during the acquisition of a facility.
(f) The cost of acquiring a facility.
(g) The cost of land improvements, such as landscaping and offsite improvements.
(h) Capital expenditures incurred in connection with relocation to and initial occupancy of a facility.
(i) Any initial expense, charge, or cost payable upon issuance of the obligations with respect to the acquisition of a facility relating to or incurred in connection with remarketing of obligations, such as remarketing agent or indexing agent fees or for credit enhancements or liquidity features, including, but not limited to, letter of credit fees, whether direct pay or standby, swap agent fees and similar expenses.
(j) The initial cost of such other items, including premiums for indemnity and surety bonds, premiums on insurance, including, but not limited to, municipal bond insurance, debt service reserve insurance and lease payment insurance, and fees and expenses of trustees, depositories, registrars, book entry registrars and paying agents for obligations issued under this act.
(k) Interest on obligations from the date thereof to the time when interest is to be covered solely from sources other than proceeds of obligations and any amounts necessary to establish or fund any reserves or capital appreciation reserves required in connection with such obligations.
(l) The reimbursement of all moneys advanced or supplied to or borrowed by the Department of Management Services or others for the payment of any item of cost of a facility.
(m) Such other expenses as may be reasonable and necessary to the acquisition of any facility under applicable law, the financing thereof under this act, and the placing of same in use.
(3) “Agency” means any department created by chapter 20, the Executive Office of the Governor, the Fish and Wildlife Conservation Commission, the Florida Commission on Offender Review, the State Board of Administration, the Department of Military Affairs, or the Legislative Branch or the Judicial Branch of state government.
(4) “Authorized investments” means and includes without limitation any investment in:

(a) Bonds, notes, or other obligations of the United States or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof.
(b) State bonds pledging the full faith and credit of the state and revenue bonds additionally secured by the full faith and credit of the state.
(c) Bonds of the several counties or districts in the state containing a pledge of the full faith and credit of the county or district involved.
(d) Bonds issued or administered by the State Board of Administration secured solely by a pledge of all or part of the 2-cent constitutional gas tax accruing under the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended, or of s. 9, Art. XII of the 1968 revised State Constitution.
(e) Bonds issued by the State Board of Education pursuant to ss. 18 and 19, Art. XII of the State Constitution of 1885, as amended, or to s. 9, Art. XII of the 1968 revised State Constitution, as amended.
(f) Bonds issued by the Florida Outdoor Recreational Development Council pursuant to s. 17, Art. IX of the State Constitution of 1885, as amended.
(g) Bonds issued by the Florida State Improvement Commission, Florida Development Commission, or Division of Bond Finance of the State Board of Administration.
(h) Savings accounts in, or certificates of deposit of, qualified public depositories as defined in s. 280.02, in an amount that does not exceed 15 percent of the net worth of the institution, or a lesser amount as determined by rule by the State Board of Administration, provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280.
(i) Obligations of the Federal Farm Credit Banks and obligations of the Federal Home Loan Bank and its district banks.
(j) Obligations of the Federal Home Loan Mortgage Corporation, including participation certificates.
(k) Obligations guaranteed by the Government National Mortgage Association.
(l) Commercial paper of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service.
(m) Time drafts or bills of exchange drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are accepted by a member bank of the Federal Reserve System having total deposits of not less than $400 million.

Investments in any security authorized in this subsection may be under repurchase agreements or reverse repurchase agreements.

(5) “Debt service charges” means, collectively, principal, including mandatory sinking fund requirements and the accretion portion of any capital appreciation bonds for retirement of obligations, interest, redemption premium, if any, required to be paid by the Department of Management Services on obligations issued under this act and any obligation administrative fees.
(6) “Division” means the Division of Bond Finance of the State Board of Administration.
(7) “Eligible facility” means all state-owned facilities under the jurisdiction of the Department of Management Services and all other state-owned facilities except those having less than 3,000 square feet.
(8) “Facility” means buildings, structures, improvements, real estate, and related interests in real estate and appurtenances, fixtures, and fixed equipment, including, but not limited to, those

for the purpose of housing either personnel, equipment, or functions and all storage and parking facilities related thereto or any one or more than one or all of the foregoing, or any combination thereof, furnished and acquired pursuant to this act.
(9) "Obligations" means, collectively, revenue bonds and revenue notes.
(10) "Obligation administrative fees" means any periodic expense, charge, or cost relating to or incurred in connection with remarketing of obligations such as remarketing agent or indexing agent fees and any periodic expense, charge, or cost related to any obligations or to credit enhancements or liquidity features, including, but not limited to, letter of credit fees, whether direct pay or standby, swap agent fees and similar expenses, periodic fees and expenses, if any, of trustees, depositories, registrars, book entry registrars and paying agents, and any allowances established by the Department of Management Services for working capital, contingency reserves, and reserves for any anticipated operating deficits during each fiscal year.
(11) "Pool" means the Florida Facilities Pool created in s. 255.505.
(12) "Pool pledged revenues" means all legislative appropriations and all fees, charges, revenues, or receipts derived by the Department of Management Services from the operation, leasing, or other disposition of facilities in the pool, and the proceeds of obligations issued under this act, and shall include any moneys appropriated to an agency for the purpose of making such rental payments, rental payments received with respect to such facilities from whatever sources, and receipts therefrom, and investment of any such moneys pursuant to this act, all as are available for the payment of debt service charges on such obligations as are issued with respect to the pool.
(13) "Pool rental rate" means the per square foot rental rate established by the Department of Management Services for every facility which is in the pool.
(14) "Qualified facility" means an eligible facility which is either:
(a) Structurally sound and is in a satisfactory state of repair;
(b) Determined by the Department of Management Services to be suitable for entry into the pool although not meeting the requirements of paragraph (a); or
(c) Under the jurisdiction of the Department of Management Services.
(15) "Real property" means all lands, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms of years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.
(16) "Revenue bonds" means any bonds, debentures, notes, certificates, or other evidences of financial indebtedness, whether certificated or noncertificated, issued by the division on behalf of the Department of Management Services under and pursuant to this act, including, but not limited to, variable rate obligations, designated maturity obligations, capital appreciation bonds, original issue discount bonds, and multimodal instruments or obligations, or instruments combining any of the foregoing.
(17) "Revenue notes" means notes or other evidences of indebtedness, whether certificated or noncertificated, issued in anticipation of the issuance of revenue bonds pursuant to this act.
(18) "State-owned facility" means any facility title to which is vested in the state or any agency.
History.—s. 2, ch. 85-349; s. 1, ch. 86-222; s. 34, ch. 88-122; s. 188, ch. 92-279; s. 55, ch. 92-326; s. 22, ch. 98-279; s. 10, ch. 98-409; s. 76, ch. 99-245; s. 8, ch. 2014-191.

255.503 Powers of the Department of Management Services.—The Department of Management Services shall have all the authority necessary to carry out and effectuate the purposes and provisions of this act, including, but not limited to, the authority to:
(1) Collect reasonable rentals or charges for the use of and services provided for facilities in the pool in accordance with the provisions of this act exclusively for the purpose of paying the expenses of improving, repairing, maintaining, and operating facilities and paying debt service charges in connection with its obligations.
(2) Prescribe for the use of facilities in the pool, prescribe the amount of rentals or charges, and make and enter into contracts with any political subdivision or agency, for the use of and services provided for such facilities.
(3) Acquire facilities pursuant to s. 11(f), Art. VII of the State Constitution and own, operate, and finance such facilities in accordance with this act through the issuance of obligations by the division under this act; to utilize rentals or charges from such facilities, as well as any appropriated state or other public funds; and to pledge revenue from such facilities to finance the acquisition of facilities pursuant to the provisions of this act.
(4) Operate existing state-owned facilities in the pool and to pledge rentals or charges for such facilities to finance the acquisition of facilities pursuant to the provisions of this act.
(5) Pledge, hypothecate, or otherwise encumber rentals or charges as may be agreed as security for obligations issued under this act and enter into trust agreements or indentures for the benefit of the holders of such obligations.
(6) Borrow money or accept advances, loans, gifts, grants, devises, or bequests from any legal source; enter into contracts or agreements with any party; and hold and apply advances, loans, gifts, grants, devises, or bequests according to the terms thereof. Such advances, loans, gifts, grants, devises, or bequests of real estate may be in fee simple or of any lesser estate and may be subject to any reasonable reservations. Any advances or loans received from any source may be repaid in accordance with the terms of such advance or loan.
(7) Sell, lease, release, or otherwise dispose of facilities in the pool in accordance with applicable law.
(8) Create and establish funds and accounts for the purpose of debt service reserves, for the matching of the timing and the amount of available funds and debt service charges, for sinking funds, for capital depreciation reserves, for operating reserves, for capitalized interest and moneys not required for immediate disbursement to acquire all or a portion of any facility, and for any other reserves, funds, or accounts reasonably necessary to carry out the provisions of this act and to invest in authorized investments any moneys held in such funds and accounts, provided such investments will be made on behalf of the Department of Management Services by the State Board of Administration or the Chief Financial Officer, as appropriate.
(9) Engage the services of consultants for rendering professional and technical assistance and advice and to engage services of professionals in connection with the acquisition or financing of any facility or the operation and activities of the Department of Management Services, including attorneys, auditors, consultants, and accountants.
(10) Lease all or any portion of any facility to an agency or to any political subdivision.
(11) Promulgate all rules necessary to implement the provisions of this act.
(12) Do all other acts reasonably necessary to carry out the provisions of this act.
History.—s. 3, ch. 85-349; s. 72, ch. 87-224; s. 23, ch. 98-279; s. 25, ch. 2000-152; s. 276, ch. 2003-261; s. 21, ch. 2006-26; s. 20, ch. 2007-73; s. 18, ch. 2008-153; s. 29, ch. 2009-82; s. 22, ch. 2010-153; s. 2, ch. 2012-6.

255.504 Use of facilities.—
(1) Any facility which is acquired and approved pursuant to s. 11(f), Art. VII of the State Constitution and financed under this act, and any facility in the pool shall be occupied to the extent that space is available, by agencies as authorized by the Department of Management Services.
(2) Any agency occupying space in facilities in the pool shall contract for such space and pay rental for such space at the rental rate applicable in accordance with the provisions of this act.
History.—s. 6, ch. 85-349; s. 24, ch. 98-279; s. 26, ch. 2000-152.
255.505 Creation of the pool.—The Department of Management Services is hereby authorized and directed to create the Florida Facilities Pool in order that agencies may participate, and thereby pool the rentals to be paid by such agencies, at uniform rates with additional charges for services provided, and to authorize the issuance of obligations secured by and payable from such rentals and charges. Participation in the pool shall be in accordance with the provisions of this act.
History.—s. 7, ch. 85-349; s. 25, ch. 98-279.
255.506 Facilities in pool.—The following facilities shall be entered into the pool:
(1) All existing state-owned facilities under the jurisdiction of the Department of Management Services shall be entered into the pool upon the creation of the pool.
(2) Each facility the acquisition of which is financed under this act and which has not already been entered into the pool shall be entered into the pool upon the earlier of:
(a) The completion of such acquisition; or
(b) The commencement of accrual of rent for all or any portion of such facility.
(3) Any agency may submit all, but not less than all, of the eligible facilities under its jurisdiction for entry into the pool. Each of such eligible facilities which is determined by the Department of Management Services to be a qualified facility shall be entered into the pool upon such determination.
(4) Any agency which requests the issuance of obligations under this act for the financing of the acquisition of a facility shall submit all, but not less than all, of the eligible facilities under its jurisdiction for entry into the pool. Each of such eligible facilities which is determined by the Department of Management Services to be a qualified facility shall be entered into the pool upon such a determination.
History.—s. 8, ch. 85-349; s. 189, ch. 92-279; s. 55, ch. 92-326; s. 26, ch. 98-279.
255.507 Determination of qualified facilities.—The Department of Management Services, in making determinations under s. 255.502(14)(b), shall determine a facility to be a qualified facility if the facility meets either of the following standards:
(1) The facility is in compliance with the firesafety standards established by the State Fire Marshal for state-owned buildings, is in compliance with flood management criteria if it is located in a flood-prone area, and is in good operating condition in relation to its intended use.
(2) The facility's economic benefit to the pool will be equal to or greater than the cost of restoring the facility to the condition described in subsection (1). For purposes of this subsection, achieving such economic benefit means that the rent to be paid by the occupants of the facility will be adequate to repay the restoration costs within 5 years.
History.—s. 9, ch. 85-349; s. 73, ch. 87-224; s. 18, ch. 97-296; s. 27, ch. 98-279.
255.508 Participation in pool.—To participate in the pool, an agency head shall submit a request to the Department of Management Services and to the division pursuant to rules adopted by the Department of Management Services pursuant to this act.

History.—s. 10, ch. 85-349; s. 28, ch. 98-279.
255.509 Request for advisory statement.—
(1) Any agency may request from the Department of Management Services an advisory statement which shall state the estimated pool rental rate which would be assessed under current conditions for the agency's facilities if entered into the pool. The request for an advisory statement shall contain a description of each eligible facility under the jurisdiction of the agency or to be acquired by the agency.
(2) In rendering such advisory statement, the Department of Management Services shall consult with the division and shall be entitled to rely upon financial advisers or other professionals and may assume whatever method of financing that the division deems cost-effective.
History.—s. 11, ch. 85-349; s. 29, ch. 98-279.
255.51 Determination of rental rates.—The Department of Management Services shall determine and establish rental rates charged and computed on a per square foot basis for all facilities in the pool whether or not of new construction, and such rates shall be applied uniformly to all agencies using or occupying space in facilities in the pool with additional charges based upon the elements of service and special requests as provided. Separate rates and charges may be established for warehouse space and parking space incidental to facilities in the pool.
History.—s. 12, ch. 85-349; s. 74, ch. 87-224; s. 30, ch. 98-279.
255.511 Factors to be considered in establishing rental rates.—
(1) The Department of Management Services shall prepare a complete annual budget for debt service on obligations issued under this act and for capital depreciation reserve deposits and expenses included in the operation and maintenance of each facility in the pool.
(2) The amount included in the budget for capital depreciation reserve deposits shall be an appropriate amount determined in accordance with generally accepted governmental accounting principles, for economic obsolescence and depreciation of each facility in the pool.
History.—s. 13, ch. 85-349; s. 31, ch. 98-279.
255.513 Powers of the Division of Bond Finance and the Department of Management Services.—The Division of Bond Finance and the Department of Management Services are authorized to jointly:
(1) Engage the services of remarketing agents, indexing agents, underwriters, financial advisers, special tax counsel, bond counsel, or similar type services with respect to the issuance of any obligations under this act.
(2) Procure credit enhancements such as municipal bond insurance, debt service reserve insurance, lease payment insurance, letters of credit or liquidity facilities such as letters of credit or surety bonds, or to enter into rate protection agreements, such as interest rate swaps or similar arrangements, in conjunction with the issuance of any obligations under this act.
History.—s. 4, ch. 85-349; s. 32, ch. 98-279.
255.514 Division of Bond Finance; revenue bonds.—The division is authorized to issue obligations under this act on behalf of and at the request of the Department of Management Services.
History.—s. 5, ch. 85-349; s. 33, ch. 98-279.
255.515 Issuance of obligations by the division.—With respect to the issuance of any obligations under this act, the division shall be entitled to use such method of financing or combination of methods of financing as it deems appropriate to result in cost-effective financing.

The division shall be entitled to rely upon the advice of financial advisers and other professionals retained jointly by the Department of Management Services and the division for such purposes.
History.—s. 14, ch. 85-349; s. 34, ch. 98-279.
255.516 Security for payment of obligations.—
(1) Obligations may be issued with or without the benefit of an indenture of trust, under a master indenture of trust, under different indentures of trust, in series, on a parity, on an inferior lien basis, and in instruments all of the same kind or any combination of different kinds in each case as the division shall determine to be in the best interests of the state.
(2) Obligations shall be secured by all such pool pledged revenues.
History.—s. 15, ch. 85-349.
255.517 Anticipation obligations.—To provide funds for the purposes of this act, and prior to the delivery of an issue of revenue bonds for the purposes of this act, the division may, on behalf of the Department of Management Services, from time to time, by resolution, anticipate the issuance of such revenue bonds by the issuance of revenue notes, including commercial paper notes in the form of bond anticipation notes, with or without coupons, exchangeable for the revenue bonds when such revenue bonds have been executed and are available for delivery, or to be paid, together with interest and premium, if any, from the proceeds of the sale of such revenue bonds or a renewal issue of revenue notes, including commercial paper notes in the form of bond anticipation notes. In connection with such revenue notes, the Department of Management Services may covenant to do all things necessary to authorize the issuance of the obligations and shall make the exchange or application of the proceeds pursuant to its agreements. Such revenue notes and, in the case of commercial paper notes, the latest maturity thereof shall mature not later than 5 years from the date of issue of the original revenue notes and shall bear such other terms and shall be executed and sold in the manner authorized by the division and not prohibited by this act.
History.—s. 16, ch. 85-349; s. 35, ch. 98-279.
255.518 Obligations; purpose, terms, approval, limitations.—
(1)(a) The issuance of obligations shall provide sufficient funds to achieve the purposes of this act; pay interest on obligations except as provided in paragraph (b); pay expenses incident to the issuance and sale of any obligations issued pursuant to this act, including costs of validating, printing, and delivering the obligations, printing the official statement, publishing notices of sale of the obligations, and related administrative expenses; pay building acquisition and construction costs; and pay all other capital expenditures of the Department of Management Services and the division incident to and necessary to carry out the purposes and powers granted by this act, subject to the provisions of s. 11(f), Art. VII of the State Constitution and the applicable provisions of the State Bond Act. Such obligations shall be payable solely from the pool pledged revenues identified to such obligation. Proceeds of obligations may not be used to pay building acquisition or construction costs for any facility until the Legislature has appropriated funds from other sources estimated to be necessary for all costs relating to the initial planning, preliminary design and programming, and land acquisition for such facility and until such planning, design, and land acquisition activities have been completed. Obligation proceeds for building construction, renovation, or acquisition shall be requested for appropriation in any fiscal year by the Department of Management Services only if the department estimates that such construction, renovation, or acquisition can be initiated during such fiscal year.

(b) Payment of debt service charges and any reserves on obligations during the construction of any facility financed by such obligations shall be made from funds other than proceeds of obligations.
(2) All obligations authorized by this act shall be issued on behalf of and in the name of the Department of Management Services by the division as provided by this act, with a term of not more than 30 years and, except as otherwise provided herein, in such principal amounts as shall be necessary to provide sufficient funds to achieve the purposes of this act.
(3) There may be established, from the proceeds of each issue of obligations, a debt service reserve account, a capitalized interest account, or a capital depreciation reserve account, in each case in an amount as may be determined by the division.
(4)(a) The provisions of the State Bond Act shall be applicable to all obligations issued pursuant to this act, when not in conflict with the provisions hereof; provided the basis of award of sale of such obligations may be either the net interest cost or the true or effective interest cost, as set forth in the resolution authorizing the sale of such obligations.
(b) In actions to validate such obligations pursuant to chapter 75, the complaint shall be filed in the Circuit Court of Leon County, the notice required by s. 75.06 shall be published in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the state attorney of the Second Judicial Circuit.
(5) Any resolution or resolutions authorizing any obligations issued pursuant to this act shall provide that:
(a) The pledge of the pool pledged revenues as security for the obligations is a gross pledge of all rentals and charges included in pool pledged revenues.
(b) The Department of Management Services shall maintain all facilities in the pool in a satisfactory state of repair, subject to such exceptions as are determined by the Department of Management Services, provided that such exceptions do not result in breach of any rate covenant in connection with the obligations.
(c) The Department of Management Services shall establish pool rental rates in amounts so that the annualized amount of pool pledged revenues for the then-current bond year shall be at least equal to the aggregate of 110 percent of debt services charges, plus 100 percent of capital depreciation reserve deposits, plus 100 percent of costs of operations and maintenance, if any, in each case as shown in the annual budget required pursuant to this act.
(d) The pool pledged revenues are pledged to secure the payment of obligations subject to such agreements with holders of outstanding obligations as may then exist.
(6) Any resolution authorizing any obligations issued pursuant to this act may contain provisions, without limitation, which shall be a part of the contract with the holders thereof, as to:
(a) Pledging all or any part of the assets of the Department of Management Services securing the same, including leases with respect to all or any part of a facility, to secure the payment of obligations, subject to such agreements with holders of obligations as may then exist.
(b) The use and disposition of the income from facilities in the pool.
(c) The procedure by which the terms of any contract with holders of obligations may be amended or abrogated, the principal amount of obligations the holders of which must consent thereto, and the manner in which such consent may be given.
(d) Vesting in the State Board of Administration such property, rights, powers, and duties in trust as the division and the Department of Management Services may determine, and limiting or

abrogating the right of holders of obligations to appoint a trustee under this act or limiting the rights, powers, and duties of such trustee.
(e) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the division and the Department of Management Services to the holders of obligations and providing for the rights and remedies of holders of obligations in the event of such default, including, as matter of right, the appointment of a receiver; provided such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this act.
(f) Providing for the segregation of revenues payable to the Department of Management Services as rentals or charges arising from facilities in the pool; providing for the handling of such revenues and the remittance of all or a portion thereof to the State Board of Administration or a paying agent; providing for the establishment of debt service reserves, capitalized interest accounts, capital depreciation reserve accounts, and the calculation of the amounts to be deposited therein; providing for the procurement of letters of credit or municipal bond insurance or similar credit enhancements or of letters of credit or similar liquidity facilities for the benefit of holders of such obligations or for the entering into of agreements with remarketing agents, tender agents, or indexing agents or of reimbursement agreements with respect to any of the foregoing concerning any such obligations.
(g) Providing for the circumstances under which facilities may be retired from or removed from and not replaced in the pool, so long as this does not result in a breach of any rate covenant with respect to the obligations.
(h) Any other matters, of like or different character, which in any way affect the security or protection of holders of obligations.
(7)(a) The obligations issued by the division on behalf of and in the name of the Department of Management Services shall be sold at public sale in the manner provided by the State Bond Act; provided that if the division shall determine that a negotiated sale of the obligations is in the best interest of the state, the division may negotiate for sale of the obligations with the underwriter jointly designated by the division and the Department of Management Services. In authorizing the negotiated sale, the division shall provide specific findings as to the reasons for the negotiated sale. The reasons shall include, but not be limited to, characteristics of the obligations to be issued and prevailing market conditions that necessitate a negotiated sale. In the event the division negotiates for sale of obligations, the managing underwriter, or financial consultant or adviser, if applicable, shall provide to the division, prior to the award of such obligations to the managing underwriter, a disclosure statement containing the following information:
1. An itemized list setting forth the nature and estimated amounts of expenses to be incurred by the managing underwriter in connection with the issuance of such obligations. Notwithstanding the foregoing, any such list may include an item for miscellaneous expenses, provided it includes only minor items of expense which cannot be easily categorized elsewhere in the statement.
2. The names, addresses, and estimated amounts of compensation of any finders connected with the issuance of the obligations.
3. The amount of underwriting spread expected to be realized.
4. Any management fee charged by the managing underwriter.
5. Any other fee, bonus, or compensation estimated to be paid by the managing underwriter in connection with the obligations issued to any person not regularly employed or retained by it.
6. The name and address of the managing underwriter, if any, connected with the obligations issued.
7. Any other disclosure which the division may require.

This paragraph is not intended to restrict or prohibit the employment of professional services relating to obligations issued under this act or the issuance of bonds by the division under any other provisions of law.

(b) In the event an offer of an issue of obligations at public sale produces no bid, or in the event all bids received are rejected, the division is authorized to negotiate for the sale of the obligations under such rates and terms as are in the best interest of the state; provided that no obligations shall be so sold or delivered on terms less favorable than the terms contained in any bids rejected at the public sale thereof or, if no bids were received at such public sale, the terms contained in the notice of public sale.
(c) The failure of the division to comply with one or more provisions of this section shall not affect the validity of the obligations so issued.
(8)(a) No underwriter, commercial bank, investment banker, or financial consultant or adviser shall pay any finder any bonus, fee, or gratuity in connection with the sale of obligations issued by the division on behalf of and in the name of the Department of Management Services unless full disclosure is made to the division prior to or concurrently with the submission of a purchase proposal for such obligations by the underwriter, commercial bank, investment banker, or financial consultant or adviser and is made subsequently in the official statement or offering circular, if any, detailing the name and address of any finder and the amount of bonus, fee, or gratuity paid to such finder.
(b) A willful violation of this subsection is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(c) No violation of this subsection shall affect the validity of any obligation issued under this act.
(9) As used in this section, the term “finder” means a person who is neither regularly employed by, nor a partner or officer of, an underwriter, bank, banker, or financial consultant or adviser and who enters into an understanding with either the issuer or the managing underwriter, or both, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or impliedly, to act solely as an intermediary between such issuer and managing underwriter for the purpose of influencing any transaction in the purchase of such obligations.
(10) All obligations issued by the division on behalf of and in the name of the Department of Management Services shall state on the face thereof that they are payable, both as to principal and interest, and premium, if any, solely out of the pool pledged revenues, and do not constitute an obligation, either general or special, of the state or of any political subdivision.
(11) All obligations issued by the division on behalf of and in the name of the Department of Management Services are hereby declared to have all the qualities and incidents of negotiable instruments under the applicable laws of the state.
(12) Any pledge of earnings, revenues, or other moneys made by the Department of Management Services shall be valid and binding from the time the pledge is made. Any earnings, revenues, or other moneys so pledged and thereafter received by the Department of Management Services shall immediately be subject to the lien of that pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against the Department of Management Services irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed pursuant to the Uniform Commercial Code.

(13) No employee of the Department of Management Services or the division, nor any person lawfully executing obligations issued under this act by the division on behalf of and in the name of the Department of Management Services, shall be liable personally on the obligations or be subject to any personal liability or accountability by reason of the issuance thereof.
History.—s. 17, ch. 85-349; s. 2, ch. 86-222; s. 75, ch. 87-224; s. 190, ch. 92-279; s. 55, ch. 92-326; s. 36, ch. 98-279; s. 27, ch. 2000-152; ss. 26, 27, ch. 2008-153; ss. 27, 28, ch. 2009-82; ss. 20, 21, ch. 2010-153; s. 13, ch. 2012-212.

255.519 Variable rate obligations.—

(1) With respect to the provisions of s. 215.84(3), if the interest rate on bonds bearing a floating or variable rate of interest as calculated on the date of the initial sale thereof does not exceed the limitation provided by s. 215.84(3), so long as the basis, method, or formula for computing the floating or variable rate does not change during the life of the bonds, subsequent increases in the interest rate in accordance with said basis, method, or formula shall not cause the interest rate on the bonds to violate the limitation provided by s. 215.84(3). A certificate by the issuer of the bonds as to the computation of the interest rate in compliance with this requirement shall be deemed conclusive evidence of compliance with the provisions of s. 215.84(3).

(2) With respect to all variable rate obligations of 5 years' maturity or less for purposes of determining compliance with all rate covenant tests under this act, the State Board of Administration shall recompute debt service to an amount which will fully amortize the debt in level payments of principal and interest over 25 years at the assumed rate.

History.—s. 18, ch. 85-349.

255.52 Approval by State Board of Administration.—At or prior to the sale by the division, all obligations proposed to be issued by the division shall be approved by the State Board of Administration as to fiscal sufficiency. The State Board of Administration shall look to the rate coverage of all pool pledged revenues, as projected by the Department of Management Services, with respect to all proposed and outstanding obligations issued under this act:

(1) One hundred and ten percent of debt service charges; plus

(2) One hundred percent of capital depreciation reserved deposits, if any; plus

(3) One hundred percent of costs of operation and maintenance.

With respect to variable rate obligations, such evaluation shall be made at the interest rate for the date of sale determined as provided in s. 255.519.

History.—s. 19, ch. 85-349; s. 3, ch. 86-222; s. 37, ch. 98-279.

255.521 Failure of payment.—Should an agency fail to make a timely payment of the pool pledged rentals or charges as required by this act, the Chief Financial Officer shall withhold general revenues of the agency in an amount sufficient to pay the rentals and charges due and unpaid from such agency. The Chief Financial Officer shall forward such general revenue amounts to the Department of Management Services in payment of such rents.

History.—s. 20, ch. 85-349; s. 38, ch. 98-279; s. 277, ch. 2003-261.

255.522 State and political subdivisions not liable on obligations.—Obligations issued pursuant to this act shall not be a debt of the state or of any political subdivision, and neither the state nor any political subdivision shall be liable thereon. The Department of Management Services shall not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision; and neither the credit, the revenues, nor the taxing power of

the state or of any political subdivision shall be, or shall be deemed to be, pledged to the payment of any obligations issued pursuant to this act.
History.—s. 21, ch. 85-349; s. 39, ch. 98-279.
255.523 Exemption from taxes.—The property of the Department of Management Services, the transactions and operations thereof, and the income therefrom shall be exempt from taxation by the state and political subdivisions.
History.—s. 23, ch. 85-349; s. 40, ch. 98-279.
255.524 Obligations issued constitute legal investments.—All obligations issued pursuant to this act shall be and constitute legal investments without limitation for all political subdivisions of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any public funds. This section shall be considered as additional and supplemental authority and shall not be limited without specific reference hereto.
History.—s. 23, ch. 85-349.
255.525 Inconsistent provisions of other laws superseded.—Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.
History.—s. 24, ch. 85-349.
255.5576 Consideration of energy-efficient materials; high-energy lighting.—
(1) The Department of Management Services shall consider the energy efficiency of all materials used in the construction, alteration, repair, or rebuilding of a building or facility owned or operated by a state agency. Whenever feasible, the department shall lease a building or facility that has high-efficiency lighting.
(2) The Department of Management Services shall adopt rules requiring a state agency to install high-efficiency lamps when replacing an existing lamp or installing a new lamp in a building owned by the state agency.
History.—s. 61, ch. 2010-176.
255.60 Special contracts with charitable or not-for-profit organizations.—The state, the governing body of any political subdivision of the state, or a public-private partnership is authorized, but not required, to contract for public service work with a not-for-profit organization or charitable youth organization, notwithstanding competitive sealed bid procedures required under this chapter, chapter 287, or any municipal or county charter, upon compliance with this section.
(1) The contractor or supplier must meet the following conditions:
(a) The contractor or supplier must be a not-for-profit corporation incorporated under chapter 617 and in good standing.
(b) The contractor or supplier must hold exempt status under s. 501(a) of the Internal Revenue Code, as an organization described in s. 501(c)(3) of the Internal Revenue Code.
(c) For youth organizations, the corporate charter of the contractor or supplier must state that the corporation is organized as a charitable not-for-profit organization exclusively for at-risk youths enrolled in a work-study program.
(d) Administrative salaries and benefits for any such corporation shall not exceed 15 percent of gross revenues. Field supervisors shall not be considered administrative overhead.

(2) The contract, if approved by authorized agency personnel of the state, the governing body of a political subdivision, or the public-private partnership, as appropriate, must provide at a minimum that:
(a) For youth organizations, labor shall be performed exclusively by at-risk youth and their direct supervisors; and shall not be subject to subcontracting.
(b) For the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure.
(c) For public education buildings, the building must be at least 90,000 square feet.
(d) Payment must be production-based.
(e) The contract will terminate should the contractor or supplier no longer qualify under subsection (1).
(f) The supplier or contractor has instituted a drug-free workplace program substantially in compliance with the provisions of s. 287.087.
(g) The contractor or supplier agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure that the contractor or supplier has complied with this section.
(3) A contract under this section may not exceed the annual sum of $250,000.
(4) Should a court find that a contract purporting to have been entered into pursuant to this section does not so qualify, the court may order that the contract be terminated on reasonable notice to the parties. The court shall not require disgorgement of any moneys earned for goods or services actually delivered or supplied.
(5) Nothing in this section shall excuse any person from compliance with ss. 287.132-287.134.
History.—s. 1, ch. 2003-113; s. 1, ch. 2013-223; s. 35, ch. 2014-17.