

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 678

INTRODUCER: Senator Powell

SUBJECT: Disposal of Property

DATE: March 6, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hackett	Ryon	CA	Favorable
2. _____	_____	TR	_____
3. _____	_____	RC	_____

I. Summary:

SB 678 provides that the Florida Department of Transportation may convey property to a governmental entity without consideration if the property is to be used for affordable housing.

The bill takes effect July 1, 2023.

II. Present Situation:

Disposal of Real Property Acquired for Transportation Purposes

The Florida Department of Transportation (FDOT) acquires land throughout the state to utilize for transportation facilities¹ and securing rights-of-way through purchase, exchange, and donation.² FDOT is authorized to convey acquired property it determines not to be needed for the construction, operation, and maintenance of a transportation facility.³

Generally, FDOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest.⁴ A sale of unneeded property may not occur at a price less than FDOT's current estimate of value except that:

- If donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose

¹ "Transportation facility" means any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place. See s. 334.03(30), F.S.

² Section 337.25(1), F.S.

³ Section 337.25(4), F.S.

⁴ *Id.*

jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.⁵

- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.⁶
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, FDOT may negotiate for the sale of such property as replacement housing.⁷
- If FDOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes FDOT to significant liability risks, FDOT may use the projected maintenance costs over the next ten years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.⁸

The provision allowing conveyance free of consideration to a governmental entity to be used for a public purpose does not define "public purpose."⁹

Right of First Refusal

In general,¹⁰ FDOT is required to first offer the property (a "right of first refusal") to the property owner from whom FDOT originally acquired the property for FDOT's current estimate of value of the property.¹¹ The right of first refusal must:

- Be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt;
- Provide the previous owner with a minimum of 30 days to exercise the right in writing; and
- Be sent to the originator of the offer by certified mail or hand delivery, effective upon dispatch.

If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property. A right of first refusal may not be required for disposal of property acquired more than 10 years before the date of disposition by FDOT.¹²

Affordable Housing

One major goal at all levels of government is to ensure that citizens have access to affordable housing. In general, housing is considered affordable when it costs less than 30 percent of a family's gross income. A family paying more than 30 percent of its income on either rent or mortgage payments is considered "cost burdened," while those paying more than 50 percent are

⁵ Section 337.25(4)(a), F.S.

⁶ Section 337.25(4)(b), F.S.

⁷ Section 337.25(4)(c), F.S.

⁸ Section 337.25(4)(d), F.S.

⁹ *Supra*, note 6. "Public purpose" is defined by *Black's Law Dictionary* as "an action by or at the direction of a government for the benefit of the community as a whole."

¹⁰ This is the case in all conveyances other than returning property to the original donor, the sale of property to produce replacement housing for persons displaced by transportation projects, and the disposal of property acquired more than 10 years before the date of disposition by the department. *Supra* note 3.

¹¹ *Supra* note 3.

¹² *Id.*

considered “extremely cost burdened.” Severely cost burdened households are more likely to sacrifice other necessities such as healthy food and healthcare to pay for housing, and to experience unstable housing situations such as eviction.

Affordable housing is defined in terms of household income. Resident eligibility for Florida’s state and federally funded housing programs is typically governed by area median income (AMI) levels. These levels are published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area.

Housing costs reflect what people are willing to pay to live in an area, which may make it difficult for the workforce, elders, and people with disabilities to find affordable homes and apartments. The government helps make housing affordable through programs which decrease monthly rent or mortgage payments so that income eligible families are able to pay less for housing than it would otherwise cost at “market rate.” Lower monthly payments result from government investment in multifamily rental or single family homes in exchange for price limits.

Disposition of Local Government-owned Property for Affordable Housing

Since 2006, counties and cities have been required to prepare an inventory of publically owned real property that would be appropriate for use as affordable housing, and update the inventory every three years.¹³ The list must include the address and legal description of each such real property, specifying whether it is vacant or improved.

Properties so identified as appropriate for use as affordable housing may be disposed in the following ways:

- Sold and the proceeds used to purchase land for the development of affordable housing;
- Sold with a restriction that requires the development of permanent affordable housing on the land;
- Donated to a nonprofit housing organization for the construction of permanent affordable housing; or
- Made otherwise available for the use for the production and preservation of permanent affordable housing.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 337.25(4)(b), F.S., to provide that the FDOT may convey land not needed for transportation facilities to other governmental entities without consideration for affordable housing purposes.

While current law provides the FDOT may convey such land without consideration “to be used for a public purpose,” the bill expressly provides that such public purposes include local governmental disposition of the property for affordable housing as provided in ss. 125.379 and 166.0451, F.S.

The bill takes effect July 1, 2023.

¹³ Sections 125.379 and 166.0451, F.S.

¹⁴ *Id.*

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None identified.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent the provision is utilized, local governments may benefit from consideration-free receipt of land for affordable housing from the Department of Transportation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 337.25 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
