

STORAGE NAME: h0441.sgc.doc
DATE: March 30, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 441
RELATING TO: County Government/Property Sales
SPONSOR(S): Representative Baker
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 9 NAYS 0
 - (2) HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

HB 441 authorizes boards of county commissioners to prescribe by ordinance disposition standards and procedures for the sale of real and personal property owned by the county, and for the leasing of real property owned by the county, under certain conditions.

On March 29, 2001, the Council for Smarter Government considered HB 441, adopted one amendment, and passed the bill. The amendment, which is traveling with the bill, is explained in this bill analysis. (See section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:".)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Statutory Authority

Part I of Chapter 125, F.S., contains authority relating to the powers and duties of county commissioners.

Section 125.35, F.S., provides for the sale and conveyance of real or personal county-owned property, and for the lease of county-owned real property. The board of county commissioners determines when it is in the best interests of the County to sell real or personal property, or to lease real property, to the highest and best bidder for the highest and best use as determined by the board.

Boards of county commissioners are expressly authorized to:

- Negotiate the lease of an airport or seaport facility;
- Change or extend an existing lease of real property for an additional period of time of up to twenty-five years, when the improved value of the lease is appraised at greater than \$20 million; or
- Lease a professional sports franchise facility financed by revenues, received in compliance with the Local Option Tourist Development Act.

The board is required to publish notice once a week for at least two weeks in a newspaper of general circulation, published in the county, calling for bids. The board is authorized to reject all bids if they are too low and may require a deposit or surety bond.

When the board deems that a parcel is of insufficient size and shape to be issued a building permit for any kind of development, or when an appraisal shows that the value is \$15,000 or less, and when the parcel is only of use to adjacent property owners, the board may initiate a private sale.

Case Law

Absent a statutory requirement, a public entity is not legally obligated to engage in competitive bidding or to award a contract based on the lowest bid. (William A. Berbusse, Jr., Inc. v. North Broward Hospital District, 117 So.2d 550 (Fla. 2d DCA 1960))

Authorities created through special act are not required to competitive bid for the sale of property, pursuant to statute, unless it is stipulated in the special act. (Furnams v. Santa Rosa Island Authority, 377 So.2d 983 (Fla. 1st DCA 1979))

The Court in Wester v. Belote, 103 Fla. 976 (Fla. 1931), indicated the reasoning behind competitive bidding,

Laws of this kind requiring contracts to be let to the lowest bidder are based upon public economy, are of great importance to the taxpayers, and ought not to be frittered away by exceptions.

In so far as they thus serve the object of protecting the public against collusive contracts and prevent favoritism toward contractors by public officials and tend to secure fair competition upon equal terms to all bidders, they remove temptation on the part of public officers to seek private gain at the taxpayers' expense, are of highly remedial character, and should receive a construction always which will fully effectuate and advance their true intent and purpose and which will avoid the likelihood of same being circumvented, evaded, or defeated.

C. EFFECT OF PROPOSED CHANGES:

HB 441 authorizes an alternative procedure for the sale or disposition of certain county-owned real and personal property by boards of county commissioners.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds subsection (3) to section 125.35, F.S., to authorize the board of county commissioners to implement disposition standards and procedures, by ordinance, to be used by the county in selling and conveying county-owned real or personal property, and in leasing real property. Requires the standards and procedures to include at least:

- The establishment of competition and qualification standards upon which disposition will be decided;
- Reasonable public notice (measured by the efficacy and efficiency of the mode of communication used) of the intent to consider the disposition of county property and the accessibility of the standards;
- Identification of the methods by which persons may acquire county property;
- Identification of the negotiation procedures appropriate for the selection of a person who may acquire property;
- Description of the procedure of informing potential purchasers of the board's intent to consider disposition of property, and the procedure for registering objections;
- Compliance with the governing comprehensive plan and zoning ordinances.

Section 2. Provides that the bill will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has no fiscal impact on state revenues.

2. Expenditures:

This bill has no fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill may generate increased local government revenues as the board may be able to sell more property.

2. Expenditures:

This bill may decrease advertising costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

An attorney with the Florida Association of Counties represents that the Association supports this bill.

An attorney representing the interests of Volusia County expresses support for this bill, as follows:

Competitive bidding is the traditional method that governments have used in the acquisition of goods and construction services. In more recent years, alternate methods such as competitive negotiations, sole source purchasing and life cycle purchasing have been substituted for the traditional sealed bid method.

Volusia County owns a 60 acre tract of land of waterfront property which several potential purchasers have been interested in. In some instances the potential buyers have been unwilling to wait for the delay occasioned by conducting the competitive bidding process. In another instance, after spending months conducting the competitive bidding process the potential buyer bid, but then was unwilling to complete the transaction. Thus, the property was effectively off the market for a number of months while dealing with someone who turned out to be not a willing buyer.

Volusia County has significant lands surrounding its commercial airport which it wishes to lease for income and economic development purposes. Since Attorney General Opinion 99-35, which required competitive bidding for non-aviation purposes at airports, the County must bid new leases of its land. This is essentially unworkable. This property should continuously be available for offers in order to provide the maximum opportunity to attract tenants when the tenants wish to make decisions about their projects.

Volusia County is in the development stages of an industrial park located adjacent to its sanitary landfill where it hopes to replace industrial tenants which are unsuitable land uses in developed areas of the county and whose activities can be effectively monitored to prevent adverse effects on the environment. Again, these properties will be effectively marketed only if they are available on a continuous basis to permit tenants to make decisions on their own time frames.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

- On March 26, 2001, the Committee on Natural Resources & Environmental Protection unanimously adopted one amendment that requires a method of letting interested persons know when a board intends to take final action on the disposition of property. This traveling amendment conforms to the Senate companion, which is Senate Bill 1132.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Cindy M. Brown

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Karon A. Molloy

Staff Director:

Wayne S. Kiger

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

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