

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Community Affairs Committee

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BILL: CS/SB 1130

SPONSOR: Transportation Committee and Senator Crist

SUBJECT: Conveyance of Roads/ Homeowners' Associations

DATE: March 17, 2005

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Evans</u>   | <u>Meyer</u>   | <u>TR</u> | <u>Fav/CS</u>    |
| 2. | <u>Vickers</u> | <u>Yeatman</u> | <u>CA</u> | <u>Favorable</u> |
| 3. | _____          | _____          | _____     | _____            |
| 4. | _____          | _____          | _____     | _____            |
| 5. | _____          | _____          | _____     | _____            |
| 6. | _____          | _____          | _____     | _____            |

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## I. Summary:

This committee substitute (CS) transfers and renumbers several statutory provisions relating to the abandonment and conveyance of public roads to homeowners' associations. The CS addresses concerns relating to the ability of municipalities to exercise their home rule powers established in s.166.021, F.S., to vacate roads and right of ways to homeowners' associations.

This CS amends section 316.006 of the Florida Statutes. This CS also creates section 336.125 of the Florida Statutes.

## II. Present Situation:

Section 316.00825, F.S., establishes a process by which *counties* can abandon roads, rights-of-way and appurtenant facilities under their jurisdictions and simultaneously convey them to homeowners' associations. A homeowners' association seeking to own the roads in its neighborhood must have satisfied the following requirements:

- The homeowners' association has requested in writing the conveyance of the road in order to convert the subdivision into a gated community with restricted public access.
- No fewer than four-fifths of the property owners of record had consented in writing to the conveyance.
- The homeowners' association is both a corporation not-for-profit and in good standing as defined in chapter 617, F.S., and has the power pursuant to s. 720.301(9), F.S., to levy and collect assessments for routine and periodic maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.

- The homeowners' association has entered into and executed agreements or provided other assurances to the county that the roads, drainage systems, and other appurtenances will be maintained.

This section also requires the homeowners' association to install, operate, repair, and maintain traffic signals, signs, and other traffic control devices unless it enters into an agreement giving the county jurisdiction over traffic control.

Since the passage of s. 316.00825, F.S., municipalities have expressed an interest in also being able to abandon and convey city-owned roads to homeowners' associations for the purpose of creating gated communities. However, the Attorney General's Office issued Opinion #04-47 in September 2004 concluding that municipalities were precluded by statute from being able to use this law.

Opinion # 04-47 cited four sections of law that, in combination, precluded municipalities from being able to abandon city-owned roads and rights-of-way and then conveying them to homeowners' associations. First, s. 316.00825, F.S., authorizes only counties to abandon roads and rights-of-way under their jurisdictions and simultaneously convey them to homeowners' associations. The opinion noted, "It is a rule of statutory construction that when a law mentions the things upon which it is to operate, it is ordinarily construed as excluding from its operation all things not expressly mentioned...."

Further, the Attorney General noted three other sections of law that in combination supported his ruling. Section 166.021(1), F.S., states that municipalities may exercise any power for municipal purposes except when expressly prohibited by law. Section 166.021(3)(c), F.S., precludes a municipality from enacting legislation on a subject preempted by general law to a county. The final section of law cited was s. 316.007, F.S., which prohibits any local authority from enacting or enforcing any ordinance based on the traffic control matters covered in ch. 316, F.S. The Attorney General concluded:

"Therefore, I am of the opinion that municipalities are precluded by the terms of sections 166.021(3)(c) and 316.007, Florida Statutes, from abandoning roads and rights-of-way dedicated in a recorded residential subdivision plat and simultaneously conveying their interest in such roads, rights-of way, and appurtenant drainage facilities to a homeowners' association for the subdivision in the manner provided by section 316.00825, Florida Statutes."

### **III. Effect of Proposed Changes:**

The CS renumbers the existing s. 316.00825, F.S., related to counties' authority to abandon county roads and convey them to homeowners' associations, as the new s. 336.125, F.S. and corrects a cross-reference necessary because of the renumbering.

Transferring this existing section of law to the chapter dealing with the county road system (ch. 336, F.S.) is intended to address concerns that municipalities, through their home-rule powers, couldn't address road-conveyance issues because they were preempted by the counties. Section

166.021(3)(c), F.S., precludes a municipality from enacting legislation on traffic-control matters already addressed in ch. 316, F.S.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Representatives of municipalities assert this CS will effectively allow municipalities to exercise their home rule powers established in s.166.021, F.S., to vacate roads and right of ways to homeowners' associations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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