

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 625 allows municipalities to abandon and convey city-owned roads and rights-of-way to private homeowners' associations, who would be responsible financially for their maintenance.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Prior to 2002, county governments could abandon their interests in roads and rights-of-way under their jurisdictions, after public notice, pursuant to ss. 336.09 -336.12, F.S. If the roads had not been deeded originally to the county by the state or federal government, they typically were returned to the adjacent property owners.

During the 2002 legislative session, s. 316.00825, F.S., was created to address what some county attorneys viewed as a glitch in state law. The new section of law established a process by which counties could abandon roads, rights-of-way and appurtenant facilities under their jurisdictions and simultaneously convey them to homeowners' associations seeking to create gated communities. A homeowners' association seeking to own the roads in its neighborhood had to meet four requirements:

- o 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.
- o No fewer than four-fifths of the property owners of record had consented in writing to the conveyance.
- o 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.
- o 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.

The law 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...."¹

Further, the Attorney General noted three other sections of law that in combination, supported his ruling. Section 166.21(1), F.S., states that municipalities may exercise any power for municipal

¹ Response to Lonnie N. Groot, Oviedo City Attorney, September 14, 2004, page 3.

purposes except when expressly prohibited by law. Section 166.21(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 chapter 316, F.S. The Attorney General concluded:

“Therefore, I am of the opinion that municipalities are precluded by the terms of sections 166.21(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.”²

Effect of HB 625

The bill would add municipalities to s. 316.00825, F.S. so they could convey city-owned roads and rights-of-way to eligible homeowners’ associations. It also would amends s. 316.006, F.S., to specify that if a city abandons and conveys a road to a homeowners’ association, its responsibilities to patrol and maintain that road cease unless it enters into an agreement with the homeowners’ association to continue those responsibilities.

HB 625 would take effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends s. 316.00825, F.S., to give municipalities the same authority as county governments to close and abandon roads.

Section 2: Amends s.316.006, F.S., to clarify that if a municipality abandons roads and rights-of-way dedicated in a recorded easement and simultaneously conveys that interest to a homeowner’s association, the municipality’s traffic control jurisdiction over that abandoned ad conveyed road ceases unless the municipality has entered into an agreement with the homeowner’s association to continue its regulation.

Section 3: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See “D. FISCAL COMMENTS” below.

2. Expenditures:

See “D. FISCAL COMMENTS” below.

² Ibid, page 4.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those homeowners' associations that are conveyed ownership of what previously were municipal streets would bear the costs of maintaining them and any traffic control devices. Depending on an association's finances, it might have to raise homeowner assessments to pay these expenses.

HB 625 also could create the financial benefit of increased property values for homes within gated communities, driven in part by a greater sense of security about the neighborhood.

D. FISCAL COMMENTS:

Municipalities that abandoned and conveyed city roads would save the funds previously spent to maintain those roads, and likely apply them to road improvement projects or other local uses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 625 because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Municipalities are exempt from the provisions of chapter 120, F.S., the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 625's sponsor plans to offer a strike-everything-after-the-enacting-clause amendment when the Transportation Committee considers his bill.

Briefly, the strike-everything amendment will:

- o Amend s. 316.006, F.S., to specify that municipalities may exercise their home rule powers granted under chapter 166, F.S., to abandon, vacate, or close roads or rights-of-ways under their jurisdictions pursuant to the terms and conditions approved by their governmental boards.
- o Renumber 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.

The strike-everything amendment is in response to some of the comments in the Attorney General's Opinion # 04-47, related to home rule issues.

As drafted, HB 625 simply amends s. 316.00825, F.S., to add the word "municipality" to those subsections expressing counties' authority to abandon and convey to private ownership roads and rights-of-way under their jurisdictions. The League of Cities expressed concerns, saying a legal argument could be made that HB 625 only gives municipalities the power under chapter 316, F.S., to abandon and convey city-owned roads, thus reducing municipal home-rule powers under chapter 166, F.S. Also, the cities' road-closing authority would be less than what counties enjoy under their own ss. 336.09-336.12, F.S., the League added.

The strike-everything amendment is very broadly written. The amendment attempts to safeguard municipalities' home-rule powers and to provide maximum flexibility for cities to abandon, close, or convey their roads or rights-of-way by referencing chapter 166, F.S.

The strike-everything amendment could be construed as less stringent than the existing statute controlling county governments' abandonment and conveyance of roads to homeowners' associations. Homeowners' associations within city jurisdictions would not be specifically required to have the written approval of four-fifths of their property owners for the proposed abandonment and conveyance of city roads to them, or any of the other requirements homeowners' associations must meet under s. 316.00825, F.S. Nor would the conveyance be for the specific purpose of creating a gated community with restricted public access, as is required by s. 316.00825, F.S. In fact, any person or entity could seek conveyance of a city-owned road. The only requirements that would have to be met would be those established by that particular city governing authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES