

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 Community Affairs Committee

BILL: SB 1618

INTRODUCER: Senator Bennett

SUBJECT: Boards of County Commissioners/Property Lease

DATE: March 4, 2009 REVISED: 03/10/09 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	Fav/2 amendments
2.	_____	_____	<u>JA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill authorizes the board of county commissioners to negotiate the lease of county property for a term not to exceed 5 years rather than going through the competitive bidding process.

This bill substantially amends section 125.35 of the Florida Statutes.

II. Present Situation:

County Leasing Authority

Section 1(f), Art. VIII, State Const., in pertinent part, provides that noncharter counties “shall have such power of self-government as is provided by general or special law.” This constitutional provision is statutorily implemented in s. 125.01, F.S. Counties are, therefore, empowered to carry on county government to the extent not inconsistent with general or special law. They are specifically

authorized “to employ personnel, expend funds, enter into contractual obligations, and purchase or *lease* and sell or exchange any *real* or personal *property*.”¹

Section 125.35(a), F.S., specifically authorizes the board of county commissioners to “lease real property, belonging to the county.”²

To lease property, the board:

- must determine that it is in the best interest of the county to do so,
- must open the process for competitive bidding,³ and
- may set the terms and conditions of the lease.

However, the board of county commissioners is authorized to negotiate the lease of an airport or seaport facility under such terms and conditions as negotiated by the board.⁴ This section of the statute has been interpreted as allowing the board of county commissioners to negotiate this type of lease without going through the competitive bidding process.⁵

A local government may by ordinance prescribe disposition standards and procedures to be used by the county in leasing real property owned by the county. The standards and procedures must:

- Establish competition and qualification standards upon which disposition will be determined.
- Provide reasonable public notice.
- Identify how an interested person may acquire county property.
- Set the types of negotiation procedures.
- Set the manner in which interested persons will be notified of the board's intent to consider final action and the time and manner for making objections.
- Adhere to the governing comprehensive plan and zoning ordinances.⁶

Competitive Bidding

The principal benefit flowing to the public authority is the opportunity of purchasing the goods and services required by it at the best price obtainable. Under this system, the public authority may not arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preference. The award must be made to the one submitting the lowest and best bid, or all bids must be rejected and the proposal re-advertised.⁷

¹ Op.Atty.Gen., 88-34, Aug. 25, 1988 (citing *Speer v. Olson*, 367 So.2d 207, 210 (Fla. 1978) (finding that chapter 125, F.S., implements s. 1(f), Art. VIII, Fla. Const.; section 125.01(3)(a), F.S. (emphasis in original)).

² Section 125.35(a), F.S.

³ Section 125.35(a); *see also Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So.2d 613 (Fla. 1st DCA 1989); *Rolling Oaks Homeowner's Association, Inc. v. Dade County*, 492 So.2d 686, 688 (Fla. 3d DCA 1986); *Randall Industries, Inc. v. Lee County*, 307 So.2d 499, 501 (Fla. 2d DCA 1975).

⁴ Section 125.35(1)(b), F.S.

⁵ Op.Atty.Gen., 99-35, June 8, 1999.

⁶ Section 125.35(3), F.S.

⁷ *Hotel China & Glassware Co. v. Board of Public Instruction*, 130 So.2d 78, 81 (Fla. 1st DCA 1961).

However, the competitive bidding process can take time and money. Temporary leases may be appropriate on an emergency basis as a result of a hurricane or other natural disaster, for short term revenue generating ventures, and for replacing vendors such as coffee shops and hot dog vendors in government buildings. At present local governments have no discretion to bypass the bidding process.

III. Effect of Proposed Changes:

Section 1 amends s. 125.35, F.S., to authorize a county commission to negotiate the lease of county property, other than an airport or seaport facility, for a term not to exceed five years. This provision allows the county commission to lease county property for less than five years without going through the competitive bidding process.

Section 2 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will allow private entities to negotiate leases of county land for five years or less.

C. Government Sector Impact:

This bill should allow county commissions to negotiate leases of county land for five years or less. As a result, county commissions would have more flexibility to determine the terms and conditions of these types of leases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:**Barcode 624614 by Community Affairs on March 10, 2009:**

The amendment freezes the salaries of county constitutional officers for the fiscal years 2009-2010 and 2010-2011 at the 2008-2009 fiscal year level. (WITH TITLE AMENDMENT)

Barcode 316836 by Community Affairs on March 10, 2009:

The amendment authorizes local governments to negotiate 2 year leases instead of 5 year leases.