

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 829

Local Government

SPONSOR(S): Economic Development & Community Affairs Policy Council; Criminal & Civil Justice Policy Council; Military & Local Affairs Policy Committee and Bovo

TIED BILLS:

IDEN./SIM. BILLS: SB 1004

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 0 N, As CS	Rojas	Hoagland
2)	Criminal & Civil Justice Policy Council	13 Y, 1 N, As CS	Thomas	Havlicak
3)	Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	Rojas	Tinker
4)				
5)				

SUMMARY ANALYSIS

The bill expands the flexibility of local governments in several respects. Specifically the bill:

- Authorizes boards of county commissioners to negotiate the lease of county real property for a term not to exceed 5 years rather than going through the competitive bidding process.
- Allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.
- Clarifies the restrictions on local governments participating in issue campaigns.

This bill has no fiscal impact to the state and should have a positive impact on counties.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County Leasing Authority

Section 1, Art. VIII of the Florida Constitution provides, in part, that noncharter counties "shall have such power of self-government as is provided by general or special law" and counties operating under county charters "shall have all powers of local self-government not inconsistent with general law." This constitutional provision is statutorily implemented in s. 125.01, F.S.¹ Counties 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*."²

Section 125.35(a), F.S., authorizes the board of county commissioners to "lease real property, belonging to the county." To lease property, the board of county commissioners must determine that it is in the best interest of the county to do so and must use the competitive bidding process. The board may use its discretion when setting the terms and conditions of the lease.³

The board of county commissioners is authorized to negotiate the lease of an airport or seaport facility under the terms and conditions 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

¹ Fla. Atty Gen. Op. 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.

² *Id.* (emphasis in original).

³ Section 125.35(1)(a), F.S.

⁴ Section 125.35(1)(b), F.S.

⁵ Fla. Atty.Gen. Op., 99-35 (June 8, 1999).

A county 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 competitive bidding process is used throughout the Florida statutes to ensure that goods and services are being procured at the lowest possible cost.⁷ The First District Court of Appeal explained the public benefit of 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.⁸

Section 125.35(1)(a), F.S., requires the board of county commissioners to use the competitive bidding process when selling and conveying real or personal property or leasing real property belonging to the county. Unlike the competitive bidding process for goods and services, where the state is trying to find the lowest and best bid, when a county is trying to sell or lease real property under s. 125.35, F.S., the board must sell or lease to the “highest and best bidder.” Temporary leases may be appropriate in certain situations, such as in the event of a natural disaster or for short-term, revenue-generating ventures or replacing vendors such as coffee shops in government buildings. However, counties have no discretion to bypass the bidding process.⁹

Despite the numerous benefits, the competitive bidding process can often be time consuming and expensive. Currently, local governments have no discretion to bypass the bidding process.

Road Mapping

The mapping of Florida’s roads is done at both the state and local levels. County general highway maps are a statewide series of maps depicting the general road system of each county. The Florida Department of Transportation maintains an Official Transportation Map for the state as well as maps of each of the Department of Transportation’s districts. Right-of-way maps contain maps of local and state roads specific enough to show how they delineate the boundaries between the public right-of-way

⁶ Section 125.35(3), F.S.

⁷ See, e.g., ss. 112.313(12)(b), 253.54, 337.02, 379.3512, and 627.64872(11), F.S.

⁸ *Hotel China & Glassware Co. v. Board of Public Instruction*, 130 So.2d 78, 81 (Fla. 1st DCA 1961).

⁹ See *Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So. 2d 613, 615 (Fla. 1st DCA 1989); *Rolling Oaks Homeowner’s Ass’n, Inc. v. Dade County*, 492 So. 2d 686, 689 (Fla. 3d DCA 1986); *Randall Industries, Inc. v. Lee County*, 307 So. 2d 499, 500 (Fla. 2d DCA 1975).

and abutting properties.¹⁰ Right-of-way maps are kept by the Department of Transportation's eight surveying and mapping offices¹¹ and by each county circuit court clerk.¹²

Section 337.29, F.S., states that title to all roads designated in the State Highway System or State Park Road System is in the state. Transfer of title must be done in accordance with s. 335.0415, F.S. Section 337.29, F.S. also requires local governments to record a deed or right-of-way map when:

- Title vests for highway purposes in the state, or
- The Department of Transportation acquires lands.

Section 335.0415, F.S., sets the jurisdiction of public roads and creates a process by which they may be transferred. It specifically directs that public roads may be transferred between jurisdictions only by mutual agreement of the affected governmental entities.

The title to roads transferred between jurisdictions is held by the governmental entity to which the roads have been transferred. However the process cannot be completed until the receiving government entity records road information on the right-of-way map with the county in which such rights-of-way are located. Therefore, unlike state acquisition of roadways, local government acquisition cannot be accomplished by deed.

Electioneering Communication

On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications," were held unconstitutional by the United States District Court for the Northern District of Florida.¹³ The electioneering communications laws attempted to regulate communication that "refers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue."¹⁴ Any group that makes an electioneering communication must register as an electioneering communications organization. These organizations were required to register and report expenditures and contributions in the same manner as political committees supporting or opposing an issue or a candidate.

In the Broward Coalition decision, the court explained that there are two factors that must be met before a communication is deemed to be the functional equivalent of express advocacy. First, the speech must be "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."¹⁵ Second, the communication must be a "broadcast, cable, or satellite communication that refers to a clearly identified candidate within sixty days of a general election or thirty days of a primary election."¹⁶ Under this criteria, the court found that: 1) none of the plaintiffs issued communication via broadcast, cable, or satellite; 2) all of the speech at issue is susceptible of a reasonable interpretation other than an appeal to vote for or against a candidate; and 3) "plaintiff's speech relating to ballot issues cannot, by definition, be express advocacy for a particular candidate."¹⁷ The court's opinion generated some uncertainty as to the manner and method in which local governments could participate in issue campaigns.

¹⁰ DEPARTMENT OF TRANSPORTATION, SURVEYING & MAPPING OFFICE – MAPS,

<http://www.dot.state.fl.us/surveyingandmapping/maps.shtm>

¹¹ DEPARTMENT OF TRANSPORTATION, SURVEYING & MAPPING OFFICE – RIGHT OF WAY MAPS,

<http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtm>.

¹² Section 177.131, F.S.

¹³ Broward Coalition v. Browning, 2009 WL 1457972, at *8.

¹⁴ Section 106.011(1)(a), F.S.

¹⁵ WRTL II, at 470.

¹⁶ Id. at 476.

¹⁷ Broward Coalition, 2009 WL 1457972, at *6.

Effect of the Bill

This bill allows the county commission to lease county real property for less than five years without going through the competitive bidding process. The change would provide greater flexibility in addressing issues that may be time sensitive. Expanding the use of temporary leases would provide greater flexibility in dealing with emergencies, short term revenue generating ventures, and replacing vendors in government buildings.

Furthermore, the bill allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located. This change would decrease the length of time that the transfer of title process requires under current law.

Lastly, the bill clarifies some of the restrictions on local governments participating in issue campaigns. The bill removes references to "electioneering communications," which conforms to recent federal court decisions and clarifies that local governments may publish public notices, adopt resolutions and ordinances, and produce reports without violating the law.

B. SECTION DIRECTORY:

- Section 1.** amends s. 106.113, F.S., to clarify the restrictions on local governments participating in issue campaigns.
- Section 2.** amends s. 125.35, F.S., relating to county authorized to sell real and personal property and to lease real property.
- Section 3.** amends s. 337.29, F.S., relating to vesting of title to roads; liability for torts.
- Section 4.** provides an effective date of July 1, 2010.

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:
None.
2. Expenditures:

This bill will decrease county expenditures by allowing county commissions to negotiate specified short term leases of county real property rather than requiring use of a competitive bidding process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will allow private entities to negotiate certain leases of county real property directly with county commissions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, HB 829 was amended in the Military & Local Affairs Policy Committee upon adoption of a proposed committee substitute. The proposed committee substitute removed provisions from the bill as filed that addressed prohibiting a person from falsely personating a firefighter.

On March 22, 2010, CS/HB 829 was amended in the Criminal & Civil Justice Policy Council to clarify that the property subject to lease under the bill is real property.

On April 16, 2010, CS/CS/HB 829 was amended in the Economic Development & Community Affairs Policy Council. The amendment clarifies the restrictions on local governments participating in issue campaigns. Specifically the amendment:

- Removes references to "electioneering communications," which conforms to recent federal court decisions.
- Clarifies that local governments may publish public notices, adopt resolutions and ordinances, and produce reports without violating the law.

This analysis reflects the bill as amended.