

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 829 Local Government

SPONSOR(S): Bovo, and others

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			
3)	Criminal & Civil Justice Appropriations Committee			
4)	Economic Development & Community Affairs Policy Council			
5)				

SUMMARY ANALYSIS

The bill:

- Authorizes boards 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.
- 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 bill has no fiscal impact to the state.

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, in part, provides 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.

Therefore, counties are authorized to carry on county government to the extent that it is not inconsistent with general or special law. Counties are also 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." 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,² and
- may set the terms and conditions of the lease.

Current law also provides that 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.³ 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.⁴

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.; section 125.01(3)(a), F.S. (emphasis in original)).

² 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).

³ Section 125.35(1)(b), F.S.

⁴ Fla. Atty.Gen. Op., 99-35 (June 8, 1999).

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.⁵

Competitive Bidding

One of the primary responsibilities of a county's public authority is managing the purchase of required goods and services. Public authorities are directed to fulfill purchasing needs required at the best price obtainable. This is most commonly accomplished by establishing a competitive bidding process.

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.⁶

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 and abutting properties.⁷ Right-of-way maps are kept by the Department of Transportation's eight surveying and mapping offices⁸ and by each county circuit court clerk.⁹

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

⁵ Section 125.35(3), F.S.

⁶ *Hotel China & Glassware Co. v. Board of Public Instruction*, 130 So.2d 78, 81 (Fla. 1st DCA 1961).

⁷ DEPARTMENT OF TRANSPORTATION, SURVEYING & MAPPING OFFICE – MAPS,
<http://www.dot.state.fl.us/surveyingandmapping/maps.shtm>

⁸ DEPARTMENT OF TRANSPORTATION, SURVEYING & MAPPING OFFICE – RIGHT OF WAY MAPS,
<http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtm>.

⁹ Section 177.131, F.S.

located. Therefore, unlike state acquisition of roadways, local government acquisition cannot be accomplished by deed.

Effect of the Bill

This bill allows the county commission to lease county 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.

B. SECTION DIRECTORY:

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.

Section 2 amends s. 337.29, F.S., to allow 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.

Section 3 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 land 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 land 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 analysis reflects the bill as amended.