

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 1144

INTRODUCER: Senator Margolis

SUBJECT: Local Government

DATE: April 1, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	<b>Favorable</b>
2.	O'Connor	Maclure	JU	<b>Favorable</b>
3.			TR	
4.				
5.				
6.				

**I. Summary:**

This bill authorizes the board of county commissioners to negotiate the lease of real property for a term not to exceed five years, rather than go through the competitive bidding process. The bill also 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 substantially amends sections 125.35 and 337.29, Florida Statutes.

**II. Present Situation:**

**County Leasing Authority**

Article VIII, section 1 of the Florida Constitution provides, in part, that counties have the power to carry on local government to the extent provided by, or not inconsistent with, general or special law. This constitutional provision is codified in s. 125.01, F.S.<sup>1</sup> 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*.”<sup>2</sup>

Section 125.35(1)(a), F.S., specifically authorizes the board of county commissioners (board) to “lease real property, belonging to the county.”

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<sup>1</sup> Op. Att’y Gen. Fla. 88-34 (1988) (citing *Speer v. Olson*, 367 So. 2d 207, 210 (Fla. 1978) (finding that ch. 125, F.S., implements art. VIII, section 1(f) of the Florida Constitution)).

<sup>2</sup> *Id.* (emphasis added).

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.<sup>3</sup>

The board is authorized to negotiate the lease of an airport or seaport facility under such terms and conditions as negotiated by the board.<sup>4</sup> This provision authorizes the board of county commissioners to negotiate a lease of an airport or seaport facility without going through the competitive bidding process.<sup>5</sup>

Alternatively, 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.<sup>6</sup>

### **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.<sup>7</sup> 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.<sup>8</sup>

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." However, the competitive bidding process is often time consuming and can result in lost

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<sup>3</sup> Section 125.35(1)(a), F.S.

<sup>4</sup> Section 125.35(1)(b), F.S.

<sup>5</sup> See Op. Att'y Gen. Fla. 99-35 (1999).

<sup>6</sup> Section 125.35(3), F.S.

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

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

revenue.<sup>9</sup> 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, currently local governments have no discretion to bypass the bidding process.<sup>10</sup>

### Road Mapping

Mapping of Florida's roads is done at the state and local levels. "[C]ounty general highway maps are a statewide series of maps depicting the general road system of each county."<sup>11</sup> The Florida Department of Transportation (DOT or department) maintains an Official Transportation Map for the state as well as maps of each of the department's districts. Right-of-way maps contain maps of local and state roads with enough specificity to show how they delineate the boundaries between the public right-of-way and abutting properties.<sup>12</sup> Right-of-way maps are kept by DOT's surveying and mapping offices within each district<sup>13</sup> and by the circuit court clerk of the county.<sup>14</sup>

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. Local governments must duly record a *deed or right-of-way map* when:

- Title vests for highway purposes in the state, or
- The department acquires lands.<sup>15</sup>

When roads are transferred between jurisdictions, the title to those roads is given to the governmental entity to which the roads were transferred. Title is transferred to the governmental entity upon the recording of a *right-of-way map* by the governmental entity in the county where the rights-of-way are located.<sup>16</sup> Therefore, unlike state acquisition of roadways, local government acquisition cannot be perfected by deed.

In 2010, the Legislature unanimously passed SB 1004 by Senator Gelber (identical to SB 1144). However, Governor Crist vetoed the bill. The Governor believed that competitive bidding protects the public's interest and assures the best use of taxpayer dollars. As a result, the Governor chose to withhold approval for SB 1004.<sup>17</sup>

<sup>9</sup> Conversation with Jess McCarty, Assistant County Attorney, Miami-Dade County (Mar. 10, 2010).

<sup>10</sup> 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).

<sup>11</sup> Florida Dep't of Transp., *Surveying & Mapping Office – Maps*, <http://www.dot.state.fl.us/surveyingandmapping/maps.shtml> (last visited Apr. 1, 2011).

<sup>12</sup> See generally *id.*

<sup>13</sup> See generally Fla. Dep't of Transp., *Surveying & Mapping Office – Right of Way Maps*, <http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtml> (last visited Apr. 1, 2011).

<sup>14</sup> Section 177.131, F.S.

<sup>15</sup> Section 337.29(2), F.S.

<sup>16</sup> Section 337.29(3), F.S. (emphasis added).

<sup>17</sup> Veto Message by Governor Charlie Crist for CS/CS/SB 1004, republished in *Journal of the Senate* (Jul. 20, 2010).

### III. Effect of Proposed Changes:

**Section 1** amends s. 125.35, F.S., to authorize the board of county commissioners to negotiate the lease of real property for a term not to exceed five years, without going through the competitive bidding process.

**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. This change may decrease the length of time that the transfer-of-title process requires under current law.

**Section 3** provides an effective date of July 1, 2011.

### 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:

None.

C. Government Sector Impact:

Currently, when a county wants to lease its property, it must obtain competitive bids and pick the “highest and best bidder.”<sup>18</sup> This process often takes many months, especially in large counties. During the course of the bidding process, the county property often remains vacant, resulting in lost revenue and inconvenience to the county.<sup>19</sup> This bill will allow boards of county commissioners (boards) to negotiate leases of county property for five years or less, without going through the competitive bidding process. As a result,

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<sup>18</sup> Section 125.35(1)(a), F.S.

<sup>19</sup> Conversation with and e-mail from Jess McCarty, Assistant County Attorney, Miami-Dade County, to professional staff of the Senate Committee on Judiciary (Mar. 10, 2010).

boards will 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:**

None.