

FINAL BILL ANALYSIS

BILL #: HB 767

FINAL HOUSE FLOOR ACTION:

114 Y's 2 N's

SPONSOR: Rep. Rooney

GOVERNOR'S ACTION: Vetoed

COMPANION BILLS: SB 1144

SUMMARY ANALYSIS

HB 767 was passed by the House on April 20, 2011, and subsequently passed the Senate on May 2, 2011. The bill was vetoed by the Governor on June 27, 2011. 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 five 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 and should have a positive impact on counties.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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:

¹ Op. Att’y Gen. Fla. 88-34 (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.*

³ Section 125.35(1)(a), F.S.

⁴ Section 125.35(1)(b), F.S.

⁵ Op. Att’y Gen. Fla. 99-35 (1999).

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.

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. The process for obtaining bids can often take months, resulting in lost revenues while properties sit vacant.¹⁰

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.¹¹ Right-of-way maps are kept by the Department of Transportation’s district surveying and mapping offices¹² and by each county circuit court clerk.¹³

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

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).

¹⁰ Conversation with Jess McCarty, Assistant County Attorney for Miami-Dade County (Mar. 24, 2011).

¹¹ Department of Transportation Surveying & Mapping Office, Online Maps, <http://www.dot.state.fl.us/surveyingandmapping/maps.shtm> (last visited Mar. 24, 2011).

¹² Department of Transportation Surveying & Mapping Office, Right of Way Maps, <http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtm> (last visited Mar. 24, 2011).

¹³ Section 177.131, F.S.

- 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.

Governor's 2010 Veto

In 2010, the Legislature passed CS/CS/SB 1004, which was identical to HB 767 (the House companion bill was CS/CS/CS/HB 829). The Governor vetoed the bill, stating that “[c]ompetitive bidding by governmental entities protects the public’s interest and assures the best use of taxpayers’ dollars.” The Governor withheld his approval of the bill, stating that current law was “sufficient to achieve balance” of the public interest and achievement of the best bids by government officials.

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.

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:

Counties wishing to lease real property must use what is often a time-consuming and expensive competitive bidding process.¹⁴ This bill will decrease county expenditures and increase flexibility 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.

¹⁴ Conversation with Jess McCarty, Assistant County Attorney for Miami-Dade County (Mar. 24, 2011).