

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1132

SPONSOR: Senator Brown-Waite

SUBJECT: County Government

DATE: March 23, 2001 REVISED: 03/27/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides counties with an alternative procedure to competitive bidding for the sale and disposition of real or personal property.

This bill amends section 125.35 of the Florida Statutes.

II. Present Situation:

Section 125.35, F.S., authorizes the board of county commissioners to sell and convey real or personal property. However, the statute requires that sales of county real property must be advertised by newspaper publication, bids called for, and any sale must be made to the highest bidder, although all bids may be rejected if they are deemed to be too low. Section 125.38, F.S., states that the above requirements of bidding and the like do not apply to a sale of county property to another governmental unit or agency.

In addition, s. 274.06, F.S., provides that a county may dispose of surplus personal property by following specified procedures, including the obtaining of bids or in some instances sale without obtaining bids. Government property with a value in excess of \$5,000 may be sold only to the highest responsible bidder, or by public auction. Government property with a value under \$5,000 may be disposed of in the most efficient and cost-effective means as determined by the governmental unit. As used in the s. 274.06, F.S., the term "property" is defined as tangible personal property of a nonconsumable nature.

Section 125.35(1)(b), F.S., provides an exception from the competitive bidding process for the county to:

- Negotiate the lease of an airport or seaport facility;
- Change or extend an existing lease of real property for an additional period of time of up to twenty-five years, when the improved value of the lease is appraised at greater than \$20 million; or
- Lease a professional sports franchise facility financed by revenues, received in compliance with the Local Option Tourist Development Act.

Section 125.35(1)(c), F.S., requires the county to publish notice once a week for at least two weeks in a newspaper of general circulation, published in the county, calling for bids. The board is authorized to reject all bids if they are too low and may require a deposit or surety bond.

When the board deems that a parcel is of insufficient size and shape to be issued a building permit for any kind of development, or when an appraisal shows that the value is \$15,000 or less, and when the parcel is only of use to adjacent property owners, the board may initiate a private sale.

The Court in *Wester v. Belote*, 103 Fla. 976 (Fla. 1931), indicated the reasoning behind competitive bidding:

Laws of this kind requiring contracts to be let to the lowest bidder are based upon public economy, are of great importance to the taxpayers, and ought not to be frittered away by exceptions. In so far as they thus serve the object of protecting the public against collusive contracts and prevent favoritism toward contractors by public officials and tend to secure fair competition upon equal terms to all bidders, they remove temptation on the part of public officers to seek private gain at the taxpayers' expense, are of highly remedial character, and should receive a construction always which will fully effectuate and advance their true intent and purpose and which will avoid the likelihood of same being circumvented, evaded, or defeated.

Absent a statutory requirement, a public entity is not legally obligated to engage in competitive bidding or to award a contract based on the lowest bid. *William A. Berbusse, Jr., Inc. v. North Broward Hospital District*, 117 So.2d 550 (Fla. 2d DCA 1960).

Municipalities, unlike counties, are not expressly prohibited from selling property through a noncompetitive sale. Similarly, authorities created through special act are not required to competitive bid for the sale of property, pursuant to statute, unless it is stipulated in the special act. *Furnams v. Santa Rosa Island Authority*, 377 So.2d 983 (Fla. 1st DCA 1979).

In addition, pursuant to s. 189.442, F.S., community improvement authorities may:

...if the authority determines that the purposes of the act would be more effectively served, the authority may sell or lease property of the authority upon a negotiated basis or for no or nominal consideration.

III. Effect of Proposed Changes:

As an alternative to the competitive bidding of the sale of real or personal property, the bill authorizes the board of county commissioners to set up an alternative procedure for the disposition of such property. The procedure must include at minimum:

- Competition and qualification standards.
- Public notice of the intent to consider disposition of county property.
- Identification of the manner by which an interested person may acquire county property
- Types of negotiation procedures applicable to the selection of a buyer.
- The manner in which interested persons are informed of the board's intent to consider the proposed disposition and the method of making objections.
- A requirement that the disposition of real property adhere to the governing comprehensive plan and zoning ordinances.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As the bill makes it easier for counties to sell real and personal property, the revenue generated by such sales may increase. However, because such property sales will not be competitively bid, the sales price on a particular transaction that a county receives for a sale may not be the highest that it could receive.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs:

Clarifies that the terms and conditions of the negotiated contract will be disclosed at a public hearing prior to the execution of the contract.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
