

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: April 13, 2001 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------------|
| 1. | Bowman | Yeatman | CA | Fav/1 amendment |
| 2. | White | Wilson | GO | Favorable |
| 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, whenever the board determines that it is in the county's best interest to do so. The sale must be made to the highest and best bidder for the particular use the board deems to be the highest and the best.

Section 125.35(1)(c), F.S., specifically addresses county sales of real property to non-governmental units or agencies. The subsection requires such sales to be advertised in a newspaper at least once per week for a two-week period, and requires the advertisement to contain a request for bids. 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., provides that if the county sale of real property is to a governmental unit or agency, the competitive bidding requirements of s. 125.35(1)(c), F.S. do not apply. Additionally, if the board finds that a parcel of real property 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.

Section 125.35(1)(b), F.S., exempts a county from competitive bidding requirements when it:

- Negotiates the lease of an airport or seaport facility;
- Changes or extends 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
- Leases a professional sports franchise facility financed by revenues, received in compliance with the Local Option Tourist Development Act.

Section 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 s. 274.06, F.S., the term "property" is defined as tangible personal property of a nonconsumable nature.

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:

Currently, s. 125.35, F.S., requires a county to comply with certain competitive bidding procedures when selling or leasing real or personal property that belongs to the county. The bill amends this section to permit a board of county commissioners to create an alternative procedure for the disposition of real or personal property. The procedure must include at minimum:

- Competition and qualification standards.
- Reasonable 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.

The bill provides that the act takes effect upon becoming a law.

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.
