

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 763 Disposal of Department of Transportation Property

SPONSOR(S): Edmonds and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 678

FINAL HOUSE FLOOR ACTION: 119 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 763 passed the House on May 2, 2023, as SB 678.

The Florida Department of Transportation (DOT) is authorized to convey any land, building, or other real or personal property it acquired if DOT determines the property is no longer needed for an existing, proposed, or anticipated transportation facility. In pertinent part, DOT may, without consideration, convey such property to a governmental entity if the property is used for a public purpose.

The bill provides that when DOT conveys the property for a public purpose without consideration to a governmental entity, public purpose includes, but is not limited to, affordable housing.

The bill has no fiscal impact on the state and an indeterminate fiscal impact on local governments and the private sector.

The bill was approved by the Governor on May 24, 2023, ch. 2023-116, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Department of Transportation Disposal of Real Property

The Florida Department of Transportation (DOT) is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings, or other improvements necessary to secure or use transportation rights-of-way for existing, proposed, or anticipated transportation facilities.¹ At a later date, if DOT determines the acquired property is no longer needed for a transportation facility,² DOT is authorized to convey the property.³ In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means DOT deems to be in its best interest and must advertise the disposal of the property if it is valued over \$10,000.⁴

DOT may not dispose of property for a price less than DOT's estimate of value, except under the following conditions:

- If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.⁵
- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.⁶
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, DOT may negotiate for the sale of such property as replacement housing.⁷
- If DOT determines that the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.⁸

At DOT's discretion, the property may be sold to the abutting owner for DOT's current estimate of value if the sale to a person other than an abutting property owner would be inequitable.⁹ In cases of property to be used for a public purpose, or in cases of the property requiring significant costs to be incurred or exposing DOT to significant liability risks, DOT may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the property is situated.¹⁰ However in these cases, or in the case of the property being sold to the abutting owner, DOT must provide a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's

¹ S. 337.25(1)(a), F.S.

² S. 334.03(30), F.S., defines "Transportation facility" as any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place.

³ S. 337.25(4), F.S.

⁴ *Id.*

⁵ S. 337.25(4)(a), F.S.

⁶ S. 337.25(4)(b), F.S.

⁷ S. 337.25(4)(c), F.S.

⁸ S. 337.25(4)(d), F.S.

⁹ S. 337.25(4)(e), F.S.

¹⁰ S. 337.25(4), F.S.

current estimate of value.¹¹ These provisions do not apply if the property was acquired by DOT more than 10 years before the date of disposition.¹²

County and Municipal Disposal of Property for Affordable Housing

Every three years, each county and municipality must evaluate all real property holdings within its jurisdiction that are appropriate for affordable¹³ housing and create an inventory list.¹⁴ The governing body of the county or municipality will review the inventory list, which includes the address and legal description of each such real property, and adopt a resolution regarding the list following a public hearing.¹⁵

The properties identified as appropriate for affordable housing may be disposed of in the following ways:

- Sold and the proceeds used to purchase land for the development of affordable housing;
- Sold with restrictions requiring the development of the property as permanent affordable housing;
- Donated to a nonprofit housing organization for the construction of permanent affordable housing; or
- Offered by the county or municipality for use for the production and preservation of permanent affordable housing.¹⁶

Public Purpose

Florida law does not define “public purpose” in the context of DOT disposing of its property.

A federal rule relating to public lands defines “public purpose” as the provision of facilities or services for the benefit of the public in connection with, but not limited to, public health, safety, or welfare. Use of lands or facilities for habitation, cultivation, trade, or manufacturing is permissible only when necessary for and integral to the public purpose.¹⁷

The DOT Right of Way Manual defines a “public purpose conveyance” as a conveyance by DOT to another governmental entity for a social, economic, or environmental purpose that would benefit the general public.¹⁸

Effect of the Bill

The bill provides that when DOT conveys the property for a public purpose without consideration to a governmental entity, public purpose includes, but is not limited to, affordable housing.

¹¹ *Id.*

¹² *Id.*

¹³ “Affordable” means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households that are considered “extremely-low-income persons”, “low-income persons”, “moderate-income persons”, and “very-low-income persons”. S. 420.0004(1), F.S.

¹⁴ Ss. 125.379(1) and 166.0451(1), F.S.

¹⁵ *Id.*

¹⁶ Ss. 125.379(2) and 166.0451(2), F.S.

¹⁷ 43 C.F.R. § 2740.0-5(d) (2023).

¹⁸ DOT, *Right of Way Procedures Manual*, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rightofway/documents/rowmanual/20220506_row_full.pdf?sfvrsn=3604477c_2 (last visited Mar. 1, 2023).

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:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate but likely positive. The bill may lead to increased access to affordable housing for the general public and those in need of such housing benefits.

D. FISCAL COMMENTS:

Indeterminate. DOT has discretion when deciding whether to convey land for a public purpose without cost to the local governmental entity.