

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 CS

Abandonment of Roads

SPONSOR(S): Littlefield

TIED BILLS:

IDEN./SIM. BILLS: SB 1130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	14 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	6 Y, 0 N	Dominguez	Hamby
3) State Infrastructure Council	8 Y, 0 N, w/CS	Pugh	Havlicak
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

During the 2002 legislative session, s. 316.00825, F.S., was created to establish a process by which counties could abandon roads under their jurisdiction and simultaneously convey ownership and maintenance responsibility for the roads to a homeowners' association for the purpose of creating a gated community. The homeowners' association seeking conveyance of the public road must meet certain requirements, such as proof that it has the financial ability to properly maintain the road, its drainage systems, and other appurtenances, and that at least 80 percent of its property owners have consented to the conveyance.

Passage of this provision created an unintended consequence: municipalities were now prohibited from abandoning city-owned roads for the purpose of conveying them to homeowners' associations. That's because provisions in chapter 166, F.S., and in chapter 316, F.S., basically prohibit municipalities from imposing traffic-control ordinances on matters already preempted in general law by counties.

HB 625 w/CS seeks to correct the problem. It renumbers the existing s. 316.00825, F.S., related to counties' authority to abandon county roads and convey them to homeowners' associations as the new s. 336.125, F.S., in the chapter of law governing the county road system. By removing this section from chapter 316, F.S., the bill, in effect, gives municipalities the authority to abandon city-owned roads under their home rule powers pursuant to chapter 166, F.S..

This bill has no fiscal impact on the state, and could have a positive impact on the budgets of municipalities that take advantage of its provisions. There also could be fiscal impacts to homeowners' associations seeking conveyance of public roads. (See "II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT" for details.)

HB 625 w/CS raises no apparent constitutional or legal issues. It takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 625 w/CS allows municipalities to abandon, vacate, discontinue, or close city-owned roads and rights-of-way under whatever terms and conditions the individual city governments decide. This new power could result in some roads owned by cities being conveyed to private homeowners' associations, who would be responsible financially for their maintenance.

B. EFFECT OF PROPOSED CHANGES:

Background

Prior to 2002, county governments could abandon their interests in roads and rights-of-way under their jurisdictions, after public notice, pursuant to ss. 336.09 -336.12, F.S. If the roads had not been deeded originally to the county by the state or federal government, they typically were returned to the adjacent property owners.

Meanwhile, municipal governments utilized their broad home-rule authority, pursuant to s. 166.021, F.S., to enact ordinances related to road abandonment.

During the 2002 legislative session, s. 316.00825, F.S., was created to address what some county attorneys viewed as a glitch in state law. The new section of law established a process by which counties could abandon roads, rights-of-way and appurtenant facilities under their jurisdictions and simultaneously convey them to homeowners' associations seeking to create gated communities. A homeowners' association seeking to own the roads in its neighborhood must meet four requirements:

- The homeowners' association has requested in writing the conveyance of the road in order to convert the subdivision into a gated community with restricted public access.
- No fewer than four-fifths of the property owners of record have consented in writing to the conveyance.
- The homeowners' association is both a not-for-profit corporation in good standing as defined in chapter 617, F.S., and has the power pursuant to s. 720.301(9), F.S., to levy and collect assessments for routine and periodic maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.
- The homeowners' association has entered into and executed agreements or provided other assurances to the county that the roads, drainage systems, and other appurtenances will be maintained.

The law also requires the homeowners' association to install, operate, repair, and maintain traffic signals, signs, and other traffic control devices unless it enters into an agreement giving the county jurisdiction over traffic control.

Since the passage of s. 316.00825, F.S., municipalities have expressed an interest in also being able to abandon and convey city-owned roads to homeowners' associations for the purpose of creating gated communities. However, the Attorney General's Office issued Opinion # 04-47 in September 2004 concluding that municipalities were precluded by statute from being able to use this law.

Opinion # 04-47 cited four sections of law that, in combination, precluded municipalities from being able to abandon city-owned roads and rights-of-way and then conveying them to homeowners' associations. First, s. 316.00825, F.S., authorizes only counties to abandon roads and rights-of-way under their jurisdictions and simultaneously convey them to homeowners' associations. The opinion noted, "It is a rule of statutory construction that when a law mentions the things upon which it is to operate, it is ordinarily construed as excluding from its operation all things not expressly mentioned...."¹

¹ Attorney General's Office Opinion # 04-47, September 14, 2004, page 3 in response to Lonnie N. Groot, Oviedo City Attorney.

Further, the Attorney General noted three other sections of law that in combination, supported his ruling. Section 166.21(1), F.S., states that municipalities may exercise any power for municipal purposes except when expressly prohibited by law. Section 166.21(3)(c), F.S., precludes a municipality from enacting legislation on a subject preempted by general law to a county. The final section of law cited was s. 316.007, F.S., which prohibits any local authority from enacting or enforcing any ordinance based on the traffic control matters covered in chapter 316, F.S. The Attorney General concluded:

“Therefore, I am of the opinion that municipalities are precluded by the terms of sections 166.21(3)(c) and 316.007, Florida Statutes, from abandoning roads and rights-of-way dedicated in a recorded residential subdivision plat and simultaneously conveying their interest in such roads, rights-of way, and appurtenant drainage facilities to a homeowners’ association for the subdivision in the manner provided by section 316.00825, Florida Statutes.”²

Attorneys for the Florida League of Cities and for individual municipalities began discussing ways to give cities the road-conveyance authority of counties without jeopardizing cities’ home-rule powers.

Proposed Changes

HB 625 w/CS has the effect of returning to municipalities their home-rule power to abandon, vacate, or close roads or rights-of-way under their jurisdictions pursuant to the terms and conditions approved by their governmental boards.

It accomplishes that by renumbering the existing s. 316.00825, F.S., related to counties’ authority to abandon county roads and convey them to homeowners’ associations, as the new s. 336.125, F.S. and corrects a cross-reference necessary because of the renumbering. Transferring this existing section of law to the chapter of law dealing with the county road system is intended to address concerns that municipalities, through their home-rule powers, couldn’t address road-conveyance issues because they were preempted by the counties, pursuant to s. 166.21(3)(c), F.S., and the prohibition in s. 316.007, F.S.

HB 625 w/CS takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 316.006, F.S., to correct a cross-reference.

Section 2: Transfers and renumbers the existing s. 316.00825, F.S., as s. 336.125, F.S.

Section 3: Provides this act shall take effect upon becoming a 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:

² Id., page 4.

1. Revenues:
See "D. FISCAL COMMENTS" below.

2. Expenditures:
See "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In those cases where a municipality conveys ownership of a city-owned road to a homeowners' association, the association will bear the costs of maintaining them and any traffic control devices. Depending on an association's finances, it might have to raise homeowner assessments to pay these expenses.

HB 625 w/CS also could create the financial benefit of increased property values for homes within gated communities, driven in part by a greater sense of security about the neighborhood.

D. FISCAL COMMENTS:

Municipalities that abandoned and conveyed city roads would retain the funds previously spent to maintain those roads.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 625 w/CS because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

Municipalities are exempt from the provisions of chapter 120, F.S., the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 8, 2005, meeting, the House Transportation Committee adopted without objection a strike-everything-after-the-enacting clause amendment. The amendment took a different approach to giving municipalities broad authority to close and convey city-owned roads and rights-of-way than the original bill. The amendment added a provision in s. 316.006, F.S., granting municipalities the authority to abandon, vacate, or close roads or rights-of-way under their jurisdictions pursuant to the terms and conditions approved by their governmental boards. It also renumbered the existing s. 316.00825, F.S., related to counties' authority to abandon county roads and convey them to homeowners' associations as the new s. 336.125, F.S. Finally, the amendment changed the effective date to "upon becoming law."

The committee then voted 14-0 to report the bill favorably with a committee substitute.

State Infrastructure Council

At its March 22, 2005, meeting, the Council adopted without objection an amendment to strike the provisions added to s. 316.006(2), F.S., specifically giving municipalities broad authority to close and convey city-owned roads pursuant to the terms and conditions approved by their governmental boards. This was done to conform the bill to its Senate companion.

The Council then voted 8-0 to report the bill as favorable with a committee substitute.