

Select Year: 2023  

## The 2023 Florida Statutes (including Special Session C)

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[Title XXVI](#)

PUBLIC

TRANSPORTATION

[Chapter 337](#)CONTRACTING; ACQUISITION, DISPOSAL, AND USE OF  
PROPERTY[View Entire](#)[Chapter](#)

### **337.251 Lease of property for joint public-private development and areas above or below department property.—**

(1) ~~The department may lease to public agencies or private entities, for a term not to exceed 99 years,~~ the use of department property, including rights-of-way, for joint public-private transportation purposes to further economic development in this state and generate revenue for transportation. The department may also lease the use of areas above or below state highways or other transportation facilities for commercial purposes. Leases under this section are subject to any reservations, restrictions, or conditions necessary to ensure adequate protection for the safe and efficient operation and maintenance of all transportation and utility facilities, the adequacy of traffic flow, and the full use of existing and future state transportation facilities. Such joint public-private use or commercial use of property may not interfere with the primary state transportation needs or present or future utility needs for that property nor be contrary to the best interests of the public. The department may not lease any such property if the proposed use conflicts with zoning or land development codes of any affected local government. The department shall, prior to entering into such lease, determine that the property subject to the lease has a permanent transportation use related to the responsibilities of the department, has the potential for such future transportation uses, or constitutes airspace or subsurface rights attached to property having such uses, and is therefore not available for sale as surplus property.

(2) The department may request proposals for the lease of such property or, if the department receives a proposal for a lease of a particular department property which it desires to consider, the department shall publish a notice in a newspaper of general circulation at least once a week for 2 weeks stating that it has received the proposal and will accept other proposals for lease of such property for 120 days after the date of publication. A copy of the notice must be mailed to each local government in the affected area. The department shall establish by rule an application fee for the submission of proposals pursuant to this section. The fee must be sufficient to pay the anticipated costs of evaluating the proposals. The department may engage the services of private consultants to assist in the evaluations. Before approval, the department shall determine that the proposed lease:

- (a) Is in the public's best interest;
- (b) Does not require that state funds be used; and
- (c) Has adequate safeguards in place to ensure that additional costs are not borne and service disruptions are not experienced by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

(3) A proposal must be selected by the department based on competitive bidding, except that the department may consider other relevant factors specified in the request for proposals. The department may consider such factors as the value of property exchanges, the cost of construction, and other recurring costs for the benefit of the department by the lessee in lieu of direct revenue to the department if such other factors are of equal value including innovative proposals to involve minority businesses. The department may name a board of advisers which may be composed of accountants, real estate appraisers, design engineers, or other experts experienced in the type of development proposed. The board of advisers shall review the feasibility of the proposals, recommend acceptance or rejection of each proposal, and rank each feasible proposal in the order of technical feasibility and

benefit provided to the department. The board of advisers shall be reasonably compensated for the services provided and all department costs for evaluating the proposals shall be reimbursed from a proposal application fee to be set by the department and paid by the applicants. The board of advisers shall not be subject to selection under the provisions of chapter 287.

(4) The requirements of this section apply to complex lease transactions involving extensive capital improvements by the lessee or provisions for exchange of goods or services by the lessee in lieu of cash and do not affect the requirements for other types of leases set forth in s. [337.25\(5\)](#).

(5) The department may utilize leaseback or other joint public-private uses of property in lieu of full or partial compensation to a property owner for property acquired by eminent domain or to a landowner who donates property to the department, without competitive proposals and selection, if such use is acceptable to the property owner in lieu of other compensation and such use does not interfere with the public transportation purpose for which the property was acquired.

(6) This section does not require right-of-way lease arrangements for facilities of utilities which provide water, sewer, gas, telecommunication, or electric services for which utilities may obtain permits from the department.

(7) The department shall be indemnified by a lessee for liability which arises from construction on or the use of department property by the lessee. Mortgages or other liens or encumbrances may not attach to department property as a result of the financing, construction, or use of the property by the lessee. Improvements constructed on the property by the lessee shall revert to the department upon expiration of the lease.

(8) Revenue derived from a joint public-private use shall be deposited in the State Transportation Trust Fund.

(9) A fixed-guideway transportation system authorized by the department to be wholly or partially within the department's right-of-way pursuant to a lease granted under this section may operate at any safe speed.

(10) The department may adopt rules to administer the provisions of this section.

**History.**—s. 7, ch. 90-227; s. 27, ch. 95-257; s. 38, ch. 96-323; s. 24, ch. 99-385; s. 53, ch. 2002-20; s. 9, ch. 2005-281; s. 13, ch. 2014-223.