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Progress Report

October 2001 **Report No. 01-46**

Some Highway Right-of-Way Costs Decreased, But Legislative Changes Needed to Further Reduce Costs

at a glance

In Fiscal Year 2000-01, some Department of Transportation right-of-way costs such as payment of landowner attorney and appraisal fees declined from Fiscal Year 1997-98 in spite of increasing land values. However department payments increased for other landowner costs" such as land use planners, certified public accountants, and relocation assistance.

Likely factors contributing to cost decreases were 1994 law changes that limited state payment of landowner attorney fees and the department's more frequent use of negotiation, which is less costly than condemnation. Factors contributing to the increases include acquisition of more right-of-way in densely developed areas with higher costs associated with relocating people and businesses.

The Legislature did not adopt our 1999 recommendation for reducing costs for landowner expenses. Under the recommended option, the state would have paid up to a specified amount for a landowner to obtain one appraisal. The state would also pay up to a specified amount for landowner attorneys and technical experts but only if the property's final sale price was a specified percentage over the department's initial offer. The Legislature also did not adopt our recommendation to eliminate payments for business damages. The department paid $16.4 million in business damages in Fiscal Year 2000-01.

As we recommended, the department increased outdoor advertising fees to eliminate a funding deficit in its Outdoor Advertising Program.

Purpose

In accordance with state law, this progress report informs the Legislature of actions taken by the Department of Transportation in response to a 1999 OPPAGA report.[1,2] This report presents our assessment of the extent to which the department has addressed the findings and recommendations included in our report.

Background

The Department of Transportation's Right-of-Way Acquisition Program is responsible for three groups of activities: purchasing right-of-way, regulating outdoor advertising signs, and managing the logo information sign contract.

The program's primary activity is obtaining right-of-way needed for Department of Transportation road construction projects. Department staff appraises the property and attempts to negotiate a purchase price with the landowner. If they are unable to agree on a price and the property is essential for the project to be built, the department files a condemnation suit and the court determines the property's value.

The United States and Florida constitutions and state laws provide significant protections to landowners whose property is subject to

[1] Section 11.45(7)(f), *F.S.*

[2] *Justification Review of the Right-of-Way Acquisition Program*, Report No. 99-02, August 1999.

condemnation. The state must compensate landowners for their land, attorney fees, appraiser fees, technical expert fees, and relocation expenses if necessary. If the state takes a portion of a business property, it also pays business damages for permanently lost profits and the reduced profit-making capacity of the business.

In Fiscal Year 2000-01, the department expended $461.9 million for right-of-way acquisitions, and assigned 460 full-time equivalent (FTE) positions to perform right-of-way acquisition activities.

The program also manages the logo information sign contract. Logo signs provide information to motorists about services such as fuel, food, lodging and camping that are available at interchanges along Florida's interstate highways. The logo function has been privatized and is run by Florida Logos, Incorporated.

In addition, the program regulates outdoor advertising signs (billboards) as part of the federal Highway Beautification Program. The program permits, monitors, and annually inspects outdoor advertising signs adjacent to state highways for compliance with size, lighting, and other regulations. In Fiscal Year 2000-01, the department expended $1.6 million for outdoor advertising activities. It also assigned 33 FTE positions to perform these activities.

Prior Findings

Right-of-way acquisition

Landowner expenses

Our prior review of the program concluded that Florida law provides incentives for landowners to litigate and results in Florida paying more in landowner right-of-way costs than any other state. The state must compensate landowners for their land, business damages, attorney fees, appraiser fees, technical expert fees, and relocation expenses if necessary.

Because the state pays these costs, there is no financial risk for landowners to hire expensive advisors and no incentive for them to negotiate a settlement with the state. Instead, the law encourages landowners to proceed to condemnation in the hopes of achieving higher values for their property. In Fiscal Year 1997-98, 45% of the right-of-way properties were purchased through condemnation.

Florida pays more types of landowner costs than most other states. Florida is one of only three states that pay any landowner costs during negotiation. For parcels purchased through condemnation, Florida is 1 of 18 states that pay landowner attorney fees, 1 of 14 states that pay landowner fees for technical experts (such as accountants or engineers), and 1 of 11 states that pay landowner appraiser fees.

In the face of escalating right-of-way costs, the 1994 Legislature limited the state's payment of landowner attorney fees. Prior to 1994, landowner attorney fees were based on an hourly rate, and the fee was paid regardless of whether the attorneys helped the landowners secure higher prices for their properties. The law now authorizes the payment of attorney fees solely on the basis of the benefits achieved for the landowners. Benefits are defined as the difference between the last written offer made by the state before the landowner hired an attorney and the final sale price. Because of the time it takes for condemnation cases to work their way through the courts, Fiscal Year 1997-98 was the first year in which a majority of the condemnation cases were settled under the provisions of 1994 legislation limiting attorney fees. In Fiscal Year 1997-98, the ratio of attorney costs to all land and landowner costs decreased from 11% to 10%. However, we concluded that more time was needed to determine if the change would yield significant savings to the state.

We recommended that the Legislature amend the law to reduce Florida's increasing costs for paying landowner expenses for right-of-way acquisition. Under the option we recommended, the state would pay up to a specified amount for the landowner to obtain one appraisal. In addition, the state would pay up to a specified amount for landowner attorneys and technical experts, but would pay these costs only if the property's final sale price were a specified percentage over the department's initial offer.

Placing reasonable caps on state payments for landowner expenses could significantly reduce right-of-way acquisition costs. Paying these costs only when the property's final sale price is a specified percentage over the department's initial offer would discourage unreasonable attempts by landowners to achieve excessive profits for their property. This policy would also encourage the department and landowners to come to agreement on a property's purchase price when their differences are small. We estimated that if the state had required a 20% increase in value before paying landowners' costs, $27,114,500 in landowner costs could have been avoided.

Business Damages

The right to collect business damages is provided by state law and is not protected by the United States or Florida constitutions. In Fiscal Year 1997-98, Florida paid business damages of $18.8 million.

To reduce the cost of right-of-way acquisition, we recommended that the Legislature amend the law to eliminate state payment of business damages for right-of-way acquisition. Such an amendment would have saved the state $18.8 million in Fiscal Year 1997-98.

Logo program contract

The Logo Program consists of signs that provide information to motorists by displaying the logos of businesses at an interchange that provides fuel, food, lodging and camping. The program was privatized in 1996. Privatizing the program has allowed the department to avoid program operating costs of $267,551 per year and a future liability of $804,000 for replacing logo signs previously constructed with private funds.

However, we noted that unlike some other states, Florida has structured its contract with a private company to allow all profits to remain with the company. Other states have structured their logo contracts to benefit from the profits made by selling advertising on state highway signs. For example, Kentucky receives annual revenues of approximately $382,000 - $450,000 from its privatized logo program.

Because privatization of this program has been successful, we recommended that the department rebid the logo contract when the current contract expires in 2007. We also recommended that the new contract require a percentage of logo profits be returned to the state.

In its response to our report, the department indicated that prior to entering into any new contract for operating the Logo Program, it will seek the Legislature's guidance on the issue of requiring some profits be returned to the state.

Outdoor Advertising

The Outdoor Advertising Program, which is required by state law to operate on a break-even basis, had been operating at a deficit for the past two years (a deficit of $111,756 in Fiscal Year 1996-97 and $93,370 in Fiscal Year 1997-98). Also, the program had incurred additional liabilities as the result of a legislatively mandated billboard survey that cost $811,331. The program would need to increase outdoor advertising fees to eliminate the deficit and return to financial self-sufficiency.

To address the ongoing operating shortfall and eliminate the deficit, the program was planning to increase the permit fees it charges for billboards. The department was in the process of raising the annual permit fee on billboards from $35 to $41 for small signs and from $55 to $61 for large signs. These increased fees should have covered the annual operating expenses of the program and generated enough additional funds to eliminate the operating deficit by 2001.

We recommended that the department implement this fee increase. We also recommended that after the program eliminated the deficit, the department should review the fees to determine how much they should be reduced.

Current Status

Some right-of-way costs have decreased since our prior report's release in 1999

For our 1999 report, department data on right-of-way acquisitions was available only through Fiscal Year 1997-98. Data for subsequent years indicates that total landowner-related costs and business damages paid by the department have slightly decreased (see Exhibit 1, page 4).

Cost categories experiencing decreases include department payment of landowner attorney fees, which decreased from $34.8 million in Fiscal Year 1997-98 to $32.0 million in Fiscal Year 2000-01 (a decrease of $2.8 million) and landowner appraisal fees, which decreased from $9.3 million to $8.7 million (a decrease of $0.6 million).

Factors likely contributing to these decreases include the 1994 law limiting state payment of landowner attorney fees and the department making greater use of negotiation to purchase land. In Fiscal Year 2000-01, the department acquired 69% of the land it purchased through negotiation compared to 55% in Fiscal Year 1997-98. Our prior report concluded that it cost the department more to purchase land through condemnation than negotiation.

Exhibit 1
Although Some Right-of-Way Costs Have Decreased, DOT Payment of Other Landowner Costs Has Increased Since Fiscal Year 1997-98

Program Expenditures (In Millions)	Fiscal Years 1997-98	Fiscal Years 2000-01	Change Amount	Change Percent
Land cost	$254.4	$299.4	$45.0	17.7 %
Business damages	18.8	16.4	(2.4)	(12.8)%
Landowner expenses:				
Attorney fees and expenses	$34.8	$32.0	(2.8)	(8.0)%
Appraisal fees and expenses	9.3	8.7	(0.6)	(6.4)%
Other fees and expenses	19.4	21.7	2.3	11.8 %
Total landowner expenses	63.5	62.4	(1.1)	(1.7)%
Miscellaneous	18.3	6.7	(11.6)	(63.4)%
Internal costs and consultants	77.9	77.0	(0.9)	(1.2)%
Total Program Costs	**$432.9**	**$461.9**	**$29.0**	**6.7%**

Source: Department of Transportation.

However, "other landowner costs" were higher in Fiscal Year 2000-01 than in Fiscal Year 1997-98. [3] Program managers indicated that most of the increase in other landowner costs came from a $1.6 million increase in relocation costs. They further indicated that this increase was due to the department acquiring more parcels for right-of-way in densely developed commercial and residential areas where buildings have to be purchased to make room for the road improvements. This resulted in more people and businesses having to be relocated, thereby increasing the department's relocation payments.

The Legislature has not implemented our recommendations for reducing right-of-way costs

The Legislature has not amended the law to adopt the option we recommended for reducing Florida's costs for landowner expenses in right-of-way acquisitions. It also did not amend the law to adopt our recommendation to eliminate payments for business damages. We continue to believe that the Legislature should adopt our recommendations, which would reduce state costs.

The department increased its permit fees for billboards

The department adopted the new fee increase effective with the permit renewals for calendar year 2000. Department managers indicated that they would review the permit fee schedule each biennium to ensure that fees are set at a level to allow for operation of the program. They also indicated that as a result of privatization and reduced staffing, they anticipate that the program would very likely eliminate the deficit and return to financial self-sufficiency in Fiscal Year 2002-03.

[33] Other landowner costs include the costs for technical experts such as certified public accounts and land use planners who determine business damages and relocation costs. Relocation costs are paid when the occupant of a house or business has to be moved when a building is purchased for right-of-way.

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