

# PB<sup>2</sup> Performance Report

No. 98-56

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## Right-of-Way Program Does Not Meet Standards; Accountability System in Need of Strengthening

*This report assesses the performance of the Florida Department of Transportation's (FDOT) Right-of-Way Acquisition Program based on its 1997-98 performance-based program budgeting (PB<sup>2</sup>) measures and comments on the measures proposed by the department for 1999-2000.*

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### Summary

- In Fiscal Year 1997-98 FDOT acquired fewer right-of-way parcels and certified fewer projects ready for construction than in the prior year due to a smaller work plan for Fiscal Year 1997-98. Also, FDOT did not meet its PB<sup>2</sup> standards in these areas due to the difficulty in accurately estimating the number of projects to be certified and the number of parcels that needed to be acquired. Supplemental measures maintained by the Florida Transportation Commission show that the program was able to obtain right-of-way needed to support the work program. However, the percentage of parcels obtained through negotiation declined, which can increase state costs.
- The program needs additional PB<sup>2</sup> measures to allow greater accountability for its use of resources. The program lacks outcome measures. OPPAGA recommends that the Legislature adopt four new outcome performance measures and two new output measures and continue the two existing FDOT output measures to enhance the usefulness of performance measures and program cost information.
- The program's accountability system meets our expectations in two of four areas (*data reliability* and *the use and reporting of data*). The program's *purpose statement* needs to be expanded to more completely gauge program performance. The program's *performance measures* do not adequately assess performance and need some modification. The program will need to develop data to improve its current measures.
- We provided a draft copy of our report to the Secretary of the Department of Transportation, who concurred, but with some exceptions. (See Appendix C.)

## Background

The purpose of the Right-of-Way Program is to acquire rights-of-way necessary to support FDOT's Work Program. The department cannot let construction contracts until all right-of-way parcels needed for the project are acquired and the Right-of-Way Office certifies the project as ready for construction to proceed.

Federal and state laws protect the rights of people from whom property will be acquired. To acquire right-of-way for a new road, or to widen an existing road, numerous individual parcels of property must be identified, and appraised by the Florida Department of Transportation. The department must provide owners with reasonable notice; full compensation for the property; payment of the property owner's attorneys cost, appraisal costs, and other consultant costs; moving expenses; and under certain circumstance compensation for damage to a business caused by the appropriation. The department must also provide assistance to families and businesses in finding a replacement home or business location. Should the property owner decline to accept the state's offer and the property is essential for the project to be built, the property must be taken through eminent domain court proceedings in which a jury may be required to determine full compensation. However, obtaining property through eminent domain can increase the costs of obtaining right-of-way because the state goes through a judicial process which may include a jury trial that takes more time and can involve additional attorney fees, expert witness fees, and other costs incurred by both the property owner and the department. All such costs as provided by statute must be paid by the department.

The department allotted the Right-of-Way Acquisition Program an estimated \$543 million and 513 positions for Fiscal Year 1998-99.<sup>1</sup> The program is primarily funded from state fuel taxes, motor vehicle fees, and federal apportionments/grants that are deposited into the State Transportation Trust Fund.

The department's performance is monitored through various reporting requirements. The Florida Transportation Commission, an independent commission composed of private business people, evaluates the department's performance quarterly and reports to the Legislature annually. The department reports annually to the Governor on its progress in achieving program objectives in its agency strategic plan. The department also reports annually to the Legislature on its progress in achieving program objectives defined in law. Some of the measures reported in the commission's performance and production review and in the department's strategic plan and program objectives and accomplishment report are also used for performance-based program budgeting.

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<sup>1</sup> The Florida Department of Transportation's funds are not appropriated in the PB<sup>2</sup> program budget format.

## Performance

In Fiscal Year 1997-98 FDOT acquired fewer right-of-way parcels and certified fewer projects ready for construction than in the prior year due to a smaller work plan for Fiscal Year 1997-98. Also, FDOT did not meet its PB<sup>2</sup> standards in these areas due to the difficulty in accurately estimating the number of projects to be certified and the number of parcels that needed to be acquired.

The General Appropriations Act did not establish outcome measures for the Right-of-Way Acquisition Program. Accordingly, we examined supplemental measures developed by the Florida Transportation Commission. These measures show that the department was effective in acquiring the right-of-way parcels needed to support its work program. For Fiscal Year 1997-98 only one construction contract letting was delayed due to FDOT's failure to acquire the necessary right-of-way parcels. The percentage of parcels obtained through negotiation declined, which can increase state costs. The FDOT spent about two-thirds of its funds to buy property with a purchase price within 20% of the FDOT appraised value. Finally, when comparing a parcel's FDOT appraised value to the landowner's counter offer or asking price, FDOT paid the landowner a little more than half of the additional funds the landowner wanted.

See Appendix A for a more detailed discussion of program performance for each of its measures.

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## Proposed Performance Measures

OPPAGA recommends that the Legislature adopt six new performance measures (four outcome measures and two output measures) not currently in the General Appropriations Act and continue using the two existing output measures to enhance the usefulness of performance measure information. The recommended measures will more accurately account for program costs and the effective use of program funds.

To avoid burdening decision-makers with unnecessary details, some of these additional measures could be maintained in the performance ledger or by the department and made available for legislative review, rather than placed in the General Appropriations Act. Performance information maintained internally by the department should be held to the same quality standards as other information reported by the department. OPPAGA will continue to assist the department in developing and refining performance measures that demonstrate program efficiency and effectiveness.

See Appendix B for a more detailed discussion of our recommendations for the program's measures.

## Rating of Program Accountability

A key factor in PB<sup>2</sup> is that agencies need to develop strong accountability systems that enable the Legislature and the public to assess program performance. An *accountability system* consists of these key elements: program purpose or goals, performance measures, a process for valid and reliable data, and credible reports of performance that can be used to manage the program. OPPAGA's rating tells decision-makers whether they can rely on the program's performance information. We compared the components of the Right-of-Way Acquisition Program's accountability system against our established criteria to determine its rating.

| Accountability System Component             | Meets Expectations | Needs Some Modifications | Needs Major Modifications |
|---|--------------------|--------------------------|---------------------------|
| Program Purpose or Goals                    |                    | X                        |                           |
| Performance Measures                        |                    | X                        |                           |
| Data Reliability                            | X                  |                          |                           |
| Reporting Information and Use by Management | X                  |                          |                           |

Source: OPPAGA analysis

The Right-of-Way Acquisition Program's accountability system meets OPPAGA's expectations in two of the four areas specified in the above table.

- Data reliability.* Information in the program's data systems is complete and reliable due in part to the program's internal controls to ensure the quality and reliability of the program's computerized databases. External controls exist in the form of annual audits of federal aid programs and other periodic audits done by the Auditor General as well as annual audits done by the agency inspector general on different parts of the program. The agency inspector general has validated the program's performance-based program budgeting measures.
- Reporting information and use by management.* Assessments of program performance are available in the Performance and Production Review of the Department of Transportation, written annually by the Florida Transportation Commission. The performance-based program budgeting and Florida Transportation Commission measures data is used by FDOT management to gauge program progress, analyze staffing levels, and in developing funding levels for next years FDOT work program. The department's reporting of this data to the public generally meets expectations, but could be improved by making Florida Transportation Commission reports more available to the public, such as through the department's website.

- *Program purpose or goals.* The program's purpose and goal needs some modification. The program's purpose statement covers its major function area, is clearly stated, and understandable. However, the program's purpose statement needs to be modified to include the constitutional goal of fairness to landowners as well as the criteria of timeliness, efficiency, and effectiveness to more completely gauge program performance. Paying full compensation for property is required by the Florida Constitution. We suggest that the revised purpose statement read: Acquire right-of-way land necessary to support the department's work program in a fair, timely, efficient, and effective manner.
- *Performance measures.* Additionally, the program's performance measures need some modifications. The program's existing performance-based program budgeting and internal measures do cover the program's mission of acquiring right-of-way to support the department's five-year work program. However, the existing performance-based program budgeting measures focus on outputs and need to be enhanced with outcome measures for timeliness and cost. Also, the department's methodology for calculating the standard and performance for the two existing output measures may artificially inflate or diminish program performance and needs to be improved.

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## For More Information

Additional information about the Right-of-Way Program is available on the Internet. The program profile is in OPPAGA's Florida Government Accountability Report (FGAR) at <http://www.oppaga.state.fl.us/profiles/6047>. OPPAGA's staff contact for this program is Bill Howard (850) 487-3777. Also, through the Internet, you may access the Department of Transportation at <http://www.dot.state.fl.us> or by calling (850) 414-4557.

## Appendix A

### Analysis of Program Performance for Each of Its Performance Measures

#### *Outcome Measures*

| Performance |         | 1997-98  | Met       | Comments |
|-------------|---------|----------|-----------|----------|
| 1996-97     | 1997-98 | Standard | Standard? |          |

The program has no PB<sup>2</sup> outcome measures

#### *Output Measures*

| Performance |         | 1997-98  | Met       | Comments |
|-------------|---------|----------|-----------|----------|
| 1996-97     | 1997-98 | Standard | Standard? |          |

##### Number of right-of-way parcels acquired

|       |       |       |    |
|-------|-------|-------|----|
| 2,509 | 2,429 | 3,298 | No |
|-------|-------|-------|----|

The program purchased 80 fewer parcels in Fiscal Year 1997-98 than it did in Fiscal Year 1996-97, and it did not meet its PB<sup>2</sup> performance standard. Fewer parcels were purchased because the projects scheduled in the Fiscal Year 1997-98 work program required the purchase of fewer parcels than did the prior year work program.

The program acquired 74% of its planned parcel acquisitions for Fiscal Year 1997-98. A total of 869 planned parcels were not acquired. Program staff indicate that it is difficult to accurately project the number of parcels that need to be acquired and thus the standard was not feasible. Some planned projects were moved to future years in the five-year work plan at the request of the local governments or due to engineering design changes. Also, parcels were subdivided and combined through the normal buying and selling of property.

##### Number of projects certified ready for construction

|     |     |     |    |
|-----|-----|-----|----|
| 103 | 101 | 105 | No |
|-----|-----|-----|----|

The program certified two fewer projects in Fiscal Year 1997-98 than it did in Fiscal Year 1996-97 because of requests from local governments or due to engineering design changes. While the program did not meet its PB<sup>2</sup> standard, its performance was not materially different from the prior year. Program staff indicate that it is difficult to accurately project the number of

## Output Measures

| Performance |         | 1997-98  | Met       | Comments  |
|-------------|---------|----------|-----------|---|
| 1996-97     | 1997-98 | Standard | Standard? |   |
|             |         |          |           | projects that will need to be certified ready for construction due to local government requests, engineering changes, or granting extended occupancy to property owners until construction begins. Only one construction contract letting was delayed due to engineering design changes when graves were discovered on the proposed right-of-way. |

## Other Performance Measures

These outcome measures are not a part of the program's PB<sup>2</sup> measures, but were developed by the Florida Transportation Commission and provide useful information about program performance.

| Performance |         | Comments |
|-------------|---------|----------|
| 1996-97     | 1997-98 |          |

### Percentage of projects certified vs. number of projects scheduled for certification

|     |     |  |
|-----|-----|--|
| 86% | 93% | FDOT certified 7% more of its planned projects in Fiscal Year 1997-98 than in Fiscal Year 1996-97. |
|-----|-----|--|

Some planned projects were not certified for the following two reasons.

Six planned projects were not certified due to engineering design changes or because extended occupancy was granted to the property owner until construction began. In the case of extended occupancy, all parcels had been acquired.

One construction contract letting was delayed due to engineering design changes when graves were discovered on the proposed right-of-way.

### Number of parcels acquired through negotiation vs. condemnation

|            |            |   |
|------------|------------|---|
| 63%        | 58%        | This measure addresses the efficient use of state funds. Purchasing parcels through negotiation costs less than through condemnation. |
| Negotiated | Negotiated |   |

|           |           |  |
|-----------|-----------|--|
| 37%       | 42%       | FDOT acquired 5% fewer parcels through negotiation in Fiscal Year 1997-98. There are several factors that could have caused this variation, such as the immediate need to acquire the parcel to meet construction contract letting deadlines, types of properties being acquired, or the location of the parcel. |
| Condemned | Condemned |  |

## Other Performance Measures

These outcome measures are not a part of the program's PB<sup>2</sup> measures, but were developed by the Florida Transportation Commission and provide useful information about program performance.

| Performance   |                      | Comments   |
|---|----------------------|--|
| 1996-97   | 1997-98              |  |
| <b>For negotiated parcels, percentage of the total purchase price within 20% of FDOT appraised value</b>  |                      |  |
| 32%<br>over 20%   | 32%<br>over 20%      | <p>This measure addresses the effective or economical use of state funds. Effective use of funds should entail acquiring parcels at a reasonable price. The Florida Transportation Commission chose 20% of FDOT appraised value as a long term indicator of whether FDOT was giving excessive profits to property owners. However, there is no evidence to suggest that a purchase price above or below 20% is either good or bad.</p> <p>FDOT performance remained the same in this measure from Fiscal Year 1996-97 to Fiscal Year 1997-98.</p> <p>This means that FDOT spent about two-thirds of its funds to buy property with a purchase price within 20% of the FDOT appraised value in Fiscal Year 1997-98.</p>   |
| 68%<br>within<br>20%  | 68%<br>within<br>20% |  |
| <b>For negotiated parcels, average purchase agreement amount as a percentage of the spread between FDOT appraisal and owner's counter-offer</b> |                      |  |
| 74%   | 58%                  | <p>This measure addresses the effective or economical use of state funds by showing FDOT's success in negotiating a purchase price with the property owner. Effective use of funds should entail acquiring parcels at a reasonable price. The spread is the difference between what the FDOT appraisal stated as the value of the property and the landowner's counter-offer. The purchase price is normally between these two figures and can be expressed as a percentage of the spread. The lower the percentage, the closer the purchase price is to the FDOT appraised value, meaning the state got a better bargain. The higher the percentage, the greater the profit to the landowner.</p> <p>FDOT performance improved in this measure from Fiscal Year 1996-97 to Fiscal Year 1997-98.</p> |

Source: OPPAGA summary of Legislative Budget Request and Florida Transportation Commission Performance and Production Review, for Fiscal Year 1996-97 and Fiscal Year 1997-98



## Appendix B

### OPPAGA Recommendations for the Right of Way Acquisition Program's Fiscal Year 1999-2000 Measures

#### *Outcome Measures, Fiscal Year 1999-2000*

| Measures Proposed by FDOT | Proposed Standards | OPPAGA Recommendations/Comments |
|---------------------------|--------------------|---------------------------------|
|---------------------------|--------------------|---------------------------------|

The department proposes no outcome measures.

#### *Output Measures, Fiscal Year 1999-2000*

| Measures Proposed by FDOT | Proposed Standards | OPPAGA Recommendations/Comments |
|---------------------------|--------------------|---------------------------------|
|---------------------------|--------------------|---------------------------------|

|  |       |   |
|--|-------|---|
| <b>Number of right-of-way parcels acquired</b> | 2,597 | <p><b>We recommend adoption of this measure with modification.</b> The alternative measure would be--number of right-of-way parcels planned to be acquired/percentage of planned parcels actually acquired.</p> <p>The alternative standard would be--2,597 / X%.</p> <p>The number of right-of-way parcels acquired indicates the volume of work the program did for a given year. OPPAGA's revision to the proposed measure is adding the percentage of parcels acquired to the measure and standard. The standard would be calculated by annually adjusting the percentage based on historical data collected.</p> <p>However, this measure is of limited use in evaluating program performance. The measure provides no indication whether FDOT acquired all the right-of-way needed to support its five-year work program. Construction contracts cannot be let until all right-of-way parcels needed for the project are acquired and the project certified as ready for construction to proceed.</p> |
|--|-------|---|

|  |     |   |
|--|-----|---|
| <b>Number of projects certified ready for construction</b> | 128 | <p><b>We recommend adoption of this measure with modification.</b> The alternative measure would be--number of projects planned to be certified/percentage of planned projects actually certified.</p> <p>The alternative standard would be--128 / X%.</p> <p>The number of projects certified ready for construction indicates the volume of work the program did for a given year. The measure relates to the program's mission of acquiring right-of-way necessary to support FDOT's five-year work program. OPPAGA's revision to the proposed measure is adding the percentage of projects certified to the measure and standard. The standard would be calculated by annually adjusting the percentage based on historical</p> |
|--|-----|---|

## Output Measures, Fiscal Year 1999-2000

| Measures Proposed by FDOT | Proposed Standards | OPPAGA Recommendations/Comments  |
|---------------------------|--------------------|--|
|                           |                    | <p>data collected.</p> <p>However, there are problems with FDOT's methods of calculating this measure's standard and performance, which could artificially inflate or diminish program performance. Due to local government requests, engineering design changes, or other unforeseen conditions, the number of projects that need to be certified for construction cannot be precisely projected. Accordingly, the Legislature should track general trends in this measure.</p> |

## OPPAGA Recommendations for Additional Measures, Fiscal Year 1999-2000

| Measures  | Comments  |
|---|---|
| <p><b>Number of planned construction contract lettings delayed beyond the fiscal year because of failure to certify a project ready for construction</b></p>  | <p>This measure illustrates the Right-of-Way program's success in accomplishing its mission of acquiring right-of-way necessary to support FDOT's five-year work program in a timely manner. Delayed construction contract lettings are a clear indication that that the Right-of-Way Office may not be achieving its mission. This measure is best defined as a number.</p>  |
| <p><b>The percentage of Right-of-Way program expenditures by the following categories: land costs, FDOT activities expenses, and land owner expenses</b></p>  | <p>This measure illustrates the Right-of-Way program's cost effectiveness and success in controlling expenses related to right-of-way acquisition. Over the course of a fiscal year the percentage of funds spent for land should be more than the percentage of funds spent for FDOT expenses plus landowner expenses to acquire the land.</p> <p>The standard would be calculated by annually adjusting the percentages based on the historical data collected.</p> <p>Land costs and business damages include the FDOT purchase price of the land and buildings, any business damages paid, any severance damages paid, and any relocation expenses paid.</p> <p>FDOT expenses include appraisal, negotiation, court, closing costs, demolition costs, and disposal of surplus property costs.</p> <p>Land owner expenses include attorney, appraisal, and other consultant costs.</p> |
| <p><b>Total purchase price of all FDOT negotiated parcels compared to the total spread or difference between the FDOT appraisal and the landowner's counter-offer to that appraisal for those same negotiated parcels</b></p> | <p>This measure addresses the effective or economical use of state funds by showing FDOT's success in negotiating a purchase price with the property owner. By acquiring parcels through negotiation, the landowner has been fully compensated for the parcel and the difference between the purchase price and the landowner's counteroffer shows FDOT avoided costs to the state.</p>   |

**OPPAGA Recommendations for Additional Measures,  
Fiscal Year 1999-2000**

| Measures   | Comments  |
|--|---|
|  | <p>The standard would be calculated by annually adjusting the percentages based on historical data collected. The formula for calculating the percentage of spread is [(purchase price of property - FDOT appraisal) / (owner counteroffer - FDOT appraisal)] = X%</p>  |
| <p><b>Percentage of parcel owners satisfied with the professional manner and conduct of FDOT Right-of-Way staff during the acquisition process for the fiscal year</b></p>                       | <p>This percentage would be determined by surveying parcel owners involved in the FDOT Right-of-Way acquisition process for the fiscal year to determine their satisfaction with the professional manner and conduct of FDOT staff during the acquisition process. The standard could be based on historical trends, or ideally it should be as close to 100% satisfied as possible. Currently, this data is not collected by FDOT. It may take a couple of years of collecting this data before FDOT has enough historical data to be able to set a reasonable standard for this measure. This measure relates to the program's mission of acquiring right-of-way parcels in a fair manner as prescribed by the Florida Constitution.</p>  |
| <p><b>Total dollar amount of expenditures for the Right-of-Way program during the fiscal year by the following categories: land costs, FDOT activities expenses, and land owner expenses</b></p> | <p>This measure will permit an accounting of FDOT's cost for the three expense categories listed. This measure illustrates the Right-of-Way program's cost effectiveness and success in controlling expenses related to right-of-way acquisition. Over the course of a fiscal year the total amount spent for land should be more than the total amount spent for FDOT expenses plus landowner expenses to acquire the land.</p> <p>The standard would be calculated by annually adjusting the dollar amounts based on collected historical data.</p> <ul style="list-style-type: none"> <li>• Land costs and business damages include the FDOT purchase price of the land and buildings, any business damages paid, any severance damages paid, and any relocation expenses paid.</li> <li>• FDOT expenses include appraisal, negotiation, court, closing costs, demolition costs, and disposal of surplus property costs.</li> <li>• Landowner expenses include attorney, appraisal, and other expert witness costs.</li> </ul> |
| <p><b>Number and percentage of parcels acquired by negotiation vs. condemnation</b></p>  | <p>This measure illustrates FDOT's success in acquiring parcels through the less costly negotiation process.</p>  |

Source: OPPAGA analysis

## Appendix C

### Response from the Florida Department of Transportation

The Secretary of the Florida Department of Transportation provided a detailed response to our report. The Secretary generally agreed with our comments and recommendations, with the exceptions noted below.

- The Right-of-Way Program staff are concerned about comparing workload from year to year for the two existing output measures.

#### **OPPAGA Director's Comments**

**We recognize that there are multiple years of the workplan and that factors will influence the workplan from year to year. However, we believe that a year-to-year trend line is useful and meaningful and the department is provided an opportunity in its budget document to explain these factors.**

- Right-of-Way Program staff believe there is no direct relationship between the FDOT cost of acquiring land, landowner expenses to acquire the land, and the value of the land itself.

#### **OPPAGA Director's Comments**

**This measure should be used in the context of a trend analysis over time to identify undesirable trends when they occur, analyze the cause, and take corrective action. We recommend this measure because the department lacks a measure of how efficiently the program is spending its funds.**

A complete copy of the department's response is available upon request.

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