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Justification Review

Right-of-Way
Acquisition Program
Florida Department of Transportation
Report 99-02 August 1999



*Office of Program Policy Analysis
and Government Accountability*

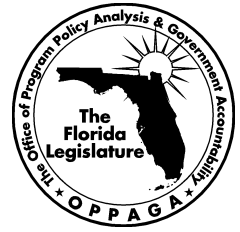
an office of the Florida Legislature

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The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



John W. Turcotte, Director

August 1999

The President of the Senate,
the Speaker of the House of Representatives,
and the Joint Legislative Auditing Committee

I have directed that a program evaluation and justification review be made of the Right-of-Way Acquisition Program administered by the Florida Department of Transportation. The results of this review are presented to you in this report. This review was made as a part of a series of justification reviews to be conducted by OPPAGA under the Government Performance and Accountability Act of 1994. This review was conducted by Bill Howard under the supervision of Kathy McGuire.

We wish to express our appreciation to the staff of the Florida Department of Transportation for their assistance.

Sincerely,

John W. Turcotte
Director

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Justification Review of the Right-of-Way Acquisition Program

Purpose

This is the second of two reports presenting the results of our Program Evaluation and Justification Review of the Florida Department of Transportation's Right-of-Way Acquisition Program. State law directs our office to complete a justification review of each state program that is operating under a performance-based program budget. Our first report described the program's performance measures, standards, and preliminary indicators of performance. (See Appendix D.) Our office reviews each program's performance and identifies alternatives for improving services and reducing costs.

Background

The 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. The department 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.

During the right-of-way acquisition process the United States and Florida constitutions and state laws provide significant protections to landowners. 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 1997-98, total expenditures for right-of-

Executive Summary

way acquisitions were \$432,937,384, and the program assigned 487 full-time equivalent (FTE) staff to these functions.

Outdoor Advertising Program

The program also regulates outdoor advertising signs (billboards) as part of the federal Highway Beautification Program. The office permits, monitors, and annually inspects outdoor advertising signs adjacent to state highways for compliance with sign size, lighting, setback from the road, and distance between signs regulations. Expenditures for outdoor advertising activities were \$1,536,401, and the program assigned 31 FTEs to these functions for Fiscal Year 1997-98.

Logo Program

In addition, the program manages the logo information sign contract. The 917 logo signs provide information to motorists about services such as fuel, food, lodging and camping that are available at 232 interchanges along Florida's interstate highways. The logo function has been privatized and is run by Florida Logos, Incorporated.

Program Benefit and Performance—————

If Florida continues to expand the state highway system, the acquisition of transportation right-of-way will continue to be an essential state function. Without the program, the capacity of existing roads could not be expanded, which could lead to increased congestion and unsafe travel. If the state continued to build and maintain roads but delegated to local governments the responsibility for purchasing right-of-way for state transportation projects, the result would be an inefficient duplication of effort and create problems coordinating the work.

Florida's regulation of billboards is required by the federal Highway Beautification Act. If Florida did not enforce this act the state could lose 10% or \$104 million per year of federal funding if penalties were imposed.

The department's privatized logo program is not an essential function. However, it is a useful service that allows motorists to drive more efficiently by telling them whether services they require are available at the highway interchange or they need to drive on.

In Fiscal Year 1997-98 the department did not meet the standards for its two performance-based program budget performance measures because of difficulty in accurately estimating these activities.¹ However, supplemental measures maintained by the Florida Transportation Commission show that the program did achieve its mission of acquiring the right-of-way needed to support

¹ Performance measure data for Fiscal Year 1998-99 was not available at the time this report was published.

the department's work program. The program does not have adequate measures to assess whether its services are effective or efficient.

In Fiscal Year 1997-98 the program was 67% privatized. Right-of-way staff in other states and at the federal government said that they felt it would be difficult for Florida to further privatize due to national shortages in transportation consultants.

Options for Improvement

Florida pays more in landowner right-of-way costs than any other state

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, 42% 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 Fiscal Year 1997-98, for land and business damages valued at \$291.5 million, Florida paid over \$63.5 million for landowner attorney, appraiser, and technical expert costs. These costs continue to increase.

We developed five options to reduce Florida's increasing costs for paying landowner expenses for right-of-way acquisition. We recommend the legislature adopt Option 5. Under this option 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 only pay these costs if the property's final sale price were a specified percentage over the department's initial offer. This option would encourage both the department and landowners to negotiate in good faith and protect taxpayers from paying unnecessary and escalating litigation costs.

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Florida pays more in business damages than any other state

The right to collect business damages is provided by state law and is not protected by the United States or Florida constitutions. Only nine states pay business damages and Florida pays more in business damages than any other state. In calendar year 1997 Florida paid business damages of \$16.4 million or 8.06% of acquisition costs. Georgia paid the next highest dollar amount, at \$1.2 million, and Louisiana paid the next highest percentage, at 2.63%. To reduce the cost of right-of-way acquisition, the Legislature could amend s. 73.071(3)(b), F.S., to delete state payment of business damages for right-of-way acquisition. Such an amendment would have saved the state almost \$19 million in Fiscal Year 1997-98.

Logo program should be restructured

The contract that privatized the Logo Program will expire in 2007 and will need to be rebid. We project increasing profit margins for the next contract period due to reduced start-up costs. We recommend that the new contract require that a percentage of logo profits be returned to the state. While the private vendor should make a reasonable profit, the state should not create a situation in which the vendor makes an unfair profit on a state program.

Outdoor Advertising Program must eliminate its deficit

To pay for itself as required by law, the Outdoor Advertising Program must eliminate its deficit. To do this we recommended that the department proceed with its plan to raise the annual permit fee on billboards from \$35 to \$41 for small signs and from \$55 to \$61 for large signs. These increased fees will cover the annual operating expenses of the program and generate enough additional funds to eliminate the deficit by 2001.

Agency Response

The Secretary of the Florida Department of Transportation provided a written response to our preliminary and tentative findings and recommendations. (See Appendix C, page 28, for his response.)

Introduction

Purpose

This is the second of two reports presenting the conclusions of our Program Evaluation and Justification Review of the Florida Department of Transportation's Right-of-Way Acquisition Program. State law directs OPPAGA to conduct justification reviews of each program during its second year of operating under a performance-based program budget. Our first report described the program's performance measures, standards, and preliminary indicators of performance. (See Appendix D.) This report analyzes the services provided by the Right-of-Way Acquisition Program and identifies alternatives to reduce costs. Appendix A summarizes our conclusions regarding each of nine issues the law directs OPPAGA to consider in a program evaluation and justification review.

Background

The Right-of-Way Acquisition Program is responsible for three groups of activities. The program's primary activity is obtaining land needed for Department of Transportation road construction projects. The program also regulates billboards and manages the logo information sign contract, which provides information to motorists about services such as fuel and lodging that are available at the interchanges of interstate highways. Total Right-of-Way Acquisition Program allotments are shown in Exhibit 1-1. The program is primarily funded from state fuel taxes, motor vehicle fees, and federal apportionments and grants that are deposited in the State Transportation Trust Fund.

Exhibit 1-1
Program Funding Is Relatively Stable

Fiscal Year	Program Allotment	Program Staff	Total Department Allotment	% Program Cost of Total Department Costs
1998-1999	\$543.0 million	522	\$3.795 billion	14.3%
1997-1998	587.7 million	519	3.471 billion	16.9%
1996-1997	504.0 million	532	3.183 billion	15.8%

Source: Department of Transportation Budget Office.

Right-of-Way Acquisition

The purpose of right-of-way acquisition is to obtain land that the Department of Transportation needs in order to build or expand roads. The acquisition process begins after staff in the department's Highway Construction and Engineering Program have identified which land parcels are needed for a roadway project.

The department begins the acquisition process by conducting a property appraisal to determine the value of the land and any occupying businesses that might be affected by the land purchase. Using the appraised value, the department makes a written offer to the property owner to purchase the property. The department and the owner then negotiate the parcel's purchase price. If they are unable to agree upon 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.

Florida's right-of-way process pays many landowner costs

During the right-of-way acquisition process the state provides significant protection to landowners. The United States and Florida constitutions require that private property shall not be taken for a public use without property owners being paid just and full compensation for their land and any structures and improvements on the land. In addition, Florida law directs the department to compensate business owners for any profit losses they will experience as a result of the state buying a portion of their property. Florida law also requires the department to pay all reasonable costs for appraisers, attorneys, and other experts the landowner hires for negotiations or to represent the landowner in court if the department files a condemnation suit. In acquiring property for right-of-way, the department is authorized to provide displaced persons with relocation assistance.

Staff of the Right-of-Way Acquisition Program hire contractors to clear the acquired property. After all the property needed for a project has been acquired and cleared, program staff certify that construction may proceed. Program staff also dispose of any surplus property that was purchased but not needed, such as parts of larger parcels that were not needed for the roadway construction due to engineering design changes.

In Fiscal Year 1997-98, the program acquired 2,429 right-of-way parcels and certified 101 projects ready for construction. Expenditures for right-of-way acquisition activities were \$432,937,384 (see Exhibit 1-2) and the program assigned 487 FTEs to these functions.

Exhibit 1-2**82% of Program Expenditures Were Paid to Landowners**

Fiscal Year 1997-98 Department Right-of-Way Expenditures		
Program Function	Total Cost	Percentage of Program Costs
Appraisals	\$ 20,818,497	4.8%
Negotiations	18,291,000	4.2%
Relocation	1,474,676	0.3%
Court costs	26,984,019	6.2%
Demolition	9,952,346	2.3%
Surplus property	416,846	0.1%
Total Department Program Operating Expenses	\$ 77,937,384	18.0%¹
Land costs ²	291,500,000	67.3%
Landowner expenses paid by department	63,500,000	14.7%
Total Program Expenditures	\$432,937,384	100.0%

¹ Percentages do not total due to rounding.

² Land costs include the purchase price of the properties, business damages, and miscellaneous costs.

Source: Department Right-of-Way Office, Department Comptroller's Office, and OPPAGA analysis.

Outdoor Advertising

The program's Office of Outdoor Advertising regulates outdoor advertising signs (often referred to as billboards). As part of the federal Highway Beautification Program, the office permits, monitors, and annually inspects outdoor advertising signs adjacent to state highways for compliance with federal and state regulations. These regulations govern sign size, lighting, setback from the road, and distance between signs. In Fiscal Year 1997-98 the department regulated approximately 23,000 billboards. Expenditures for outdoor advertising were \$1,536,401 and the program assigned 31 FTE to these functions for Fiscal Year 1997-98.

Logo Signs

The program's Office of Outdoor Advertising also supervises the construction and maintenance of logo signs at interchanges on

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interstate highways. These signs provide information to motorists by displaying the logos of business at the interchange that provide fuel, food, lodging and camping. The logo function has been privatized and is run by Florida Logos, Incorporated. In Fiscal Year 1997-98 Florida Logos, Inc., maintained 917 logo signs at 232 interchanges along Florida highways. The corporation pays the \$64,000 cost for the salary and benefits of the one department employee that monitors the logo contract.

Program Benefit and Performance

Program Benefit

The Right-of-Way Program has provided an essential state function

If Florida continues to expand the state highway system, the acquisition of transportation right-of-way will continue to be an essential state function. As Florida faces future challenges including population growth, expanding urban areas, and increasing traffic congestion, the department may need to acquire land to expand the existing road system. If the right-of-way program were discontinued and the state were unable to expand the capacity of existing roads or build new roads, congestion could increase and travel could become more inefficient and unsafe.

Delegating the program to local governments would be inefficient

If the state continued to build roads but delegated to local governments the responsibility for purchasing right-of-way for state transportation projects, the result would be inefficient. Multiple local government right-of-way acquisition programs would need to be involved in the purchase of right-of-way for state transportation projects, which could lead to duplication of effort, inconsistent interpretation and application of national standards, difficulty coordinating the state's road building program and local governments' land buying programs. As a result, the state's transportation infrastructure could further deteriorate. Many local governments would not have the capacity to manage a large right-of-way purchasing operation.

Florida's regulation of billboards is required by the Federal Highway Beautification Act. If the state did not regulate billboards, 10% of the state's federal transportation funds could be withheld as a penalty. Since the state receives an estimated \$1.04 billion per year in federal transportation funds, Florida could lose \$104 million per year if a penalty were imposed.

The department's Logo Program is not an essential function. However, it is a useful service that informs motorists of services available at interstate highway interchanges. Logo is a privatized, self-supporting service that could provide increased state revenues in the future.

Program Performance

In Fiscal Year 1997-98 the department did not meet the standards for its two performance-based program budget performance measures.² According to department staff, the program did not meet its standards for acquiring land parcels and certifying projects ready for construction due to the difficulty in accurately estimating these activities. The program does not have adequate measures to assess whether its services are effective or efficient.

While the program did not meet its PB² performance standards, it did acquire the land needed for the department's work program

Supplemental measures maintained by the Florida Transportation Commission show that the program did achieve its mission of acquiring the right-of-way needed to support the department's work program. Only one construction contract letting was delayed due to the program's failure to acquire property, and this was the result of discovering graves in the proposed right-of-way.

Supplemental data indicates that the program had mixed results in saving the state money. On one hand, the department got a better price for the parcels it purchased through negotiation. For negotiated parcels, the difference between what the department appraisal stated as the value of the property and the landowner's counter-offer declined from 74% to 58%. The lower this percentage, the closer the purchase price is to the department's appraised value, which means that the state got a better value. On the other hand, although negotiation is a less expensive way to purchase property, the department purchased fewer parcels through negotiation this year than last year, 58% to 63% respectively.

The state would benefit if more properties were purchased through negotiation

Acquiring right-of-way through condemnation is more expensive than acquisition by negotiation. In Fiscal Year 1997-98, the program paid an average of \$8,184, or 17% above appraised value, for negotiated properties and \$96,801 or 64% above appraised value for properties acquired through condemnation. The department paid almost \$54 million over its appraised value for these 885 condemned properties. The department also incurred an additional \$27 million in internal costs to try these condemnation lawsuits. Therefore, the condemnation process cost the state an additional \$81 million over the appraised value of these properties. However, Florida law encourages landowners to go to condemnation, which increases the cost of right-of-way acquisition.

See Appendix D for further analysis of the Right-of-Way Program's performance for performance-based program budgeting.

² Performance measure data for Fiscal Year 1998-99 were not available at the time this report was published.

Potential for Privatization

Right-of-Way activities are 67% privatized

In Fiscal Year 1997-98 the department contracted for approximately 67% of the Right-of-Way activity expenditures. (See Exhibit 2-1.) The department hires consultants when (1) it does not have enough staff, (2) experts are needed for specialized activities (such as providing expert witness testimony in court condemnation cases), and (3) consultants are less expensive than in-house staff. The program's mix of staff and consultants is comparable to other states we contacted, and allows the department to maintain sufficient in-house expertise while allowing most of the work to be done by the private sector. Right-of-way staff in other states and at the Federal Department of Transportation said that they felt it would be difficult for Florida to further privatize due to national shortages in transportation consultants such as relocation specialists.

Exhibit 2-1

67% of All Right-of-Way Activities Are Privatized

Department Expenditures	Department Expenses	Percent Department	Consultant Services	Percent Consultant	FY 1997-98 Total Cost
Appraisals	\$ 6,463,348	31%	\$14,355,149	69%	\$20,818,497
Negotiations	6,591,974	36%	11,699,026	64%	18,291,000
Relocation	1,474,676	100%	0	0%	1,474,676
Court Process	8,848,492	33%	18,135,527	67%	26,984,019
Demolition	1,595,398	16%	8,356,948	84%	9,952,346
Surplus Property	416,846	100%	0	0%	416,846
Total	\$25,390,734	33%	\$52,542,650	67%	\$77,937,384

Source: Department Right-of-Way Office, the Comptroller's Office, and OPPAGA analysis.

The program's oversight of outdoor advertising cannot be readily privatized because it is a regulatory function and therefore should be performed by the state. The logo information sign activities have been privatized.

Accomplishments

We noted three recent Right-of-Way Program accomplishments.

- Program staff have taken corrective action to resolve deficiencies in the reliability of program data. In 1993 the Office of the Auditor General, in Report No. 12158, identified several data internal control problems and made recommendations to correct them. Program staff adopted and

implemented these recommendations and also worked to correct other data reliability problems. Due in large part to these new internal controls, in 1997 the department's inspector general verified the accuracy of the data for the program's two existing performance measures.

- Section 479.02(8), F.S., directed the program's Office of Outdoor Advertising to conduct a statewide survey of billboards because it was widely believed that the Department of Transportation's billboard database was inaccurate. This survey, which was completed in Fiscal Year 1997-98, found that the department's billboard database was accurate.
- The Florida Legislature's 1994 revision to section 73.092(1)(c), F.S., appears to be helping to stabilize state costs for landowners' attorneys. The ratio of landowner attorney fees to all other combined land and landowner expenses remained stable from Fiscal Year 1993-94 to Fiscal Year 1997-98. 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 terms of the revised legislation. In that year, the percentage of costs for landowner attorneys compared to total land and landowner acquisition costs decreased from 11% to 10%. More time is needed to determine if this change will yield significant savings to the state.

Program Options

Chapter 3 contains our conclusions and recommendations for Right-of-Way Acquisition Program cost savings and cost recovery.

Cost Savings and Cost Recovery

Program Options

We identified four ways to reduce Right-of-Way Program costs and/or increase program revenues.

- The Legislature could amend the Florida Constitution and Florida law to pay fewer landowners' costs in right-of-way acquisition.
- The Legislature could amend the law to pay less in business damages during right-of-way acquisition.
- The department could restructure the next logo contract to address projected profits.
- The department could raise the annual permit fees so that the Outdoor Advertising Program is self-supporting as prescribed by law.

Florida law provides incentives for landowners to litigate and results in Florida paying more in landowner right-of-way costs than any other state

Although Florida laws governing right-of-way acquisition are intended to protect property owners, they create an incentive for landowners to litigate rather than negotiate the sale of their property. The broad range of landowner costs that the state pays and the number of cases that are litigated contribute to Florida paying more in right-of-way acquisition costs than any other state in the nation.³ In Fiscal Year 1997-98, to buy land valued at \$254.4 million, the state paid over \$63 million for landowner attorney fees, appraisers, and other costs. These state payments of landowner costs continue to rise.

Property owners are compensated when the state takes their land

The United States and Florida constitutions provide that when land is taken for a public purpose, the landowner shall be fully compensated. For road projects, Florida law requires that the state not only compensate owners for their property but also pay

³ Because Florida is a growth state, the number of miles of road that Florida is building is also high, which contributes to high acquisition costs.

landowners' expenses for attorneys, appraisers, and other technical experts employed during the negotiation process and in any court proceedings. Technical experts are professionals such as certified public accountants and land use planners that look at the effect of changes to the property for determining business damages. Because there is no financial risk to the landowner to hire expensive advisors and no incentive to negotiate a settlement with the state, the law encourages landowners to litigate.

Florida is one of three states that pay landowner costs during negotiation

Florida law protects the interests of landowners more than most other states in the nation.⁴ (See Exhibit 3-1.) Florida is one of only three states that pays landowner costs for hiring attorneys and property appraisers while the landowner and the state negotiate a price for right-of-way property. Florida is one of only two states that pay for landowners to hire technical experts during this negotiation process. By hiring independent professionals during the negotiations, landowners can determine if the state is offering a fair price for their property. Knowing that the state has made a fair offer should encourage landowners to accept the state's price and result in a quick sale. However, there is no financial incentive for a landowner to accept the state's purchase offer because the state will also pay for landowner attorney, appraiser, and technical expert fees if the landowner stops negotiating and goes to court to seek a higher purchase price. In Fiscal Year 1997-98, 45% of the right-of-way properties were purchased through the condemnation process.

Florida also pays more types of landowner condemnation costs than most other states

Florida pays more types of landowner costs than most states for right-of-way condemnation cases. (See Exhibit 3-1.) Eighteen states pay some amount of landowner attorney fees for properties that go to condemnation. In 10 of these states, the court must award a sale price that is a specified percentage over the state's last offer before the state is responsible for attorney fees. Seven of these 10 states require an increase between 10%-15% before the state pays attorney fees. Florida pays landowner attorney fees if the court awards a property value greater than the state's final purchase offer by any amount. Florida is also one of the few states that pay the landowner's property appraiser fees and technical expert fees during the condemnation process. Under Florida law there is no defined monetary limit to the state's payment of appraiser and expert fees.

Exhibit 3-1

Florida Pays More Landowner Costs Than Most Other States

Negotiation

- Florida is 1 of 3 states that pay attorney and appraiser fees.
 - Florida is 1 of 2 states that pay technical expert fees.
-

⁴ Florida law does not require private companies to pay landowner costs for negotiation and condemnation for properties purchased for utility right-of-way.

Condemnation	<ul style="list-style-type: none"> ▪ Florida is 1 of 18 states that pay landowner attorney fees. ▪ Florida is 1 of 14 states that pay landowner technical expert fees. ▪ Florida is 1 of 11 states that pay landowner appraiser fees.
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Source: Florida Department of Transportation and OPPAGA analysis.

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. Section 73.092(1), F.S., now authorizes the payment of attorney fees solely on the basis of the benefits achieved for the clients.⁵ 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. Attorney's fees are based on the following schedule:

- 33% of any benefit up to \$250,000; plus
- 25% of any benefit between \$250,000 and \$1 million; plus
- 20% of any benefit between exceeding \$1 million.

Florida is paying more in landowner attorney costs than any other state

Despite the 1994 legislation, Florida still pays more for landowners' attorney fees for right-of-way acquisition than any other state, both in dollars spent and as a percentage of property purchased. In calendar year 1997 Florida paid \$33 million in landowner attorney fees or 16.2% of what was spent for land. In contrast, the next-highest state, Louisiana, spent \$2 million in landowner attorney fees or 9.6% of what was spent for land.

**Exhibit 3-2
Florida Pays Substantially More for Landowner Attorney Costs Than the Next Highest State**

State	Attorney Fees	Percentage of Land Cost	Land Cost
Florida	\$33,000,000	16.2%	\$203,600,000
Louisiana	2,000,000	9.6%	20,900,000

Source: Florida Department of Transportation.

Average landowner costs per parcel are increasing

Total landowner costs being paid by the state are also increasing, even though the number of parcels purchased is decreasing. From Fiscal Year 1993-94 to 1997-98 the department purchased 19% fewer parcels, yet landowner costs increased 40%. (See Appendix B.) This means that landowner attorney, appraiser, and technical expert fees are increasing per property. There are too

⁵ If the landowner accepts the department's initial offer, the department has a policy of paying the landowner's attorney a reasonable fee based on the difficulty of the case and the number of hours spent on the case. The department adopted this policy so that landowner attorneys would not attempt to increase the price of a parcel in order to receive a fee for their efforts.

Cost Savings and Cost Recovery

many variables and not enough historical data to definitively say why these costs are going up. According to department staff, the condemnation court process has become more complex and both the department and landowners are caught in escalating legal battles that pressure both sides to use more attorneys, appraisers, and technical experts. The state's policy of giving landowners carte blanche to hire eminent domain professionals fuels this situation.

Five options to reduce state right-of-way costs

We identified five options for reducing state costs resulting from paying landowner expenses. These options would reduce right-of-way acquisition costs and bring Florida into closer conformity with landowner protections offered by other states.

1. Pay landowners for their property, but do not pay their appraiser, attorney, or other technical expert costs.
2. Maintain the current restrictions on state payment of landowner attorney fees and cap payment of landowner appraiser and other technical expert costs at specified dollar amounts.
3. Cap payment of attorneys, appraisers, and other technical expert costs at a specified dollar amount.
4. Pay landowner costs for an appraisal to a specified cap. Pay landowner costs for attorneys and technical experts only if the sale price is a specified percentage higher than the department's initial offer.
5. (A combination of options 3 and 4) Pay landowner costs for an appraisal to a specified cap. Cap the amount the state will pay for landowners' costs for attorneys and technical experts and only pay these costs if the property's sale price is a specified percentage over the department's initial offer.

The advantages and disadvantages of these options are described below, as well as practices in other states. When possible we provide estimates of cost savings in each option. We are unable to provide complete cost saving estimates for some options for two reasons. First, the department's databases do not track whether landowner costs were incurred during negotiation or condemnation. Therefore, the money that would be saved by affecting only one of these two activities (which some of the options do) cannot be precisely determined. And second, it is not possible to determine how many landowners would continue to litigate even if the state's payment of landowners' costs were reduced or eliminated. Therefore, we could not estimate how much of the department's internal costs associated with these condemnation proceedings would be saved.

Option 1 – Amend the State Constitution to stop paying landowners' costs for attorneys, appraisers, and other technical experts.

Description. Under this option the state would no longer pay any landowner attorney, appraiser, or technical expert fees. To implement this option, Florida Statutes and Article X, Section 6(a) of the Florida Constitution would need to be revised. The Florida Supreme Court has recently interpreted Article X to require compensation for landowner costs, not just the land and improvements.⁶ Therefore, Article X would have to be revised to specify that landowner costs are not required as a part of full compensation to landowners. According to department staff, Florida has the only state constitution that has been interpreted to require the state to pay these landowner costs.

This option would bring Florida more into conformity with how most states acquire right-of-way. Thirty-two states do not pay landowner attorney, appraiser, or technical expert costs.

Advantages. Under this option, in Fiscal Year 1997-98 the state could have saved over \$63 million for landowner attorney fees, appraisers, and other technical expert costs. In addition, if the state had not paid these landowner costs, more parcels would probably have been purchased through negotiation, which would have reduced a portion of \$26,984,019 million the department spent in condemnation court costs.

Disadvantages. This option would diminish the ability of less affluent landowners to challenge the state's proposed sale price for their land if they could not afford to hire the attorneys and experts needed to determine whether the department was making a fair offer. This situation could result in inequitable treatment of these landowners and a violation of the spirit of the federal and state constitutions to provide just and full compensation to landowners. In addition, this option could not be implemented unless the constitution were to be amended, which is difficult to do.

While this option provides the greatest cost savings, we do not recommend it because of its potential adverse effect on less affluent landowners.

Option 2 - Maintain the current restrictions on state payment of landowner attorney fees and also cap the dollar amount the state will pay for landowners' costs for appraisers and other technical experts.

Description. This option would continue existing restrictions on payment of landowner attorney fees, but would cap payment of appraiser and expert fees. Under this option the existing

⁶ Boulis v. Department of Transportation, 24 Fla. L. Weekly S150 (Fla. 1999).

restrictions limiting landowner attorney fees to a percentage of the benefit achieved for the landowner would continue to be used. The Legislature would amend Ch. 73, F.S., to cap payment of landowner appraiser and technical expert fees at a specific dollar amount. Currently, there is no payment cap for these two services, and the court must determine the fee when the department disputes the reasonableness of an appraiser or technical expert fee.

Florida is among the minority of states that pay any landowner appraiser or technical expert fees. Only 11 states pay landowner appraiser fees and 14 states pay landowner technical expert fees. Of these states, only one imposes a cap; Pennsylvania will pay no more than a total of \$500 for the landowner's combined attorney, appraiser and technical expert costs.

Advantage. This option would reduce state costs by keeping revisions to payment of landowner attorney fees and providing additional limits on other fees. This option would also allow legislators to monitor the impact of the 1994 law that placed restrictions on landowner attorney fees by limiting the amount attorneys are paid to a percentage of the benefit they realize, which is measured as the difference between the state's last offer before the attorney was hired and the final sale price. Because it takes two to three years for condemnation cases to work their way through the courts, Fiscal Year 1997-98 marks the first year in which a majority of the condemnation cases were settled under the terms of the 1994 legislation. In Fiscal Year 1997-89 the ratio of attorney costs to all land and landowner costs did decrease from 11% to 10%. More time is needed to determine if this change will yield significant savings to the state.

Currently Florida has no statutory limit on the amount the state pays for landowner appraisers and technical experts. From Fiscal Year 1994-95 to Fiscal Year 1997-98, these two cost categories increased 21%, from a combined cost of over \$23 million to over \$28 million. In Fiscal Year 1997-98, the average cost per parcel for landowner appraisers was \$4,695 and for technical experts was \$9,793. Capping the state's payment of these fees would reduce right-of-way acquisition costs. Cost savings would vary, depending on the limit imposed. Savings in court costs would depend on how much the cap deterred litigation.

Disadvantage. While placing restrictions on landowner attorney, appraiser, and technical expert fees might reduce the ability of less affluent landowners to challenge the state's proposed sale price for their land, it would allow landowners sufficient opportunity to explore the fairness of the state's offer by hiring appraisers and technical experts within the specified financial limits and attorneys without a dollar limit.

We consider Option 2 a viable option. However, it is not our preferred option because it does not adequately limit the state's payment of landowner fees.

Option 3 - Cap the amount the state will pay for landowner costs for attorneys, appraisers, and other technical experts.

Description. This option caps state payment of attorney fees as well as appraiser and expert fees. Under this option the existing limits on state payment of landowner attorney fees would be changed from paying a percentage of the benefit received to paying the fee up to a specified dollar limit. In addition, state payment of landowner appraisers and technical experts would be capped at a specific dollar amount. Currently, statutes do not stipulate a maximum dollar amount that the state will pay for these services, and the court must determine the fee if the department disputes its reasonableness.

Florida is among the minority of states that pay landowner attorney, appraiser, and technical expert fees. (See Exhibit 3-1.) Thirty-two states do not pay any attorney, appraiser, or technical expert fees for landowners. In Fiscal Year 1997-98, the average cost per parcel in Florida for landowner attorney, appraiser, and technical experts' fees was \$32,055. In contrast the state of Indiana caps payment of landowner's attorney fees at \$2,500 and pays no other fees. The state of Pennsylvania has a total cap of \$500 for landowner attorney, appraiser and technical expert fees combined.

Advantage. This option would save the state money by capping attorney fees as well as appraiser and other technical expert fees. In Fiscal Year 1997-98, the department spent over \$63 million paying landowners' attorneys, appraisers, and other technical experts. Placing reasonable caps on payments for these landowner expenses could significantly reduce right-of-way acquisition costs. Cost savings would vary, depending on the payment limit imposed. Department savings for the \$26,984,019 million in court expenditures to try these condemnation cases would depend on how much the cap deterred litigation.

Disadvantage. While placing a limit on landowner attorney, appraiser, and technical expert fees might reduce the ability of less affluent landowners to challenge the state's proposed sale price for their land, it would allow landowners sufficient opportunity to explore the fairness of the state's offer by hiring experts within the specified financial limits.

We consider Option 3 a viable option. It protects taxpayers by limiting state payment of landowner costs and protects landowners from unfair offers by the state. However, it is not our

Cost Savings and Cost Recovery

preferred option because greater cost savings can be obtained under Option 5.

Option 4 - Pay landowner's cost, up to a specified amount, for one appraisal. Pay landowner's fees for attorneys and other technical experts only if a property's final sale price is a specified percentage over the department's initial offer.

Description. Under this option the state would pay a fee, up to a specified amount, for the landowner to obtain one appraisal. The landowner would have to achieve a sale price that is a specified percentage over the department's initial offer before the department would pay the landowner's attorney and technical expert fees. If the court did award a sale price that met the percentage criteria, the state's payment of landowner attorney fees would continue to be based on benefit obtained, as in current law, and landowner technical expert fees would be paid without a dollar limit, as they are now.

Only 18 states pay landowners' costs. Of these, 10 require a specified percentage increase from the state's final offer to the sale price before landowner costs are paid. Seven states require a percentage increase between 10% and 15% before the state pays attorney fees.

Advantages. This option would discourage unreasonable attempts by landowners to receive excessive profits for their land and would encourage the department and landowners to come to agreement on the purchase price when their differences are small. We could not accurately estimate the cost savings that would be achieved through this option because the department's databases are not configured for such analysis. However, according to department data, 847 of the 1,981 (43%) properties purchased in Fiscal Year 1997-98 had a sale price within 20% of the department's appraised value. Based on this data we conservatively estimate 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. Department savings for the \$26,984,019 in court expenditures to try these condemnation cases would depend on how much the cap deterred litigation.

Disadvantages. While placing a limit on landowner appraiser fees might reduce the ability of less affluent landowners to challenge the state's proposed sale price for their land, it would allow landowners sufficient opportunity to explore the fairness of the state's offer. Although the sale price would have to exceed the state's offer by a specified percentage before the state would pay the landowner's attorney and expert fees, allowing one appraisal would permit landowners to make a reasonable assessment of whether to take this financial risk.

We consider Option 4 a viable option. It protects taxpayers by limiting state payment of landowner costs and protects landowners from unfair purchasing by the state. However, it is not our preferred option because greater cost savings can be obtained under Option 5.

Option 5 - (A combination of options 3 and 4) Pay landowner's cost, up to a specified amount, for one appraisal. Cap the amount the state will pay for landowners' costs for attorneys and other technical experts and only pay these costs if the property's final sale price is a specified percentage over the department's initial offer.

Description. Under this option the state would also pay a fee, up to a specified amount, for one landowner appraisal. This option combines options 3 and 4 by paying landowner attorney and expert costs only if the landowner achieves a sale price that is a specified percentage over the department's initial offer and caps the amount the state will pay for these costs. Currently, there are no monetary caps on these fees, although attorney fees are capped at a specified percentage of benefit. In Fiscal Year 1997-98, the average cost per parcel in Florida for landowner attorney, appraiser, and technical experts' fees was \$32,055.

Only 18 states pay landowners' costs. Of these, 10 require a specified percentage increase from the state's final offer to the sale price before landowner costs are paid. Seven of the states require a percentage increase between 10% and 15% before the state pays attorney fees. The state of Indiana caps payment of landowner's attorney fees at \$2,500 and pays no other fees. The state of Pennsylvania has a total cap of \$500 for landowner attorney, appraiser and technical expert fees combined.

Advantages. 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. Cost savings from landowner payments would vary, depending on the cap imposed, how many parcels were purchased within the defined percentage, and the cap and percentages' effect on deterring litigation.

According to department data, 847 of the 1,981 (43%) properties purchased in Fiscal Year 1997-98 had a sale price within 20% of the department's appraised value. Based on this data we conservatively estimate that if the state had required a 20%

Cost Savings and Cost Recovery

increase in value before paying landowners' costs, \$27,114,500 in landowner costs could have been avoided.

Disadvantages. Although the sale price would have to exceed the state's offer by a specified percentage before the state would pay up to a specified amount for landowner attorney and expert fees, allowing one appraisal would permit landowners to make a reasonable assessment of whether to take this financial risk.

We recommend Option 5

We recommend that the Legislature consider Option 5 to reduce Florida's increasing costs for landowner expenses for right-of-way proceedings. Placing reasonable caps on the amount of landowner costs paid and paying those costs only for properties whose final sale price is a specified percentage above the department's initial purchase offer will encourage both the department and landowners to negotiate in good faith and protect taxpayers from paying unnecessary and escalating litigation costs.

Hypothetical state costs for each option

Exhibit 3-3 illustrates the landowner costs the state would pay under each option for a hypothetical purchase of right-of-way. For Options 2, 3, 4, and 5, the reduction in state costs would vary depending on the specified caps and the percentage of price increase required.

Exhibit 3-3

Hypothetical State Costs of Each Option

Scenario: Mary and John Smith have been informed that the state needs their property for right-of-way. These are the costs Mary and John would pay out of their own pocket if they lived in a state that did not reimburse landowners for their costs during the right-of-way acquisition process.

Appraised Value of their home	\$200,000
Settlement (25% increase).....	250,000
Increase Amount (benefit)	50,000
The Smith's attorney costs (based on hourly rate)	20,000
The Smith's appraiser costs	4,700
The Smith's technical expert costs.....	10,000

If this occurred in Florida, what would the state pay?

Options	What the state would pay			
	Landowner Attorney Fee	Landowner Appraiser Fee	Landowner Technical Expert Fee	Total State Cost by Option
	<i>33% of \$50,000 benefit</i>	<i>100%</i>	<i>100%</i>	
Current Law	\$16,500	\$4,700	\$10,000	<u>\$31,200</u>
Option 1: State pays no costs	0	0	0	<u>0</u>
	<i>33% of \$50,000 benefit</i>	<i>Capped</i>	<i>Capped</i>	
Option 2: Maintain attorney restrictions and cap other fees (if cap set at \$5,000)	\$16,500	\$5,000	\$5,000	<u>\$26,500</u>
	<i>Capped</i>	<i>Capped</i>	<i>Capped</i>	
Option 3: Cap all fees (if cap set at \$5,000)	\$5,000	\$5,000	\$5,000	<u>\$15,000</u>
Option 4:	<i>The state pays a capped amount for one appraisal. If the final price does not exceed the department's initial offer by the specified percentage, no attorney or expert costs would be paid.</i>			
	<i>33% of \$50,000 benefit</i>	<i>Capped</i>		
A: Pay fees if sale exceeds initial offer by specified percentage	\$16,500	\$5,000	\$10,000	<u>\$31,500</u>
B: No attorney or expert fees paid if sale does not exceed initial offer by specified percentage	\$0	\$5,000	\$0	<u>\$5,000</u>
Option 5:	<i>The state pays a capped amount for one appraisal. If the final price does not exceed the department's initial offer by the specified percentage, no attorney or expert costs would be paid.</i>			
	<i>Capped</i>	<i>Capped</i>	<i>Capped</i>	
A: If sale price exceeds initial offer by specified percentage, pay fees to a cap	\$5,000	\$5,000	\$5,000	<u>\$15,000</u>
B: No attorney or expert fees paid if sale does not exceed initial offer by specified percentage	\$0	\$5,000	\$0	<u>\$5,000</u>

Florida pays more in business damages than any other state

Only nine states pay business damages

The right to collect business damages is not protected by the United States or Florida constitutions. Business damages, which are authorized by section 73.071(3)(b), F.S., are defined as permanently lost profits and the reduced profit-making capacity of a business due to a portion of the property being taken by the state. Florida is one of only nine states that pays business damages, and as the other eight, does not limit the amount the state will pay. According to members of the American Association of State Highway and Transportation Officials, the remaining 41 states do not pay business damages because they are buying property and not businesses. These highway departments are following the U.S. Constitution and the case law of their state that requires them only to pay for the value of the land. In Fiscal Year 1997-98, the Florida Department of Transportation paid almost \$19 million in business damages on 108 or 9% of the 1,981 parcels purchased.

Business damage payments are made to businesses that will lose only a portion of their property; if the state buys the entire business property, it helps relocate the business instead of paying business damages. For example, the state would pay business damages if the department condemned part of the parking lot of a fast food restaurant. The owner would be eligible for business damages equal to the lost income resulting from the loss of the parking spaces. If the landowner and the department cannot agree on the amount of business damages due, the courts decide the amount the state will pay.

In calendar year 1997 Florida paid more business damages than any other state, both in terms of total dollars and as a percentage of right-of-way acquisition costs. Florida paid business damages of \$16.4 million or 8.06% of acquisition costs. The next highest state in dollars paid was Georgia, at \$1.2 million. The next highest state in percentage of acquisition costs was Louisiana at 2.63%. According to department staff, Florida may be paying more in business damages than any other state for two reasons. First, Florida statutes broadly define business damages and allow more businesses to claim damages than other states. Second, Florida business owners are aware of their opportunity to request business damages because the department informs them of this right at the beginning of the acquisition process. For the past five years business damages have remained stable at about 5% of overall acquisition costs, which are increasing.

***Elimination of total
buy-out provision
expected to increase
business damage
costs***

However, business damage payments may increase as a result of HB 591, which was passed in the 1999 legislative session. The bill was designed to help the department make fair offers for business damages. The new law requires businesses to show the department their business records, an estimate of business damages, and a description of how they calculated the loss at the beginning of the negotiation process. This change should allow the department and landowner to reach agreement sooner, thereby speeding up the acquisition process and reducing the number of lawsuits, which will save the state money previously spent trying these condemnation cases.

The second major change in the law, which prohibits the department from purchasing whole properties as a way to avoid paying business damages, will probably increase the amount of business damages the state pays in some situations. Under the old law the department could purchase an entire property if it was cheaper than buying a portion of a business property and paying business damages. For example, an entire property may be valued at \$500,000. Purchasing a portion of the property could cost \$300,000 for the land plus \$300,000 in business damages, for a total cost of \$600,000. In this example the department would save \$100,000 by purchasing the entire property for \$500,000 instead of buying part of the property and paying business damages for a total of \$600,000. However, some business owners felt that this provision was unfair because it allowed the state to avoid paying what a business was worth (no business damages are paid for purchasing an entire property). As a result of House Bill 591 the old practice of saving money by buying the whole property when only part of the property is needed to build the road project is no longer allowed. Therefore, the department is expected to pay more business damages on these types of parcels in the future.

***The state could save
over \$18 million if it
did not pay business
damages***

To reduce the cost of right-of-way acquisition, the Legislature could amend section 73.071(3)(b), F.S., to delete state payment of business damages for right-of-way acquisition. In Fiscal Year 1997-98, the state would have saved almost \$19 million if business damages had not been paid. Elimination of business damage payments would also have reduced the amount of right-of-way litigation, thereby saving an undeterminable portion of the \$26,984,019 million the department expended in Fiscal Year 1997-98 on court proceedings.

Not paying business damages to landowners may create an economic hardship on some business owners or force them to close their businesses. However, 41 states do not pay business damages because they are buying property rather than businesses, and the U.S. Constitution does not require the state to pay business damages.

The Logo Program should be restructured to lower the cost to participating businesses or become a revenue source for the state

As a result of privatization, the Logo Program has stopped operating at a deficit and is generating a profit. 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. When the current logo contract expires in 2007, the state will need to determine whether the program should continue to be privatized and whether program profits should be used as a source of state revenue.

The Logo Program was privatized to eliminate its deficit

Because the department was operating the Logo Program at a deficit of over \$100,000 annually, the program was abolished 1995. In 1996, at the request of participating businesses, the Legislature reauthorized and privatized the program. The program was awarded to Logo of Florida, Inc. Privatization allowed the department to avoid program operating costs of \$267,551 per year, an annual operating shortfall of \$103,000 and a future liability of \$804,000 for replacing logo signs previously constructed with private funds. In total, privatization resulted in a cost avoidance of over \$1 million.

As a privatized program, Logo of Florida, Inc., expanded the number of information signs 74%, from 528 to 917. The number of participating businesses increased 163%, from 680 to 1790. According to department staff, these increases occurred because the private company is more skilled and motivated at marketing the program to prospective business than the department had been. Logo of Florida, Inc., also raised the annual fee for businesses to advertise on logo signs from \$250 to \$1,000. (The law caps the annual fee at \$1,250.)

Logo is now making a profit

Logo of Florida, Inc., projects it will make \$310,000 in profits over the 10-year term of the contract. This is a modest profit for a 10-year period. However, the company started in 1997 with a negative (112%) return on investment, due to start up costs. By the tenth year of the contract (2006) the corporation, expects to receive a 30% return on investment. This positive trend should continue if it is awarded a second contract because most of the existing sign structures and panels can continue to be used.

The state does not benefit from Logo profits

While Florida has structured its contract to allow all profits to remain with the private company, other states have structured their logo contracts to benefit from the profits made by selling advertising on state highway signs. For example, the state of Kentucky receives annual revenues of approximately \$382,000-

\$450,000 from its privatized logo program. Kentucky has structured its logo contract so that it receives revenue from two sources. First, Kentucky receives 6% of the logo vendor's gross receipts. Second, Kentucky receives \$1,200 per logo panel. The vendor can generate maximum revenues of \$3,600 per logo panel. In Florida, Logo of Florida, Inc., can generate maximum revenues of \$3,000 per logo panel.

Although differences in the logo programs and contracts make it difficult to determine whether Florida's program could achieve such high returns, the revenue trends indicate that the Florida's program could provide a source of revenue for the state.

Before Florida's contract expires in 2007, the department will need to determine whether it should rebid or reassume the Logo Program. Section 479.261, F.S., stipulates that the department shall administer the program in the most efficient and cost-effective manner through department staff or service contracts. Because privatization of this program has been successful, we recommend that the department rebid the logo contract.

***Some Logo profits
should be returned to
the state***

Any new contract should address the expected increase in Logo profit margins. While the profit level of the current contract has been reasonable, the contract will likely be substantially more profitable in the future because the previous liability of needing to replace signs will be gone and contract revenues will probably continue to increase over time. While the private vendor should make a reasonable profit, the state should not create a situation where a contract vendor makes excessive profit.

The profit could be handled in one of two ways. The Legislature could revise s. 479.261, F.S., to lower the amount the logo vendor is allowed to charge businesses to advertise on the signs. However, the current fee of \$1,000 per sign per year does not seem excessive and is less than the \$1,250 cap currently provided by statute. By the time the next logo contract is bid, the \$1,250 cap imposed 10 years ago will be less of a burden to businesses due to the effects of inflation on the present value of money. Another option would be to stipulate that the vendor return a portion of the logo profits to the department to compensate the state for advertising space on the state highway system. If the department continues to privatize the Logo Program, we recommend that the contract require a percentage of logo profits be returned to the state.

To pay for itself as required by law, the Outdoor Advertising Program must eliminate its deficit

The Outdoor Advertising Program, which is required by state law to operate on a break-even basis, has been operating at a deficit for the past two years. Also, the program has incurred additional liabilities as the result of a legislatively mandated billboard survey that cost \$811,331. To cover its costs, the program will need to increase outdoor advertising fees.

Section 479.07(3)(c), F.S., stipulates that the annual outdoor advertising or billboard permit fee shall be "an amount sufficient to offset the total cost to the department for the program, but shall not exceed \$100." However, for the last two fiscal years, the program has had an operating deficit. The operating shortfall incurred by the State Transportation Trust Fund was \$93,370 in Fiscal Year 1997-98 and \$111,756 in Fiscal Year 1996-97, resulting in a cumulative operating deficit of \$205,126. The program has an additional \$811,331 liability caused by a 1996 legislatively mandated, one-time, statewide inventory of all billboards to verify the accuracy of the department's billboard database. Two contracted firms completed the survey at a cost of \$811,331.⁷ This survey expense is being amortized over 10 years at a rate of \$100,000 per year.

Increasing fees will eliminate the deficit

Although program costs are now stable, the program needs to eliminate the deficit to return to financial self-sufficiency. To address the ongoing operating shortfall and eliminate the existing deficit, the program could increase permit fees. There is a steady population of about 23,000 billboards. The department is 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.⁸ These increased fees will cover the annual operating expenses of the program and generate enough additional funds to eliminate the operating deficit by 2001. We recommend that the department implement this fee increase. When the program has eliminated the deficit, the department should review the fees to determine how much they should be reduced.

⁷ The surveys found that the department's billboard database was accurate.

⁸ The fee will remain two-tiered, as requested by the billboard industry.

Appendix A

Statutory Requirements for Program Evaluation and Justification Reviews

Section 11.513(3), F.S., directs OPPAGA Program Evaluation and Justification Reviews to address nine issue areas. Our conclusions on these issues as they relate to the Right-of-Way Program are summarized in Table A-1.

Table A-1
Summary of the Program Evaluation and Justification Review
of the Highway Construction and Engineering Program

Issue	OPPAGA Conclusions
The identifiable cost of each program	For Fiscal Year 1998-99, the Right-of-Way Acquisition Program's estimated allocations were \$543 million.
The specific purpose of the program, as well as the specific public benefit derived therefrom	Acquisition of transportation right-of-way has been an essential state function. The program obtains land needed for Department of Transportation road construction and road improvement projects. If the highway system were not improved, congestion would increase and travel would become more inefficient and less safe. The program fulfills citizens' constitutional right to full and just compensation when their property is acquired for a public purpose.
Progress toward achieving the outputs and outcomes associated with each program	In Fiscal Year 1997-98, the Right-of-Way Program did not meet its standards for PB ² output measures for acquiring right-of-way properties and certifying projects ready for construction. The program does not have outcome measures. Supplemental information indicates that the program did achieve its mission of acquiring the right-of-way parcels needed to support the department's work program. Only one construction contract letting was delayed because the program failed to certify the project as ready for construction. However, the department purchased more properties through condemnation than the previous year, and condemnation costs the state more than negotiation.
An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in section 216.011, F.S., associated with the program	<p>According to department staff, the Right-of-Way Program did not meet its PB² performance measure standards for two reasons. First, it is difficult for department staff to accurately estimate the number of projects to be certified and the number of parcels that need to be acquired when they are setting the standard. Second, local government requests and engineering changes sometimes necessitate delaying projects and moving them to future years.</p> <p>The program did acquire the right-of-way parcels needed to support the department's work program. The program's success resulted from planning staffing levels to meet the program's workload, monthly progress monitoring, and the ability to use the "quick take" condemnation process to acquire property when FDOT has to have it to let construction contracts.</p>

Issue	OPPAGA Conclusions
Alternative courses of action that would result in administering the program more efficiently and effectively	<ul style="list-style-type: none"> ▪ The Legislature could amend the Florida Constitution or Florida laws to pay fewer landowners costs in right-of-way acquisition. ▪ The Legislature could amend the law to pay less business damages during right-of-way acquisition. ▪ The department could restructure the logo contract when it expires. ▪ The department could raise the annual permit fees so that the Outdoor Advertising Program is self-supporting as prescribed by law.
The consequences of discontinuing such program	<p>One consequence of not adhering to federal requirements for the purchase of right-of-way could include forfeiting federal grants amounting to nearly \$1 billion annually.</p> <p>If the Right-of-Way Acquisition Program were discontinued, the responsibility for buying right-of-way would rest with 400 local governments. Federal and state funds could be passed down to the local governments, however federal funds may have restrictions. Having local governments responsible for buying all right-of-way would result in inefficient duplication of effort, inconsistent interpretation and application of national standards, coordination problems between the department's road building program and the local government's land buying program, and further deterioration of the transportation infrastructure. Further, many local governments would not have the capacity to manage a large right-of-way purchasing operation.</p> <p>Not expanding the State Highway System could result in congested and unsafe travel conditions.</p>
Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part, in the existing manner	<p>Florida's Right-of-Way Program costs continue to increase and are the highest in the nation. To bring Florida's costs more in line with other states, the Legislature should revise Ch. 73, F.S., to pay fewer landowner and business costs.</p>
Whether the information reported pursuant to section 216.031(5), F.S., has relevance and utility for the evaluation of each program	<p>Some of the program's performance-based program budgeting measures are not direct indicators of program performance and should be supplemented. In addition, the program's performance measures cannot be used to evaluate some aspects of its performance, such as fairness, timeliness, efficiency, and effectiveness. (See Appendix D.) To provide better information on program performance, the Legislature should add measures to the Right-of-Way Acquisition Program's performance-based program budgeting measures that demonstrate the program's fairness, timeliness, efficiency, and effectiveness.</p>
Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports	<p>The program reported reasonably accurate Fiscal Year 1997-98 performance data to the Legislature for its performance-based program budgeting measures. The program's data reliability, reporting of information, and management's use of this information met our expectations. The program's performance measures and purpose or goal need some modification. (See Appendix D.)</p>

Appendix B

Per Parcel Right-of-Way Expenditures for Landowner Costs Continue to Rise

Fees and Expenses	Fiscal Year Cost in Millions					Percentage Increase
	1993-94	1994-95	1995-96	1996-97	1997-98	1993-94 – 1997-98
Number of Parcels	NA	2,443	2,816	2,132	1,981	-19%
Land	\$194.5	\$228.6	\$243.1	\$203.6	\$254.4	31%
Business Damages	12.5	12.4	15.2	16.4	18.8	50%
Miscellaneous	3.1	4.0	5.5	11.7	18.3	490%
Total Land Cost	\$210.1	\$245.0	\$263.8	\$231.7	\$291.5	39%
Landowner Attorney	\$ 22.5	\$ 34.9	\$ 37.1	\$ 33.0	\$ 34.8	55%
Landowner Appraisal	6.5	7.6	8.2	9.1	9.3	43%
Other Landowner Costs	16.5	16.1	15.9	19.2	19.4	18%
Total Landowner Cost	\$ 45.5	\$ 58.6	\$ 61.2	\$ 61.3	\$ 63.5	40%
Total Fees and Expenses	\$255.6	\$303.6	\$325.0	\$293.0	\$355.0	39%

	Cost in Dollars					Percentage Increase
						1994-95 - 1997-98
Average Landowner Attorney		\$14,286	\$13,175	\$15,478	\$17,567	23%
Average Landowner Appraisal		3,111	2,912	4,268	4,695	51%
Average Other Landowner Costs		6,590	5,646	9,006	9,793	49%
Average Landowner Costs		\$23,987	\$21,733	\$28,752	\$32,055	34%

Source: Florida Transportation Commission.

Response From the Florida Department of Transportation

In accordance with the provisions of s. 11.45(7)(d), F.S., a draft of our report was submitted to the Secretary of the Florida Department of Transportation for his review.

The department's written response is reprinted herein beginning on page 29.



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, Florida 32399-0450

THOMAS F. BARRY, JR.
SECRETARY

July 28, 1999

Mr. John W. Turcotte, Director
Office of Program Policy Analysis
and Government Accountability
111 West Madison Street, Room 312
Tallahassee, Florida 32302

Dear Director Turcotte:

As required by Section 11.45(7)(d), Florida Statutes, our written response to your review of the Florida Department of Transportation's Right-of-Way Acquisition Program Justification Review is attached.

If you have any questions, please contact Ken Towcimak, Director, Office of Right of Way, 414-4457.

Sincerely,

Ken Morefield
Assistant Secretary for
Transportation Policy

KM/ndm

Attachment

MEMORANDUM

FLORIDA DEPARTMENT OF TRANSPORTATION
OFFICE OF RIGHT OF WAY MAIL STATION 22 PHONE 414-4357

DATE: July 28, 1999

TO: Cecil T. Bragg, Jr., Inspector General

FROM: Kenneth M. Towcimak, Director, Office of Right of Way

COPIES: Ken Morefield, Bill Deyo

SUBJECT: RESPONSE TO OPPAGA; R/W ACQUISITION PROGRAM
JUSTIFICATION REVIEW

As requested in your memo of July 15, 1999, the Office of Right of Way's comments to the above-referenced review are as follows:

1. Page 10; OPPAGA CONCLUSION: "Florida law provides incentives for landowners to litigate and results in Florida paying more in landowner right of way costs than any other state."

RESPONSE: FDOT concurs with the conclusion, but advises that many attempts to change the law in Florida regarding these issues in the past have been unsuccessful.

2. Page 20; OPPAGA CONCLUSION: "Florida pays more in business damages than any other state."

RESPONSE: FDOT concurs with the conclusion. See response to No. 1 above.

3. Page 22; OPPAGA CONCLUSION: "The Logo Program should be restructured to lower the cost to participating businesses or become a revenue source for the state."

RESPONSE: When the Legislature reestablished the Logo Program in 1996, the Department, after participation in numerous legislative workshops on the issue, understood the intent of the Legislature to be that the Logo Program should provide the service to motorists and the traveling public at the lowest possible cost to participating tourist oriented businesses, but in an amount sufficient to offset the total costs of program to the Department. Section 472.261(5), F.S., in part states: "The Department shall provide the services in the most efficient and cost effective manner through Department staff or by contracting some or all of the services. Such annual payment fee shall not exceed \$1,250." The \$1,250 cap was

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established by the Legislature after committee discussion about the estimated costs of administering the program with existing FDOT internal staff versus anticipated consultant costs, and in comparison with what other states were charging businesses for participation in their logo programs. If the intent of the Legislature had been to generate income from the program, such a maximum cap would not have been established in the law.

The private consultant selected to operate the program was the lowest bidder on the contract based upon the average annual permit cost.

The Department accepts OPPAGA's recommendation to address the expected increase in logo profit margins on any new contract and, prior to any new contract, will request the Legislature to address the issue of whether the Legislature intends the Department to maximize revenues to the state or minimize costs to the business participants.

4. Page 24; OPPAGA CONCLUSION: "To pay for itself as required by law, the Outdoor Advertising Program must eliminate its deficit."

RESPONSE: The Department concurs with this recommendation and, as noted in the review, already has taken action to amend the agency rule to raise the annual permit fee to cover the increased costs of the program and recapture previous deficits.

KMT:mah


Kenneth M. Towcimak

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PB² Performance Report

No. 98-56

February 1999

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 (PB²) measures and comments on the measures proposed by the department for 1999-2000.

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 PB² 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 PB² 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 1998-99.⁹ 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

⁹ The Florida Department of Transportation's funds are not appropriated in the PB² program budget format.

accomplishment report are also used for performance-based program budgeting.

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 PB² 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.

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 PB² 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.

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 PB² 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 PB² 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.

Output Measures

Performance		1997-98	Met	Comments
1996-97	1997-98	Standard	Standard?	
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 ² standard, its performance was not materially different from the prior year. Program staff indicate that it is difficult to accurately project the number of 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 PB² 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%	<p>FDOT certified 7% more of its planned projects in Fiscal Year 1997-98 than in Fiscal Year 1996-97.</p> <p>Some planned projects were not certified for the following two reasons.</p> <p>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.</p> <p>One construction contract letting was delayed due to engineering design changes when graves were discovered on the proposed right-of-way.</p>
Number of parcels acquired through negotiation vs. condemnation		
63% Negotiated	58% Negotiated	<p>This measure addresses the efficient use of state funds. Purchasing parcels through negotiation costs less than through condemnation.</p>

Other Performance Measures

These outcome measures are not a part of the program's PB² measures, but were developed by the Florida Transportation Commission and provide useful information about program performance.

Performance		Comments
1996-97	1997-98	
37% Condemned	42% Condemned	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.

For negotiated parcels, percentage of the total purchase price within 20% of FDOT appraised value

32% over 20%	32% over 20%	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.
68% within 20%	68% within 20%	

FDOT performance remained the same in this measure from Fiscal Year 1996-97 to Fiscal Year 1997-98.

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.

For negotiated parcels, average purchase agreement amount as a percentage of the spread between FDOT appraisal and owner's counter-offer

74%	58%	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.
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FDOT performance improved in this measure from Fiscal Year 1996-97 to Fiscal Year 1997-98.

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
Number of right-of-way parcels acquired	2,597	<p>We recommend adoption of this measure with modification. 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>
Number of projects certified ready for construction	128	<p>We recommend adoption of this measure with modification. 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</p>

Output Measures, Fiscal Year 1999-2000

Measures Proposed by FDOT	Proposed Standards	OPPAGA Recommendations/Comments
		<p>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 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
Number of planned construction contract lettings delayed beyond the fiscal year because of failure to certify a project ready for construction	<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>
The percentage of Right-of-Way program expenditures by the following categories: land costs, FDOT activities expenses, and land owner expenses	<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>
Total purchase price of all FDOT negotiated parcels compared to the	<p>This measure addresses the effective or economical use of state funds by showing FDOT's success in negotiating a purchase price</p>

OPPAGA Recommendations for Additional Measures, Fiscal Year 1999-2000

Measures	Comments
total spread or difference between the FDOT appraisal and the landowner's counter-offer to that appraisal for those same negotiated parcels	<p>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> <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>
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	<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>
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	<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"> • 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. • FDOT expenses include appraisal, negotiation, court, closing costs, demolition costs, and disposal of surplus property costs. • Landowner expenses include attorney, appraisal, and other expert witness costs.
Number and percentage of parcels acquired by negotiation vs. condemnation	<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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