

By Senator Villalobos

37-864A-02

See CS/HB 435

1                                   A bill to be entitled

2           An act relating to transportation; amending s.

3           334.30, F.S.; providing for public-private

4           transportation facilities; eliminating the

5           requirement that the Legislature approve such

6           facilities; providing requirements for the use

7           of funds from the State Transportation Trust

8           Fund; providing requirements with respect to

9           proposals; providing for specific project

10          approval by the Legislature for certain

11          projects; authorizing the Department of

12          Transportation to create certain corporations

13          to shield the state from possible financial

14          risks for projects; authorizing the department

15          to lend certain funds to such corporations;

16          authorizing the department to adopt rules;

17          repealing s. 348.0004(2)(m), F.S., relating to

18          private entity proposals for transportation

19          projects; amending s. 348.0004, F.S.;

20          establishing a process for certain expressway

21          authorities to participate in public-private

22          partnerships to build, operate, own, or finance

23          certain transportation facilities; specifying

24          the expressway authority's role in such

25          projects and providing rulemaking authority;

26          providing for the assessment of tolls;

27          providing for creation of certain tax-exempt,

28          public-purpose corporations; providing an

29          effective date.

31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 334.30, Florida Statutes, is  
2 amended to read:

3 334.30 Public-private ~~Private~~ transportation  
4 facilities.--The Legislature hereby finds and declares that  
5 there is a public need for rapid construction of safe and  
6 efficient transportation facilities for the purpose of travel  
7 within the state, and that it is in the public's interest to  
8 provide for public-private partnership agreements to  
9 effectuate the construction of additional safe, convenient,  
10 and economical transportation facilities.

11 (1) The department may receive or solicit proposals  
12 and, ~~with legislative approval by a separate bill for each~~  
13 ~~facility,~~ enter into agreements with private entities, or  
14 consortia thereof, for the building, operation, ownership, or  
15 financing of transportation facilities. The department is  
16 authorized to adopt rules to implement this section and shall  
17 by rule establish an application fee for the submission of  
18 proposals under this section. The fee must be sufficient to  
19 pay the costs of evaluating the proposals. The department may  
20 engage the services of private consultants to assist in the  
21 evaluation. Before ~~seeking legislative~~ approval, the  
22 department must determine that the proposed project:

23 (a) Is in the public's best interest.~~†~~

24 (b) Would not require state funds to be used unless  
25 there is an overriding state interest; however, the department  
26 may use state resources for a transportation facility project  
27 that is on the State Highway System or that provides for  
28 increased mobility on the state's transportation system.~~and~~

29 (c) Would have adequate safeguards in place to ensure  
30 that no additional costs or service disruptions would be  
31 realized by the traveling public and citizens of the state in

1 the event of default or cancellation of the agreement by the  
2 department.

3  
4 The department shall ensure that all reasonable costs to the  
5 state related to transportation facilities that are not part  
6 of the State Highway System are borne by the public-private  
7 entity.The department shall also ensure that all reasonable  
8 costs to the state,~~and substantially affected local~~  
9 ~~governments, and utilities, related to the private~~  
10 ~~transportation facility,~~are borne by the public-private  
11 private entity for transportation facilities that are owned by  
12 private entities.

13 (2) The use of funds from the State Transportation  
14 Trust Fund is limited to advancing projects already programmed  
15 in the adopted 5-year work program or to no more than a  
16 statewide total of \$50 million in capital costs for all  
17 projects not programmed in the adopted 5-year work program.

18 (3) The department may request proposals for  
19 public-private transportation projects or, if the department  
20 receives a proposal, shall publish a notice in the Florida  
21 Administrative Weekly and a newspaper of general circulation  
22 at least once a week for 2 weeks, stating that the department  
23 has received the proposal and will accept, for 60 days after  
24 the initial date of publication, other proposals for the same  
25 project purpose. A copy of the notice must be mailed to each  
26 local government in the affected area. Notwithstanding any  
27 other provision of law, entities selected by the department in  
28 this manner shall be deemed to have complied with all open  
29 competition provisions of law.

1           (4) The department shall not commit funds in excess of  
2 the limitation in subsection (2) without specific project  
3 approval by the Legislature.

4           (5)~~(2)~~ Agreements entered into pursuant to this  
5 section may authorize the private entity to impose tolls or  
6 fares for the use of the facility. However, the amount and  
7 use of toll or fare revenues may be regulated by the  
8 department to avoid unreasonable costs to users of the  
9 facility.

10           (6)~~(3)~~ Each ~~private~~ transportation facility  
11 constructed pursuant to this section shall comply with all  
12 requirements of federal, state, and local laws; state,  
13 regional, and local comprehensive plans; department rules,  
14 policies, procedures, and standards for transportation  
15 facilities; and any other conditions which the department  
16 determines to be in the public's best interest.

17           (7)~~(4)~~ The department may exercise any power possessed  
18 by it, including eminent domain, with respect to the  
19 development and construction of state transportation projects  
20 to facilitate the development and construction of  
21 transportation projects pursuant to this section. For  
22 public-private facilities located on the State Highway System,  
23 the department may pay all or part of the cost of operating  
24 and maintaining the facility. For facilities not located on  
25 the State Highway System,the department may provide services  
26 to the private entity and-agreements for maintenance, law  
27 enforcement, and other services ~~entered into pursuant to this~~  
28 ~~section~~ shall provide for full reimbursement for services  
29 rendered.

30           (8)~~(5)~~ Except as herein provided, the provisions of  
31 this section are not intended to amend existing laws by

1 granting additional powers to, or further restricting, local  
2 governmental entities from regulating and entering into  
3 cooperative arrangements with the private sector for the  
4 planning, construction, and operation of transportation  
5 facilities.

6 (9) The department shall have the authority to create  
7 or assist in the creation of tax-exempt, public-purpose  
8 Internal Revenue Service Ruling 63-20 corporations as provided  
9 for under the Internal Revenue Code for the purpose of  
10 shielding the state from possible financing risks for projects  
11 under this section. Internal Revenue Service Ruling 63-20  
12 corporations may receive State Transportation Trust Fund  
13 grants and loans from the department. The department shall be  
14 empowered to enter into public-private partnership agreements  
15 with Internal Revenue Service Ruling 63-20 corporations for  
16 projects under this section but shall not agree to expend any  
17 funds not appropriated for this purpose. The provisions of s.  
18 339.135(6) shall apply to such agreements.

19 (10) The department may lend funds from the Toll  
20 Facilities Revolving Trust Fund, as outlined in s. 338.251, to  
21 Internal Revenue Service Ruling 63-20 corporations that  
22 propose projects containing toll facilities. To be eligible,  
23 the Internal Revenue Service Ruling 63-20 corporation must  
24 meet the provisions of s. 338.251 and must also provide credit  
25 support, such as a letter of credit or other means acceptable  
26 to the department, to ensure the loans will be repaid as  
27 required by law. The state's liability for debt of a facility  
28 shall be limited to the amount approved for that specific  
29 facility in the department's 5-year work program adopted  
30 pursuant to s. 339.135.

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1           ~~(11)(6)~~ Notwithstanding s. 341.327, a fixed-guideway  
2 transportation system authorized by the department to be  
3 wholly or partially within the department's right-of-way  
4 pursuant to a lease granted under s. 337.251 may operate at  
5 any safe speed.

6           Section 2. Paragraph (m) of subsection (2) of section  
7 348.0004, Florida Statutes, is repealed.

8           Section 3. Subsection (9) is added to section  
9 348.0004, Florida Statutes, to read:

10           348.0004 Purposes and powers.--

11           (9) The Legislature hereby finds and declares that  
12 there is a public need for rapid construction of safe and  
13 efficient transportation facilities for the purpose of travel  
14 within the state and that it is in the public's interest to  
15 provide for public-private partnership agreements to  
16 effectuate the construction of additional safe, convenient,  
17 and economical transportation facilities.

18           (a) An expressway authority in any county as defined  
19 in s. 125.011(1) may receive or solicit proposals and enter  
20 into agreements with private entities, or consortia thereof,  
21 for the building, operation, ownership, or financing or  
22 extensions or other improvements to existing expressway  
23 authority transportation facilities or new transportation  
24 facilities that are within the jurisdiction of such an  
25 expressway authority. Such an expressway authority is  
26 authorized to adopt rules to implement this subsection and  
27 shall by rule establish an application fee for the submission  
28 of unsolicited proposals under this subsection. The fee must  
29 be sufficient to pay the costs of evaluating the proposals.  
30 Such an expressway authority may engage the services of  
31 private consultants to assist in the evaluation. Before

1 approval, such an expressway authority must determine that the  
2 proposed project:

3 1. Is in the public's best interest.

4 2. Would have adequate safeguards in place to ensure  
5 that no additional costs or service disruptions would be  
6 realized by the traveling public and citizens of the state in  
7 the event of default by the private entity or consortium or  
8 cancellation of the agreement by such expressway authority.

9 (b) Such an expressway authority may request proposals  
10 for public-private transportation projects or, if such an  
11 expressway authority receives an unsolicited proposal that it  
12 has an interest in evaluating, it shall publish a notice in  
13 the Florida Administrative Weekly and a newspaper of general  
14 circulation in the county in which such expressway authority  
15 is located at least once a week for 2 weeks stating that such  
16 expressway authority has received the proposal and will  
17 accept, for 60 days after the initial date of publication,  
18 other proposals for the same project purpose. A copy of the  
19 notice must be mailed to each local government in the affected  
20 areas. Notwithstanding any other provision of law, entities  
21 selected by such an expressway authority in this manner shall  
22 for all purposes be deemed to have complied with all open  
23 competition provisions of law, including, without limitation,  
24 chapters 255 and 287.

25 (c) Agreements entered into pursuant to this  
26 subsection may authorize the private entity to impose tolls or  
27 fares for the use of the facility. However, the amount and  
28 use of toll or fare revenues may be regulated by such an  
29 expressway authority to avoid unreasonable costs to users of  
30 the facility.

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1           (d) Each transportation facility constructed pursuant  
2 to this subsection shall comply with all requirements of  
3 federal, state, and local laws; state, regional, and local  
4 comprehensive plans; such expressway authority's rules,  
5 policies, procedures, and standards for transportation  
6 facilities; and any other conditions such expressway authority  
7 determines to be in the public's best interest.

8           (e) Such an expressway authority may exercise any  
9 power possessed by it, including eminent domain, with respect  
10 to the development and construction of transportation projects  
11 to facilitate the development and construction of  
12 transportation projects pursuant to this subsection. Such an  
13 expressway authority may pay all or part of the cost of  
14 operating and maintaining the facility or may provide services  
15 to the private entity for which it shall be entitled to  
16 receive full or partial reimbursement for services rendered.

17           (f) Except as herein provided, the provisions of this  
18 subsection are not intended to amend existing laws by further  
19 expanding or further restricting the authority of local  
20 governmental entities to regulate and enter into cooperative  
21 arrangements with the private sector for the planning,  
22 construction, and operation of transportation facilities.

23           (g) Such an expressway authority shall have the  
24 authority to create, or assist in the creation of, tax-exempt,  
25 public-purpose Internal Revenue Service Ruling 63-20  
26 corporations as provided for under the Internal Revenue Code  
27 for the purpose of shielding such an expressway authority from  
28 possible financing risks for projects under this  
29 subsection. Such an expressway authority shall be empowered  
30 to enter into public-private partnership agreements with  
31

1 Internal Revenue Service Ruling 63-20 corporations for  
2 projects under this subsection.  
3 (h) Such an expressway authority or Internal Revenue  
4 Service Ruling 63-20 corporation created under this subsection  
5 shall be entitled to apply for grants and loans from the  
6 department for projects under this subsection, subject to the  
7 same eligibility criteria and other terms and conditions as  
8 would apply to projects of such an expressway authority  
9 undertaken without private participation.

10 Section 4. This act shall take effect upon becoming a  
11 law.

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14 LEGISLATIVE SUMMARY

15 Provides for public-private transportation facilities.  
16 Deletes the requirement for legislative approval of such  
17 facilities. Provides requirements for the use of funds  
18 from the State Transportation Trust Fund and for  
19 proposals. Provides for the Legislature to approve  
20 specific projects. Authorizes an expressway authority to  
21 adopt rules governing proposals for transportation  
22 facilities by a private entity. Requires publication of  
23 notice. Authorizes an expressway authority to exercise  
24 the power of eminent domain with respect to such  
25 transportation facilities. (See bill for details.)  
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