

By the Committee on Governmental Oversight and Productivity;
and Senator Villalobos

302-2232-02

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; requiring the Department of
10 Transportation to request proposals for certain
11 contracts; providing for specific project
12 approval by the Legislature for certain
13 projects; authorizing the Department of
14 Transportation to create certain corporations;
15 authorizing such corporations to issue bonds;
16 authorizing the department to lend certain
17 funds to such corporations; authorizing the
18 department to adopt rules; repealing s.
19 348.0004(2)(m), F.S., relating to private
20 entity proposals for transportation projects;
21 amending s. 348.0004, F.S.; establishing a
22 process enabling certain expressway authorities
23 to participate in public-private partnerships
24 to build, operate, own, or finance certain
25 transportation facilities; specifying the
26 expressway authority's role in such projects
27 and providing rulemaking authority; requiring
28 an expressway authority to request proposals
29 for certain contracts; providing for the
30 assessment of tolls; providing for creation of
31 certain tax-exempt, public-purpose

1 corporations; authorizing such corporations to
2 issue bonds; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 334.30, Florida Statutes, is
7 amended to read:

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

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

- 28 (a) Is in the public's best interest. †
29 (b) Would not require state funds to be used unless
30 there is an overriding state interest; however, the department
31 may use state resources for a transportation facility project

1 that is on the State Highway System or that provides for
2 increased mobility on the state's transportation system.~~and~~

3 (c) Would have adequate safeguards in place to ensure
4 that no additional costs or service disruptions would be
5 realized by the traveling public and citizens of the state in
6 the event of default or cancellation of the agreement by the
7 department.

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

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

23 (3) The department may request proposals for
24 public-private transportation projects or, if the department
25 receives a proposal, the department shall publish a notice in
26 the Florida Administrative Weekly and a newspaper of general
27 circulation at least once a week for 2 weeks, stating that the
28 department has received the proposal and will accept, for 60
29 days after the initial date of publication, other proposals
30 for the same project purpose. A copy of the notice must be
31 mailed to each local government in the affected area. After

1 the public notification period has expired, the department
2 shall then rank the proposals in order of preference. In
3 ranking the proposals the department may consider, but is not
4 limited to professional qualifications, general business
5 terms, innovative engineering or cost-reduction terms, finance
6 plans, and the need for state funds to deliver the proposal.
7 The department will negotiate with the top ranked proposer in
8 good faith, and if the department is not satisfied with the
9 results of the negotiations, the department may, at its sole
10 discretion, terminate negotiations with the proposer. If these
11 negotiations are unsuccessful the department may go to the
12 second and lower ranked firms in order using this same
13 procedure. If only one proposal is received the department may
14 negotiate in good faith, and, if the department is not
15 satisfied with the results of the negotiations, the department
16 may, at its sole discretion, terminate negotiations with the
17 proposers. Notwithstanding this subsection, the department
18 may, at its sole discretion, reject all proposals at any point
19 in the process up to completion of a contract with the
20 proposer.

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

24 (5)~~(2)~~ Agreements entered into pursuant to this
25 section may authorize the private entity to impose tolls or
26 fares for the use of the facility. However, the amount and
27 use of toll or fare revenues may be regulated by the
28 department to avoid unreasonable costs to users of the
29 facility.

30 (6)~~(3)~~ Each ~~private~~ transportation facility
31 constructed pursuant to this section shall comply with all

1 requirements of federal, state, and local laws; state,
2 regional, and local comprehensive plans; department rules,
3 policies, procedures, and standards for transportation
4 facilities; and any other conditions which the department
5 determines to be in the public's best interest.

6 (7)~~(4)~~ The department may exercise any power possessed
7 by it, including eminent domain, with respect to the
8 development and construction of state transportation projects
9 to facilitate the development and construction of
10 transportation projects pursuant to this section. For
11 public-private facilities located on the State Highway System,
12 the department may pay all or part of the cost of operating
13 and maintaining the facility. For facilities not located on
14 the State Highway System, the department may provide services
15 to the private entity and agreements for maintenance, law
16 enforcement, and other services ~~entered into pursuant to this~~
17 ~~section~~ shall provide for full reimbursement for services
18 rendered.

19 (8)~~(5)~~ Except as herein provided, the provisions of
20 this section are not intended to amend existing laws by
21 granting additional powers to, or further restricting, local
22 governmental entities from regulating and entering into
23 cooperative arrangements with the private sector for the
24 planning, construction, and operation of transportation
25 facilities.

26 (9) The department shall have the authority to create
27 or assist in the creation of tax-exempt, public-purpose
28 Internal Revenue Service Ruling 63-20 corporations as provided
29 for under the Internal Revenue Code. Any bonds issued by the
30 63-20 corporation shall be payable solely from and secured by
31 a lien upon and pledge of the proceeds of the revenues

1 received by the 63-20 corporation. Any bonds issued by the
2 63-20 corporation shall not be or constitute a general
3 indebtedness of the state, any department or agency thereof,
4 or any political subdivision thereof within the meaning of any
5 constitutional or statutory provision or limitation. The full
6 faith and credit of the state shall not be pledged to the
7 payment of the principal of or interest on the bonds issued by
8 the 63-20 corporation. No owner of any of the bonds shall ever
9 have the right to require or compel the exercise of the taxing
10 power of the state or any department or agency of the state
11 for payment thereof, and the bonds shall not constitute a lien
12 upon any property owned by the state or any department or
13 agency of the state. Bonds issued by the 63-20 corporation
14 must be rated investment grade by a nationally recognized
15 credit rating agency. Nothing in this subsection is intended
16 to prohibit credit enhancement of such bonds, whether provided
17 by private or governmental sources other than sources backed
18 by the taxing power of the state. Nothing in this subsection
19 is intended to prohibit the pledging of additional funds or
20 revenues from private sources to secure such bonds. Internal
21 Revenue Service Ruling 63-20 corporations may receive State
22 Transportation Trust Fund grants and loans from the
23 department. The department may enter into public-private
24 partnership agreements with Internal Revenue Service Ruling
25 63-20 corporations for projects under this section, but shall
26 not agree to expend any funds not appropriated for this
27 purpose. The provisions of s. 339.135(6) shall apply to such
28 agreements.

29 (10) The department may lend funds from the Toll
30 Facilities Revolving Trust Fund, as outlined in s. 338.251, to
31 Internal Revenue Service Ruling 63-20 corporations that

1 construct projects containing toll facilities approved under
2 this section. To be eligible, the Internal Revenue Service
3 Ruling 63-20 corporation must meet the provisions of s.
4 338.251 and must either provide an indication from a
5 nationally recognized rating agency that the senior bonds of
6 the 63-20 corporation will be investment grade or must provide
7 credit support, such as a letter of credit or other means
8 acceptable to the department, to ensure that the loans will be
9 fully repaid as required by law. The state's liability for
10 debt of a facility shall be limited to the amount approved for
11 that specific facility in the department's 5-year work program
12 adopted pursuant to s. 339.135.

13 (11)(6) Notwithstanding s. 341.327, a fixed-guideway
14 transportation system authorized by the department to be
15 wholly or partially within the department's right-of-way
16 pursuant to a lease granted under s. 337.251 may operate at
17 any safe speed.

18 Section 2. Paragraph (m) of subsection (2) of section
19 348.0004, Florida Statutes, is repealed.

20 Section 3. Subsection (9) is added to section
21 348.0004, Florida Statutes, to read:

22 348.0004 Purposes and powers.--

23 (9) The Legislature hereby finds and declares that
24 there is a public need for rapid construction of safe and
25 efficient transportation facilities for the purpose of travel
26 within the state and that it is in the public's interest to
27 provide for public-private partnership agreements to
28 effectuate the construction of additional safe, convenient,
29 and economical transportation facilities.

30 (a) An expressway authority in any county as defined
31 in s. 125.011(1) may receive or solicit proposals and enter

1 into agreements with private entities, or consortia thereof,
2 for the building, operation, ownership, or financing or
3 extensions or other improvements to existing expressway
4 authority transportation facilities or new transportation
5 facilities that are within the jurisdiction of such an
6 expressway authority. Such an expressway authority is
7 authorized to adopt rules to implement this subsection and
8 shall by rule establish an application fee for the submission
9 of unsolicited proposals under this subsection. The fee must
10 be sufficient to pay the costs of evaluating the proposals.
11 Such an expressway authority may engage the services of
12 private consultants to assist in the evaluation. Before
13 approval, such an expressway authority must determine that the
14 proposed project:

- 15 1. Is in the public's best interest.
- 16 2. Would have adequate safeguards in place to ensure
17 that no additional costs or service disruptions would be
18 realized by the traveling public and citizens of the state in
19 the event of default by the private entity or consortium or
20 cancellation of the agreement by such expressway authority.

21 (b) Such an expressway authority may request proposals
22 for public-private transportation projects or, if such an
23 expressway authority receives an unsolicited proposal that it
24 has an interest in evaluating, it shall publish a notice in
25 the Florida Administrative Weekly and a newspaper of general
26 circulation in the county in which such expressway authority
27 is located at least once a week for 2 weeks stating that such
28 expressway authority has received the proposal and will
29 accept, for 60 days after the initial date of publication,
30 other proposals for the same project purpose. A copy of the
31 notice must be mailed to each local government in the affected

1 areas. After the public notification period has expired, the
2 expressway authority shall then rank the proposals in order of
3 preference. In ranking the proposals the expressway authority
4 may consider, but is not limited to, professional
5 qualifications, general business terms, innovative engineering
6 or cost-reduction terms, finance plans, and the need for state
7 funds to deliver the proposal. The expressway authority shall
8 negotiate with the top ranked proposer in good faith, and, if
9 the expressway authority is not satisfied with the results of
10 the negotiations, the expressway authority may, at its sole
11 discretion, terminate negotiations with the proposer. If these
12 negotiations are unsuccessful, the expressway authority may go
13 to the second and lower ranked firms in order using this same
14 procedure. If only one proposal is received, the expressway
15 authority may negotiate in good faith, and, if the expressway
16 authority is not satisfied with the results of the
17 negotiations, the expressway authority may, at its sole
18 discretion terminate negotiations with the proposers.
19 Notwithstanding this paragraph, the expressway authority may,
20 at its sole discretion, reject all proposals at any point in
21 the process up to completion of a contract with the proposer.

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

28 (d) Each transportation facility constructed pursuant
29 to this subsection shall comply with all requirements of
30 federal, state, and local laws; state, regional, and local
31 comprehensive plans; such expressway authority's rules,

1 policies, procedures, and standards for transportation
2 facilities; and any other conditions such expressway authority
3 determines to be in the public's best interest.

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

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

19 (g) Such an expressway authority shall have the
20 authority to create, or assist in the creation of, tax-exempt,
21 public-purpose Internal Revenue Service Ruling 63-20
22 corporations as provided for under the Internal Revenue Code.
23 Any bonds issued by the 63-20 corporation shall be payable
24 solely from and secured by a lien upon and pledge of the
25 revenues received by the 63-20 corporation. Any bonds issued
26 by the 63-20 corporation shall not be or constitute a general
27 indebtedness of the state, any department or agency thereof,
28 or any political subdivision thereof within the meaning of any
29 constitutional or statutory provision or limitation. The full
30 faith and credit of the state shall not be pledged to the
31 payment of the principal of or interest on the bonds issued by

1 the 63-20 corporation. No owner of any of the bonds shall ever
2 have the right to require or compel the exercise of the taxing
3 power of the state or any department or agency of the state
4 for payment thereof, and the bonds shall not constitute a lien
5 upon any property owned by the state or any department or
6 agency of the state. Bonds issued by the 63-20 corporation
7 must be rated investment grade by a nationally recognized
8 credit rating agency. Nothing in this paragraph is intended to
9 prohibit credit enhancement of such bonds, whether provided by
10 private or governmental sources other than sources backed by
11 the taxing power of the state. Nothing in this paragraph is
12 intended to prohibit the pledging of additional funds or
13 revenues from private sources to secure such bonds. Such an
14 expressway authority may enter into public-private partnership
15 agreements with Internal Revenue Service Ruling 63-20
16 corporations for projects under this paragraph.

17 (h) Such an expressway authority or Internal Revenue
18 Service Ruling 63-20 corporation created under this subsection
19 shall be entitled to apply for grants and loans from the
20 department for projects under this subsection, subject to the
21 same eligibility criteria and other terms and conditions as
22 would apply to projects of such an expressway authority
23 undertaken without private participation.

24 Section 4. This act shall take effect upon becoming a
25 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1582

The Committee Substitute creates an alternative procurement procedure for public-private partnerships where there are limited bidders but provides that no pledge of the taxing or credit power of the State of Florida agencies shall occur. The Florida Department of Transportation and the Miami-Dade Expressway Authority are given wide latitude to negotiate such partnership agreements when in the best interests of the public.