

720-134AXA-02

Bill No. CS/HB 435

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Kyle offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause

and insert:

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

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

(1) The department may receive or solicit proposals and, ~~with legislative approval by a separate bill for each facility,~~ enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities. The department is

1 authorized to adopt rules to implement this section and shall  
2 by rule establish an application fee for the submission of  
3 proposals under this section. The fee must be sufficient to  
4 pay the costs of evaluating the proposals. The department may  
5 engage the services of private consultants to assist in the  
6 evaluation. Before ~~seeking legislative~~ approval, the  
7 department must determine that the proposed project:

8 (a) Is in the public's best interest.  
9 (b) Would not require state funds to be used unless  
10 there is an overriding state interest; however, the department  
11 may use state resources for a transportation facility project  
12 that is on the State Highway System or that provides for  
13 increased mobility on the state's transportation system.~~and~~

14 (c) Would have adequate safeguards in place to ensure  
15 that no additional costs or service disruptions would be  
16 realized by the traveling public and citizens of the state in  
17 the event of default or cancellation of the agreement by the  
18 department.

19  
20 The department shall ensure that all reasonable costs to the  
21 state related to transportation facilities that are not part  
22 of the State Highway System are borne by the public-private  
23 entity.The department shall also ensure that all reasonable  
24 costs to the state,~~and substantially affected local~~  
25 governments,~~and utilities, related to the private~~  
26 ~~transportation facility,~~are borne by the public-private  
27 ~~private~~ entity for transportation facilities that are owned by  
28 private entities.

29 (2) The use of funds from the State Transportation  
30 Trust Fund is limited to advancing projects already programmed  
31 in the adopted 5-year work program or to no more than a

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1 statewide total of \$50 million in capital costs for all  
2 projects not programmed in the adopted 5-year work program.  
3 (3) The department may request proposals for  
4 public-private transportation projects or, if the department  
5 receives a proposal, shall publish a notice in the Florida  
6 Administrative Weekly and a newspaper of general circulation  
7 at least once a week for 2 weeks, stating that the department  
8 has received the proposal and will accept, for 60 days after  
9 the initial date of publication, other proposals for the same  
10 project purpose. A copy of the notice must be mailed to each  
11 local government in the affected area. After the public  
12 notification period has expired, the department shall then  
13 rank the proposals in order of preference. In ranking the  
14 proposals, the department may consider, but is not limited to  
15 considering, professional qualifications, general business  
16 terms, innovative engineering or cost-reduction terms, finance  
17 plans, and the need for state funds to deliver the proposal.  
18 The department shall negotiate with the top-ranked proposer in  
19 good faith, and if the department is not satisfied with the  
20 results of said negotiations, the department may, at its sole  
21 discretion, terminate negotiations with said proposer. If  
22 these negotiations are unsuccessful, the department may go to  
23 the second and lower-ranked firms in order using this same  
24 procedure. If only one proposal is received, the department  
25 may negotiate in good faith, and if the department is not  
26 satisfied with the results of said negotiations, the  
27 department may, at its sole discretion, terminate negotiations  
28 with the said proposers. Notwithstanding any other provision  
29 of this subsection, the department may, at its sole  
30 discretion, reject all proposals at any point in the process  
31 up to completion of a contract with the proposer.

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

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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. Any bonds issued by the  
10 63-20 corporation shall be payable solely from and secured by  
11 a lien upon and pledge of the revenues received by the 63-20  
12 corporation. Any bonds issued by the 63-20 corporation shall  
13 not be or constitute a general indebtedness of the State of  
14 Florida, any department or agency thereof, or any political  
15 subdivision thereof within the meaning of any constitutional  
16 or statutory provision or limitation. The full faith and  
17 credit of the State of Florida shall not be pledged to the  
18 payment of the principal of or interest on the bonds issued by  
19 the 63-20 corporation. No owner of any of the bonds shall ever  
20 have the right to require or compel the exercise of the taxing  
21 power of the State of Florida or any department or agency of  
22 the state for payment thereof, and the bonds shall not  
23 constitute a lien upon any property owned by the State of  
24 Florida or any department or agency of the state. Bonds issued  
25 by the 63-20 corporation shall be rated investment grade by a  
26 nationally recognized credit rating agency. Nothing in this  
27 subsection is intended to prohibit credit enhancement of such  
28 bonds, whether provided by private or governmental sources  
29 other than sources backed by the taxing power of the State of  
30 Florida. Nothing in this subsection is intended to prohibit  
31 the pledging of additional funds or revenues from private

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1 sources to secure such bonds. Internal Revenue Service Ruling  
2 63-20 corporations may receive State Transportation Trust Fund  
3 grants and loans from the department. The department shall be  
4 empowered to enter into public-private partnership agreements  
5 with Internal Revenue Service Ruling 63-20 corporations for  
6 projects under this section but shall not agree to expend any  
7 funds not appropriated for this purpose. The provisions of s.  
8 339.135(6) shall apply to such agreements.

9 (10) The department may lend funds from the Toll  
10 Facilities Revolving Trust Fund, as outlined in s. 338.251, to  
11 Internal Revenue Service Ruling 63-20 corporations that  
12 construct projects containing toll facilities approved under  
13 this section. To be eligible, the Internal Revenue Service  
14 Ruling 63-20 corporation must meet the provisions of s.  
15 338.251 and must either provide an indication from a  
16 nationally recognized rating agency that the senior bonds of  
17 the 63-20 corporation will be investment grade or must provide  
18 credit support, such as a letter of credit or other means  
19 acceptable to the department, to ensure that the loans will be  
20 fully repaid as required by law. The state's liability for  
21 debt of a facility shall be limited to the amount approved for  
22 that specific facility in the department's 5-year work program  
23 adopted pursuant to s. 339.135.

24 (11)(6) Notwithstanding s. 341.327, a fixed-guideway  
25 transportation system authorized by the department to be  
26 wholly or partially within the department's right-of-way  
27 pursuant to a lease granted under s. 337.251 may operate at  
28 any safe speed.

29 Section 2. Paragraph (m) of subsection (2) of section  
30 348.0004, Florida Statutes, is repealed.

31 Section 3. Subsection (9) is added to section

1 348.0004, Florida Statutes, to read:

2 348.0004 Purposes and powers.--

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

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

- 26 1. Is in the public's best interest.  
27 2. Would have adequate safeguards in place to ensure  
28 that no additional costs or service disruptions would be  
29 realized by the traveling public and citizens of the state in  
30 the event of default by the private entity or consortium or  
31 cancellation of the agreement by such expressway authority.

1        (b) Such an expressway authority may request proposals  
2 for public-private transportation projects or, if such an  
3 expressway authority receives an unsolicited proposal that it  
4 has an interest in evaluating, it shall publish a notice in  
5 the Florida Administrative Weekly and a newspaper of general  
6 circulation in the county in which such expressway authority  
7 is located at least once a week for 2 weeks stating that such  
8 expressway authority has received the proposal and will  
9 accept, for 60 days after the initial date of publication,  
10 other proposals for the same project purpose. A copy of the  
11 notice must be mailed to each local government in the affected  
12 areas. After the public notification period has expired, the  
13 expressway authority shall then rank the proposals in order of  
14 preference. In ranking the proposals, the expressway authority  
15 may consider, but is not limited to considering, professional  
16 qualifications, general business terms, innovative engineering  
17 or cost-reduction terms, finance plans, and the need for state  
18 funds to deliver the proposal. The expressway authority shall  
19 negotiate with the top-ranked proposer in good faith, and if  
20 the expressway authority is not satisfied with the results of  
21 said negotiations, the expressway authority may, at its sole  
22 discretion, terminate negotiations with said proposer. If  
23 these negotiations are unsuccessful, the expressway authority  
24 may go to the second and lower-ranked firms in order using  
25 this same procedure. If only one proposal is received, the  
26 expressway authority may negotiate in good faith, and if the  
27 expressway authority is not satisfied with the results of said  
28 negotiations, the expressway authority may, at its sole  
29 discretion, terminate negotiations with the said proposers.  
30 Notwithstanding any other provision of this paragraph, the  
31 expressway authority may, at its sole discretion, reject all



1 proposals at any point in the process up to completion of a  
2 contract with the proposer.

3 (c) Agreements entered into pursuant to this  
4 subsection may authorize the private entity to impose tolls or  
5 fares for the use of the facility. However, the amount and  
6 use of toll or fare revenues may be regulated by such an  
7 expressway authority to avoid unreasonable costs to users of  
8 the facility.

9 (d) Each transportation facility constructed pursuant  
10 to this subsection shall comply with all requirements of  
11 federal, state, and local laws; state, regional, and local  
12 comprehensive plans; such expressway authority's rules,  
13 policies, procedures, and standards for transportation  
14 facilities; and any other conditions such expressway authority  
15 determines to be in the public's best interest.

16 (e) Such an expressway authority may exercise any  
17 power possessed by it, including eminent domain, with respect  
18 to the development and construction of transportation projects  
19 to facilitate the development and construction of  
20 transportation projects pursuant to this subsection. Such an  
21 expressway authority may pay all or part of the cost of  
22 operating and maintaining the facility or may provide services  
23 to the private entity for which it shall be entitled to  
24 receive full or partial reimbursement for services rendered.

25 (f) Except as herein provided, the provisions of this  
26 subsection are not intended to amend existing laws by further  
27 expanding or further restricting the authority of local  
28 governmental entities to regulate and enter into cooperative  
29 arrangements with the private sector for the planning,  
30 construction, and operation of transportation facilities.

31 (g) Such an expressway authority shall have the

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1 authority to create or assist in the creation of tax-exempt,  
2 public-purpose Internal Revenue Service Ruling 63-20  
3 corporations as provided for under the Internal Revenue Code.  
4 Any bonds issued by the 63-20 corporation shall be payable  
5 solely from and secured by a lien upon and pledge of the  
6 revenues received by the 63-20 corporation. Any bonds issued  
7 by the 63-20 corporation shall not be or constitute a general  
8 indebtedness of the State of Florida, any department or agency  
9 thereof, or any political subdivision thereof within the  
10 meaning of any constitutional or statutory provision or  
11 limitation. The full faith and credit of the State of Florida  
12 shall not be pledged to the payment of the principal of or  
13 interest on the bonds issued by the 63-20 corporation. No  
14 owner of any of the bonds shall ever have the right to require  
15 or compel the exercise of the taxing power of the State of  
16 Florida or any department or agency of the state for payment  
17 thereof, and the bonds shall not constitute a lien upon any  
18 property owned by the State of Florida or any department or  
19 agency of the state. Bonds issued by the 63-20 corporation  
20 shall be rated investment grade by a nationally recognized  
21 credit rating agency. Nothing in this paragraph is intended to  
22 prohibit credit enhancement of such bonds, whether provided by  
23 private or governmental sources other than sources backed by  
24 the taxing power of the State of Florida. Nothing in this  
25 paragraph is intended to prohibit the pledging of additional  
26 funds or revenues from private sources to secure such bonds.  
27 Such an expressway authority shall be empowered to enter into  
28 public-private partnership agreements with Internal Revenue  
29 Service Ruling 63-20 corporations for projects under this  
30 subsection.

31 (h) Such an expressway authority or Internal Revenue

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

7 Section 4. This act shall take effect upon becoming a  
 8 law.

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11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 remove: the entire title

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15 and insert:

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A bill to be entitled

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An act relating to transportation; amending s.

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

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transportation facilities; eliminating the

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requirement that the Legislature approve such

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facilities; providing requirements for the use

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of funds from the State Transportation Trust

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Fund; providing requirements with respect to

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proposals; providing for a selection process;

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providing for specific project approval by the

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Legislature for certain projects; authorizing

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the Department of Transportation to create

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certain corporations; authorizing such

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corporations to issue bonds; authorizing the

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department to lend certain funds to such

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corporations; authorizing the department to

1           adopt rules; repealing s. 348.0004(2)(m), F.S.,  
2           relating to private entity proposals for  
3           transportation projects; amending s. 348.0004,  
4           F.S.; establishing a process enabling certain  
5           expressway authorities to participate in  
6           public-private partnerships to build, operate,  
7           own, or finance certain transportation  
8           facilities; specifying the expressway  
9           authority's role in such projects and providing  
10          rulemaking authority; providing for a selection  
11          process; providing for the assessment of tolls;  
12          providing for creation of certain tax-exempt,  
13          public-purpose corporations; authorizing such  
14          corporations to issue bonds; providing an  
15          effective date.

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