

720-134AX-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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ORIGINAL STAMP BELOW

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11 Representative(s) Kyle offered the following:

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13 **Amendment (with title amendment)**

14 Remove everything after the enacting clause

15

16 and insert:

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

19 334.30 Public-private ~~Private~~ transportation
20 facilities.--The Legislature hereby finds and declares that
21 there is a public need for rapid construction of safe and
22 efficient transportation facilities for the purpose of travel
23 within the state, and that it is in the public's interest to
24 provide for public-private partnership agreements to
25 effectuate the construction of additional safe, convenient,
26 and economical transportation facilities.

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

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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 solicit design-build proposals
4 for projects proposed under this section as provided for in s.
5 287.055. Alternatively, the department may receive unsolicited
6 proposals for projects under this section. For unsolicited
7 proposals, the rules of procurement as provided in s. 287.055
8 shall accommodate the following modifications to account for
9 an unsolicited proposal process for projects under this
10 section:

11 (a) Upon receipt of an unsolicited proposal for
12 projects under this section, the department shall promptly
13 announce the project location and limits of the project
14 contained in the unsolicited proposal by placing an
15 advertisement in the Florida Administrative Weekly and a major
16 newspaper of general circulation in the vicinity of the
17 proposed project at least once per week for 2 weeks. This
18 notification must include an invitation to submit competing
19 proposals for the same project purpose within 60 days after
20 the initial publication of the notice. A copy of the notice
21 must be mailed to each local government in the affected area.

22 (b) In the instance of an unsolicited proposal and
23 after the public notification period has expired, the
24 requirement for a minimum of three proposals as provided in s.
25 287.055(4) is overridden. If fewer than three firms or private
26 entities submit proposals, the department shall determine if
27 the one or two private entities submitting proposals are
28 qualified and shall rank the private entities in the order of
29 preference as provided for in s. 287.055(4)(b). In addition to
30 qualifications, the department may also consider general
31 business terms, creative cost-reduction tactics, preliminary

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1 financing plans, and other factors provided for in F.A.C.
2 14-107. The department shall use a qualifications-based
3 selection process for entering into a contract whereby the
4 selected firm or consortium shall subsequently establish a
5 guaranteed maximum price and guaranteed completion date. Since
6 the private entity may be a project developer, the private
7 entity is not required to be prequalified by the department
8 under s. 287.055(3)(c) if all appropriate and necessary
9 prequalification requirements are adequately met by
10 subconsultant and subcontractor members of the private
11 entity's consortium. If, after the public notification period
12 has expired, only one firm has submitted a proposal, the
13 department is not under any obligation to enter into a
14 contract with the sole proposer. If a sole proposer is
15 qualified, the department shall negotiate with that proposer
16 in good faith and, if the department is not satisfied with the
17 results of the negotiations, the department may, at its sole
18 discretion, terminate negotiations with the proposer. Upon
19 termination of all negotiations with all proposers, the
20 department may, at its discretion, prepare a design criteria
21 package and proceed with a design-build procurement for the
22 project as provided for under s. 287.055(10).

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

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

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

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

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

28 ~~(9)~~ The department shall have the authority to create
29 or assist in the creation of tax-exempt, public-purpose
30 Internal Revenue Service Ruling 63-20 corporations as provided
31 for under the Internal Revenue Code. Any bonds issued by the

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1 63-20 corporation shall be payable solely from and secured by
2 a lien upon and pledge of the proceeds of the revenues
3 received by the 63-20 corporation. The payment of the
4 principal of and interest on the bonds may be additionally
5 secured by a lien upon and pledge of the bond trust funds and
6 income received by the 63-20 corporation from the investment
7 of balances in the bond trust funds. The pledged revenues,
8 bond trust funds, investment income, and available funds on
9 deposit in the proposed project's bond construction fund, if
10 any, shall constitute the trust estate for purposes of
11 securing any bonds issued by the 63-20 corporation. Any bonds
12 issued by the 63-20 corporation shall not be or constitute a
13 general indebtedness of the State of Florida, any department
14 or agency thereof, or any political subdivision thereof within
15 the meaning of any constitutional or statutory provision or
16 limitation, but are payable solely from and secured by a lien
17 upon and pledge of the pledged revenues and the trust estate.
18 The full faith and credit of the State of Florida may not be
19 pledged to the payment of the principal of or interest on the
20 bonds issued by the 63-20 corporation. No owner of any of the
21 bonds shall ever have the right to require or compel the
22 exercise of the taxing power of the State of Florida or any
23 department or agency of the state for payment thereof, and the
24 bonds do not constitute a lien upon any property owned by the
25 State of Florida or any department or agency of the state.
26 Bonds issued by the 63-20 corporation must be rated investment
27 grade by a nationally recognized credit rating agency.
28 Internal Revenue Service Ruling 63-20 corporations may receive
29 State Transportation Trust Fund grants and loans from the
30 department. The department shall be empowered to enter into
31 public-private partnership agreements with Internal Revenue

1 Service Ruling 63-20 corporations for projects under this
2 section but shall not agree to expend any funds not
3 appropriated for this purpose. The provisions of s. 339.135(6)
4 shall apply to such agreements.

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

20 (11)(6) Notwithstanding s. 341.327, a fixed-guideway
21 transportation system authorized by the department to be
22 wholly or partially within the department's right-of-way
23 pursuant to a lease granted under s. 337.251 may operate at
24 any safe speed.

25 Section 2. Paragraph (m) of subsection (2) of section
26 348.0004, Florida Statutes, is repealed.

27 Section 3. Subsection (9) is added to section
28 348.0004, Florida Statutes, to read:

29 348.0004 Purposes and powers.--

30 (9) The Legislature hereby finds and declares that
31 there is a public need for rapid construction of safe and

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1 efficient transportation facilities for the purpose of travel
2 within the state and that it is in the public's interest to
3 provide for public-private partnership agreements to
4 effectuate the construction of additional safe, convenient,
5 and economical transportation facilities.

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

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

28 (b) Such an expressway authority may request proposals
29 for public-private transportation projects as provided for in
30 s. 287.055. Alternatively, such an expressway authority may
31 receive unsolicited proposals for public-private projects. For

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1 unsolicited proposals that the expressway authority has an
2 interest in evaluating, the rules of procurement as provided
3 in s. 287.055 shall accommodate the following modifications to
4 account for an unsolicited proposal process for projects under
5 this section:

6 1. Such expressway authority shall publish a notice in
7 the Florida Administrative Weekly and a newspaper of general
8 circulation in the county in which such expressway authority
9 is located at least once a week for 2 weeks stating that such
10 expressway authority has received the proposal and will
11 accept, for 60 days after the initial date of publication,
12 other proposals for the same project purpose. A copy of the
13 notice must be mailed to each local government in the affected
14 areas.

15 2. In the instance of an unsolicited proposal and
16 after the public notification period has expired, if fewer
17 than three firms or private entities submit proposals, the
18 authority shall determine if the one or two private entities
19 submitting proposals are qualified and rank the private
20 entities in the order of preference as provided for in s.
21 287.055(4)(b). In addition to qualifications, the authority
22 may also consider general business terms, creative
23 cost-reduction tactics, preliminary financing plans, and other
24 factors provided for in the authority's rules. The authority
25 shall use a qualifications-based selection process for
26 entering into a contract whereby the selected firm or
27 consortium shall subsequently establish a guaranteed maximum
28 price and guaranteed completion date. Since the private entity
29 may be a project developer, the private entity is not required
30 to be prequalified by the department under s. 287.055(3)(c) if
31 all appropriate and necessary prequalification requirements

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1 are adequately met by subconsultant and subcontractor members
2 of the private entity's consortium. If, after the public
3 notification period has expired, only one firm has submitted a
4 proposal, the authority is not under any obligation to enter
5 into a contract with the sole proposer. If the sole proposer
6 is qualified, the authority shall negotiate with that proposer
7 in good faith and, if the authority is not satisfied with the
8 results of the negotiations, the authority may, at its sole
9 discretion, terminate negotiations with the proposer. Upon
10 termination of all negotiations with all proposers, the
11 authority may, at its discretion, prepare a design criteria
12 package and proceed with a design-build procurement for the
13 project as provided for under s. 287.055(10).

14 (c) Agreements entered into pursuant to this
15 subsection may authorize the private entity to impose tolls or
16 fares for the use of the facility. However, the amount and
17 use of toll or fare revenues may be regulated by such an
18 expressway authority to avoid unreasonable costs to users of
19 the facility.

20 (d) Each transportation facility constructed pursuant
21 to this subsection shall comply with all requirements of
22 federal, state, and local laws; state, regional, and local
23 comprehensive plans; such expressway authority's rules,
24 policies, procedures, and standards for transportation
25 facilities; and any other conditions such expressway authority
26 determines to be in the public's best interest.

27 (e) Such an expressway authority may exercise any
28 power possessed by it, including eminent domain, with respect
29 to the development and construction of transportation projects
30 to facilitate the development and construction of
31 transportation projects pursuant to this subsection. Such an

1 expressway authority may pay all or part of the cost of
2 operating and maintaining the facility or may provide services
3 to the private entity for which it shall be entitled to
4 receive full or partial reimbursement for services rendered.

5 (f) Except as herein provided, the provisions of this
6 subsection are not intended to amend existing laws by further
7 expanding or further restricting the authority of local
8 governmental entities to regulate and enter into cooperative
9 arrangements with the private sector for the planning,
10 construction, and operation of transportation facilities.

11 (g) Such an expressway authority shall have the
12 authority to create, or assist in the creation of, tax-exempt,
13 public-purpose Internal Revenue Service Ruling 63-20
14 corporations as provided for under the Internal Revenue Code.
15 Any bonds issued by the 63-20 corporation shall be payable
16 solely from and secured by a lien upon and pledge of the
17 proceeds of the revenues received by the 63-20 corporation.

18 The payment of the principal of and interest on the bonds may
19 be additionally secured by a lien upon and pledge of the bond
20 trust funds and income received by the 63-20 corporation from
21 the investment of balances in the bond trust funds. The
22 pledged revenues, bond trust funds, investment income, and
23 available funds on deposit in the proposed project's bond
24 construction fund, if any, shall constitute the trust estate
25 for purposes of securing any bonds issued by the 63-20
26 corporation. Any bonds issued by the 63-20 corporation shall
27 not be or constitute a general indebtedness of the State of
28 Florida, any department or agency thereof, or any political
29 subdivision thereof within the meaning of any constitutional
30 or statutory provision or limitation, but are payable solely
31 from and secured by a lien upon and pledge of the pledged

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1 revenues and the trust estate. The full faith and credit of
 2 the State of Florida may not be pledged to the payment of the
 3 principal of or interest on the bonds issued by the 63-20
 4 corporation. No owner of any of the bonds shall ever have the
 5 right to require or compel the exercise of the taxing power of
 6 the State of Florida, or any department or agency of the state
 7 for payment thereof, and the bonds do not constitute a lien
 8 upon any property owned by the State of Florida or any
 9 department or agency of the state. Bonds issued by the 63-20
 10 corporation must be rated investment grade by a nationally
 11 recognized credit rating agency. Such an expressway authority
 12 may enter into public-private partnership agreements with
 13 Internal Revenue Service Ruling 63-20 corporations for
 14 projects under this subsection.

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

22 Section 4. This act shall take effect upon becoming a
 23 law.

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 25
 26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 remove: the entire title

29

30 and insert:

31 A bill to be entitled

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1 An act relating to transportation; amending s.
2 334.30, F.S.; providing for public-private
3 transportation facilities; eliminating the
4 requirement that the Legislature approve such
5 facilities; providing requirements for the use
6 of funds from the State Transportation Trust
7 Fund; providing requirements with respect to
8 proposals; requiring that the Department of
9 Transportation use a qualifications-based
10 selection process for certain contracts;
11 providing for specific project approval by the
12 Legislature for certain projects; authorizing
13 the Department of Transportation to create
14 certain corporations; authorizing such
15 corporations to issue bonds; authorizing the
16 department to lend certain funds to such
17 corporations; authorizing the department to
18 adopt rules; repealing s. 348.0004(2)(m), F.S.,
19 relating to private entity proposals for
20 transportation projects; amending s. 348.0004,
21 F.S.; establishing a process enabling certain
22 expressway authorities to participate in
23 public-private partnerships to build, operate,
24 own, or finance certain transportation
25 facilities; specifying the expressway
26 authority's role in such projects and providing
27 rulemaking authority; requiring that an
28 expressway authority use a qualifications-based
29 selection process for certain contracts;
30 providing for the assessment of tolls;
31 providing for creation of certain tax-exempt,

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1 public-purpose corporations; authorizing such
2 corporations to issue bonds; providing an
3 effective date.
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