

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

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

2

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

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

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

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

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

31

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

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

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

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

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

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

23 (5)~~(2)~~ Agreements entered into pursuant to this  
24 section may authorize the private entity to impose tolls or  
25 fares for the use of the facility. However, the amount and  
26 use of toll or fare revenues may be regulated by the  
27 department to avoid unreasonable costs to users of the  
28 facility.

29 (6)~~(3)~~ Each ~~private~~ transportation facility  
30 constructed pursuant to this section shall comply with all  
31 requirements of federal, state, and local laws; state,

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

5 ~~(7)(4)~~ The department may exercise any power possessed  
6 by it, including eminent domain, with respect to the  
7 development and construction of state transportation projects  
8 to facilitate the development and construction of  
9 transportation projects pursuant to this section. For  
10 public-private facilities located on the State Highway System,  
11 the department may pay all or part of the cost of operating  
12 and maintaining the facility. For facilities not located on  
13 the State Highway System, the department may provide services  
14 to the private entity and agreements for maintenance, law  
15 enforcement, and other services ~~entered into pursuant to this~~  
16 ~~section~~ shall provide for full reimbursement for services  
17 rendered.

18 ~~(8)(5)~~ Except as herein provided, the provisions of  
19 this section are not intended to amend existing laws by  
20 granting additional powers to, or further restricting, local  
21 governmental entities from regulating and entering into  
22 cooperative arrangements with the private sector for the  
23 planning, construction, and operation of transportation  
24 facilities.

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

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

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

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

12 (11)(6) Notwithstanding s. 341.327, a fixed-guideway  
13 transportation system authorized by the department to be  
14 wholly or partially within the department's right-of-way  
15 pursuant to a lease granted under s. 337.251 may operate at  
16 any safe speed.

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

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

21 348.0004 Purposes and powers.--

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

29 (a) An expressway authority in any county as defined  
30 in s. 125.011(1) may receive or solicit proposals and enter  
31 into agreements with private entities, or consortia thereof,

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

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

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



1 expressway authority shall then rank the proposals in order of  
2 preference. In ranking the proposals, the expressway authority  
3 may consider, but is not limited to considering, professional  
4 qualifications, general business terms, innovative engineering  
5 or cost-reduction terms, finance plans, and the need for state  
6 funds to deliver the proposal. The expressway authority shall  
7 negotiate with the top-ranked proposer in good faith, and if  
8 the expressway authority is not satisfied with the results of  
9 said negotiations, the expressway authority may, at its sole  
10 discretion, terminate negotiations with said proposer. If  
11 these negotiations are unsuccessful, the expressway authority  
12 may go to the second and lower-ranked firms in order using  
13 this same procedure. If only one proposal is received, the  
14 expressway authority may negotiate in good faith, and if the  
15 expressway authority is not satisfied with the results of said  
16 negotiations, the expressway authority may, at its sole  
17 discretion, terminate negotiations with the said proposers.  
18 Notwithstanding any other provision of this paragraph, the  
19 expressway authority may, at its sole discretion, reject all  
20 proposals at any point in the process up to completion of a  
21 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 of Florida, any department or agency  
28 thereof, or any political subdivision thereof within the  
29 meaning of any constitutional or statutory provision or  
30 limitation. The full faith and credit of the State of Florida  
31 shall not be pledged to the payment of the principal of or

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

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

26 Section 4. This act shall take effect upon becoming a  
27 law.

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