

720-134AXB-02

Bill No. CS/HB 757

Amendment No. 2 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Kyle offered the following:

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Amendment (with title amendment)

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On page 80, line 1, of the bill

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insert:

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Section 52. Section 334.30, Florida Statutes, is amended to read:

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334.30 Public-private ~~Private~~ transportation

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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.

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(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

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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.

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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

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

1 with the proposer.

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

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

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

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

31 (8)~~(5)~~ Except as herein provided, the provisions of

1 this section are not intended to amend existing laws by
2 granting additional powers to, or further restricting, local
3 governmental entities from regulating and entering into
4 cooperative arrangements with the private sector for the
5 planning, construction, and operation of transportation
6 facilities.

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

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1 the pledging of additional funds or revenues from private
2 sources to secure such bonds. Internal Revenue Service Ruling
3 63-20 corporations may receive State Transportation Trust Fund
4 grants and loans from the department. The department shall be
5 empowered to enter into public-private partnership agreements
6 with Internal Revenue Service Ruling 63-20 corporations for
7 projects under this section but shall not agree to expend any
8 funds not appropriated for this purpose. The provisions of s.
9 339.135(6) shall apply to such agreements.

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

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

30 Section 53. Paragraph (m) of subsection (2) of section
31 348.0004, Florida Statutes, is repealed.

1 Section 54. Subsection (9) is added to section
2 348.0004, Florida Statutes, to read:

3 348.0004 Purposes and powers.--

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

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

28 2. Would have adequate safeguards in place to ensure
29 that no additional costs or service disruptions would be
30 realized by the traveling public and citizens of the state in
31 the event of default by the private entity or consortium or

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

1 expressway authority may, at its sole discretion, reject all
2 proposals at any point in the process up to completion of a
3 contract with the proposer.

4 (c) Agreements entered into pursuant to this
5 subsection 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 such an
8 expressway authority to avoid unreasonable costs to users of
9 the facility.

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

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

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

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

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

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

11 And the title is amended as follows:

12 On page 8, line 1, after the semicolon,

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14 insert:

15 amending s. 334.30, F.S.; providing for
 16 public-private transportation facilities;
 17 eliminating the requirement that the
 18 Legislature approve such facilities; providing
 19 requirements for the use of funds from the
 20 State Transportation Trust Fund; providing
 21 requirements with respect to proposals;
 22 providing for a selection process; providing
 23 for specific project approval by the
 24 Legislature for certain projects; authorizing
 25 the Department of Transportation to create
 26 certain corporations; authorizing such
 27 corporations to issue bonds; authorizing the
 28 department to lend certain funds to such
 29 corporations; authorizing the department to
 30 adopt rules; repealing s. 348.0004(2)(m), F.S.,
 31 relating to private entity proposals for

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

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