

By the Committee on Transportation; and Senator Sebesta

306-1985-03

1 A bill to be entitled
2 An act relating to the Department of
3 Transportation; creating s. 215.617, F.S.;
4 authorizing the department to issue revenue
5 bonds financed by the repayment of loans from
6 the state-funded infrastructure bank; amending
7 s. 334.30, F.S.; providing for public-private
8 partnership agreements for transportation
9 facilities without prior legislative approval;
10 authorizing the department to adopt rules;
11 providing requirements for projects advanced by
12 a public-private partnership or private entity;
13 authorizing the department to request
14 proposals; requiring notice; providing
15 requirements for ranking proposals; amending s.
16 338.165, F.S.; authorizing the department to
17 request the Division of Bond Finance to issue
18 bonds secured by toll revenues collected on the
19 Beeline-East Expressway, the Sunshine Skyway
20 Bridge, and the Pinellas Bayway toll facilities
21 to provide funding for transportation projects
22 on the State Highway System in the counties in
23 which the projects are located; amending s.
24 338.2275, F.S.; increasing the cap on the
25 amount of bonds that may be issued to fund
26 approved turnpike projects; amending s.
27 338.235, F.S.; authorizing the turnpike
28 enterprise to secure products, business
29 opportunities, and services by competitive
30 solicitation; providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 215.617, Florida Statutes, is
4 created to read:

5 215.617 Bonds for state-funded infrastructure bank.--

6 (1) Upon the request of the Department of

7 Transportation, the Division of Bond Finance is authorized
8 pursuant to s. 11, Art. VII of the State Constitution and the
9 State Bond Act to issue revenue bonds, for and on behalf of
10 the Department of Transportation, for the purpose of financing
11 or refinancing the construction, reconstruction, and
12 improvement of projects that are eligible to receive
13 assistance from the state-funded infrastructure bank as
14 provided in s. 339.55. The facilities to be financed with the
15 proceeds of such bonds are designated as state fixed capital
16 outlay projects for the purposes of s. 11(d), Art. VII of the
17 State Constitution, and the specific facilities to be financed
18 shall be determined by the Department of Transportation in
19 accordance with s. 339.55. Each project to be financed with
20 the proceeds of the bonds issued pursuant to this section is
21 hereby approved as required by s. 11(f), Art. VII of the State
22 Constitution. The Division of Bond Finance is authorized to
23 consider innovative financing techniques, which may include,
24 but are not limited to, innovative bidding and structures of
25 potential financings that may result in negotiated
26 transactions.

27 (2) Bonds issued pursuant to this section shall be
28 payable primarily from a prior and superior claim on all
29 state-funded infrastructure bank repayments received each year
30 with respect to state-funded infrastructure bank projects
31 undertaken in accordance with s. 339.55.

1 (3) The duration of each series of bonds may not
2 exceed 30 annual maturities.

3 (4) The bonds issued under this section shall not
4 constitute a general obligation or debt of the state or a
5 pledge of the full faith and credit or taxing power of the
6 state. The bonds shall be secured by and are payable from the
7 revenues pledged in accordance with this section and the
8 resolution authorizing their issuance.

9 (5) The state does covenant with the holders of bonds
10 issued under this section that it will not take any action
11 that will materially and adversely affect the rights of such
12 bondholders as long as the bonds authorized by this section
13 are outstanding.

14 (6) Any complaint for validation of bonds issued
15 pursuant to this section shall be filed in the circuit court
16 of the county where the seat of state government is situated,
17 the notice required to be published by s. 75.06 shall be
18 published only in the county where the complaint is filed, and
19 the complaint and order of the circuit court shall be served
20 only on the state attorney of the circuit in which the action
21 is pending.

22 Section 2. Section 334.30, Florida Statutes, is
23 amended to read:

24 334.30 Private transportation facilities.--The
25 Legislature hereby finds and declares that there is a public
26 need for rapid construction of safe and efficient
27 transportation facilities for the purpose of travel within the
28 state, and that it is in the public's interest to provide for
29 public-private partnership agreements to effectuate the
30 construction of additional safe, convenient, and economical
31 transportation facilities.

1 (1) The department may receive or solicit proposals
2 ~~and, with legislative approval by a separate bill for each~~
3 ~~facility,~~ enter into agreements with private entities, or
4 consortia thereof, for the building, operation, ownership, or
5 financing of transportation facilities as provided in
6 subsection (2). The department may adopt rules to administer
7 this section and shall by rule establish an application fee
8 for the submission of proposals under this section. The fee
9 must be sufficient to pay the costs of evaluating the
10 proposals. The department may engage the services of private
11 consultants to assist in the evaluation. ~~Before seeking~~
12 ~~legislative approval,~~ The department must determine that the
13 proposed project:

14 (a) Is in the public's best interest;

15 (b) Complies with the provisions of subsection (2)
16 ~~would not require state funds to be used unless there is an~~
17 ~~overriding state interest;~~ and

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

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

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1 ~~private~~ entity for transportation facilities which are owned
2 by private entities.

3 (2)(a) Public-private partnerships or private entities
4 may advance projects programmed in the first 3 years of the
5 adopted work program to be reimbursed from department funds
6 for the project as programmed in the adopted work program.

7 (b) Public-private partnerships or private entities
8 may advance projects programmed in the 4th and 5th years of
9 the adopted work program to be reimbursed from department
10 funds for the project as programmed in the adopted work
11 program. The total capital costs to the department for all
12 projects advanced under this paragraph may not exceed \$50
13 million without specific project approval by the Legislature.

14 (c) Public-private partnerships or private entities
15 may advance projects on the Florida Intrastate Highway System
16 programmed in the adopted 5-year work program to be reimbursed
17 from department funds for the project as programmed in the
18 adopted work program.

19 (d) Public-private partnerships or private entities
20 may advance projects that are not programmed in the adopted
21 5-year work program but are on the State Highway System and
22 included in the local metropolitan planning organization's or
23 the department's long-range transportation plans, to be
24 reimbursed from department funds beyond the adopted 5-year
25 work program. The total capital costs to the department for
26 all projects advanced under this paragraph may not exceed \$50
27 million without specific project approval by the Legislature.

28 (3) The department may request proposals from
29 public-private transportation projects or, if the department
30 receives an unsolicited proposal, the department shall publish
31 a notice in the Florida Administrative Weekly and a newspaper

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

26 (4)(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.

1 (5)~~(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 (6)~~(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. The
13 department may provide services to the private entity.
14 Agreements for maintenance, law enforcement, and other
15 services entered into pursuant to this section shall provide
16 for full reimbursement for services rendered.

17 (7)~~(5)~~ Except as herein provided, the provisions of
18 this section are not intended to amend existing laws by
19 granting additional powers to, or further restricting, local
20 governmental entities from regulating and entering into
21 cooperative arrangements with the private sector for the
22 planning, construction, and operation of transportation
23 facilities.

24 (8)~~(6)~~ A fixed-guideway transportation system
25 authorized by the department to be wholly or partially within
26 the department's right-of-way pursuant to a lease granted
27 under s. 337.251 may operate at any safe speed.

28 Section 3. Subsection (3) of section 338.165, Florida
29 Statutes, is amended to read:

30 338.165 Continuation of tolls.--
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1 (3) Notwithstanding any other law to the contrary,
2 pursuant to s. 11, Art. VII of the State Constitution, and
3 subject to the requirements of subsection (2), the Department
4 of Transportation may request the Division of Bond Finance to
5 issue bonds secured by toll revenues collected on the
6 Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East
7 Expressway, and the Pinellas Bayway to fund transportation
8 projects located within the county or counties in which the
9 project is located and contained in the ~~1993-1994 Adopted Work~~
10 ~~Program or in any subsequent~~ adopted work program of the
11 department.

12 Section 4. Subsection (1) of section 338.2275, Florida
13 Statutes, is amended to read:

14 338.2275 Approved turnpike projects.--

15 (1) Legislative approval of the department's tentative
16 work program that contains the turnpike project constitutes
17 approval to issue bonds as required by s. 11(f), Art. VII of
18 the State Constitution. Turnpike projects approved to be
19 included in future tentative work programs include, but are
20 not limited to, projects contained in the 2003-2004 ~~1997-1998~~
21 tentative work program ~~and potential expansion projects listed~~
22 ~~in the January 25, 1997, report submitted to the Florida~~
23 ~~Transportation Commission titled "Florida's Turnpike Building~~
24 ~~on the Past - Preparing for the Future."~~A maximum of \$4.5 ~~\$3~~
25 billion of bonds may be issued to fund approved turnpike
26 projects.

27 Section 5. Subsection (2) of section 338.235, Florida
28 Statutes, is amended to read:

29 338.235 Contracts with department for provision of
30 services on the turnpike system.--

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1 (2) In order to secure high-quality products, business
2 opportunities, and services on the turnpike system, products,
3 business opportunities, and services authorized by s. 338.234
4 may be secured by competitive solicitation for ~~turnpike~~
5 ~~patrons, products and services authorized by s. 338.234(1) may~~
6 ~~be secured through the request-for-proposal process. If the~~
7 department receives an unsolicited proposal for products,
8 services, or business opportunities which it wishes to
9 consider, it shall publish a notice in a newspaper of general
10 circulation at least once a week for 2 weeks, or may broadcast
11 such notice by electronic media for 2 weeks, stating that it
12 has received a proposal and will accept other proposals on the
13 same subject for 30 days after the date of publication.The
14 department may select offers that ~~the proposal and fee which~~
15 best satisfy the conditions of a quality service, business
16 opportunity, or ~~and~~ product operation for the turnpike system.
17 The factors to be used in evaluating proposals include, but
18 are not limited to:
19 (a) The financial capacity of the provider;
20 (b) The willingness to contribute toward the cost of
21 facility construction;
22 (c) The type and quality of the service or product
23 offered;
24 (d) The price structure of the service or product
25 offered;
26 (e) Management experience and capabilities;
27 (f) The national brand names offered;
28 (g) The originality of the concept and its
29 relationship to the turnpike system;
30 (h) The lease rate; and
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1 (i) Other factors that the department may deem
2 pertinent.

3 Section 6. This act shall take effect upon becoming a
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 1752

9 The CS clarifies any public-private project must be in the the
10 Florida Department of Transportation's (FDOT) 5-year work
program or in an MPO long-range plan.

11 The CS also removes the requirement for the demonstration of
12 an overriding state interest for state funds to be spent in a
13 public-private partnership, and further ensures any project
14 undertaken pursuant to this section must be in FDOT's 5-year
15 work program or in an MPO long-range plan. The CS clarifies
the total capital costs to FDOT for projects in the 4th and
5th years of the work program, and projects in MPO long-range
plans may not exceed \$50 million without specific approval
from the Legislature.