HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1773 Transportation financing
SPONSOR(S): Transportation Committee
TIED BILLS: HB 1775 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Systems (SUB)	9 Y, 0 N	PUGH	MILLER
2) Transportation	21 Y, 0 N	PUGH	MILLER
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Department of Transportation (FDOT) is responsible for planning, designing, building, operating, maintaining, and financing the state's public transportation system. The agency operates primarily on a cash-flow basis, using revenues from state and federal motor fuel taxes and certain vehicle registration fees to fund its activities. Its major bond programs are the general obligation bonds issued for right-of-way acquisition and bridge construction; revenue bonds issued on behalf of the Turnpike Enterprise for its expansion and improvement projects; and revenue bonds issued for non-Turnpike toll facilities. All of FDOT's bonds are issued by the state Division of Bond Finance according to the provisions of the State Bond Act, ss. 215.57-215.83, F.S,

The Governor's proposed FDOT budget for fiscal year 03-04 is $5.4 billion, with about $262 million of that for debt service for the aforementioned bond programs. While its annual budget is a significant sum of money, FDOT is expecting overall reductions in state and federal funding because of a general economic decline.

HB 1773 revamps or amends four existing FDOT transportation programs in an effort to stretch agency dollars further. Specifically:

- Loans in the State Infrastructure Bank (SIB) program will be leveraged as investments backed by their repayments. FDOT is anticipating a return of $6 for every $1 leveraged.
- Current law allowing FDOT to enter into public-private partnerships for the development of toll roads and other transportation will be changed to permit private entities to form special corporations that qualify for tax-exempt bonds, thereby providing upfront, less-expensive capital for construction.
- The toll revenues of several non-Turnpike toll facilities that have repaid their debt service may be used to build transportation projects in the counties where the toll facilities are located; and
- The Turnpike Enterprise's bond cap will be raised from $3 billion to $4.5 billion, reflecting the financial health of the system and allowing it to advance projects in its work program.

It also extends to expressway authorities the ability to enter into public-private partnerships similar to those authorized for FDOT under the amended s. 334.30, F.S.

The fiscal impact of HB 1773 is indeterminate. FDOT has indicated that if HB 1773 becomes law and market conditions are favorable, the Division of Bond Finance in 2004 may issue $45 million in revenue bonds backed by Beeline-East Expressway toll revenues to finance improvements to State Road 520.

HB 1773 has no apparent constitutional defects. It takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[x]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

HB 1773 does not reduce government because it gives FDOT and local entities access to additional money to spend for transportation projects. Nor does it lower taxes, in the general sense, because the motoring public will continue to pay tolls on facilities that have retired the bonds sold to build them, and because it is likely drivers will pay tolls to use the roads and other transportation facilities built with the new bond revenues authorized under the legislation.

However, the trade-off in terms of public policy is that transportation projects the agency says are needed to reduce congestion, promote economic growth, and reduce travel time will be built because of the creative revenue streams authorized by HB 1773. The legislation also takes steps in reducing government reliance on providing transportation, because it amends current law on public-private partnerships to make it more workable and financially feasible for private investors.

B. EFFECT OF PROPOSED CHANGES:

State Infrastructure Bank (SIB)

Current Situation

Since 1997, FDOT has operated a federally funded "infrastructure bank," a self-sustaining, revolving loan fund that can lend funds and provide credit enhancement assistance to public and private entities. Florida, California, Rhode Island, and Missouri were the four states selected to establish infrastructure banks as pilot projects pursuant to the federal transportation funding program, TEA-21.

The federally funded "bank" was so popular that the Legislature, at FDOT's request, created a State Infrastructure Bank (SIB) in 2000 as part of the Governor's Mobility 2000 initiative. It was supposed to receive $150 million over three years in state general revenue to capitalize the fund. The SIB actually has a federal sub-account and a state sub-account, in order to keep the funds separate. The federal funds have a more limited use than those contributed by the state.

Generally, the SIB provides loans to help fund transportation projects that are on the State Highway System or which provide greater mobility on the state transportation system, and which otherwise may be delayed or not built. The SIB loans typically pay for only a portion of the total cost of the project. The criteria include:

- -- Must be consistent with MPO plans and local government comprehensive plans.
- -- Must provide a dedicated repayment source to ensure the loan is repaid.
- -- Will encourage, enhance, or create economic benefits.
- -- Enables project to proceed at an earlier date.
- -- SIB assistance fosters public-private partnerships and attract private investment.
- -- Will use new technologies, such as "intelligent transportation systems."
- -- Will maintain or protect the environment.
- -- Can demonstrate transportation benefits for improving intermodalism and safety.

FDOT staff review the applications, and make recommendations to the Secretary, based on whether criteria are met. The FDOT Secretary makes the final determination of which applicants receive SIB loans.

As structured, SIB loans are repaid from revenues generated by the project, such as tolls or other pledged resources. The repayments are then re-loaned to fund additional transportation projects. That is what makes it a self-sustaining revolving loan fund.

Since its creation, the SIB has attracted $120 million in federal capital and $101.1 million in state capital, plus interest earnings. Twenty-four loans using federal funds and 12 loans using state funds have been approved so far, for projects valued in excess of $3.1 billion. The average loan amount is $13.6 million, and the average loan duration is for 15.5 years. The SIB program has helped fund projects – mostly road improvements -- in all seven FDOT districts and for the Turnpike Enterprise.

FDOT says the SIB is an extremely popular program, but it is undergoing a financial setback. It has received $50 million less in federal money and about $56 million less from state general revenue, than originally planned, because of economic declines. Without a significant cash infusion or a change in the program, SIB can not issue any more loans until fiscal year 2007-2008.

<u>Effect of Proposed Changes</u>
FDOT is proposing to leverage the existing SIB portfolio of loan repayments by issuing revenue bonds -- in much the same way as banks leverage mortgage loans. The bonds will be repaid by the loan payments from the cities, counties and other entities that obtained the loans through the SIB.

In turn, the bond proceeds will be used to make available loans for new projects.

FDOT believes that an investment market exists for this leveraging proposal. Agency staff have calculated that the SIB could generate, conservatively, $100 million in available loan capacity annually. Leveraging the loan capacity could generate as much $600 million in additional projects.

Bond issuance costs, bond insurance costs, and establishment of a reserve fund, in case loan repayments are less than expected or a borrower defaults, will be absorbed by the SIB, and not require additional state funds, according to FDOT staff.

Public-Private Partnerships
<u>Current Situation</u>
Section 334.30, F.S., was created in 1991 to allow for the development of private transportation facilities, such as toll roads or passenger rail service, that would serve to reduce burdens on public highway systems. The private entity developing the transportation facility is able to charge tolls or fares for its use, under agreement with FDOT, and FDOT could regulate the amount charged, if the proposal was determined to be unreasonable to users. No state funds would be expended on these projects, except those with an "overriding state interest," in which case FDOT has the discretion to exercise eminent domain and other powers to assist in such projects, and any maintenance, law enforcement, or other services provided by FDOT must be fully reimbursed by the private entity.

This section of law has never been used in the 10 years since it was created, nor has s. 348.0004(2)(m), F.S., which gave expressway authorities the ability to enter into public-private partnerships to build toll roads. Some speculate the statutes have not be used because the entire financial burden typically would be on the private developer.

Over the last two years, however, FDOT has received a series of unsolicited trial proposals from the Toll Road Corporation of America for an "I-95 Reversible HOT Lane System" in Miami that could be a candidate for this program, if certain legislative changes are made. The proposed project involves the construction of reversible toll lanes in the median of I-95. This could make anywhere from 11 to 13 lanes, rather than the current 10, available for motorists' use. The Miami-Dade County Metropolitan Planning Organization has amended its long-range Transportation Improvement Plan to include a version of this I-95 HOT Lane project.

HOT lanes, an acronym for "High-occupancy toll" lanes, use electronic toll collection technology to collect tolls at highway speeds. HOT lanes attract motorists willing to pay a fee to use them, because less congestion means traffic flows quicker. Typically, motorists attach transponders – similar to Florida's SunPass - to their vehicles that record their usage of the HOT lane, at what time and how many miles. The motorists are either billed or, more commonly, their pre-arranged accounts are debited. Supporters of HOT lanes say they are an effective tool for addressing highway congestion; are an alternative to building additional lanes as a way to add capacity; and allow motorists to chose between what is more valuable to them: time or money. Opponents describe the HOT lanes as elitist, saying the savings in drive time may be offset by the long lines on access roads to even get onto a HOT lane. They also contend that HOT lanes may exacerbate traffic problems by encouraging motorists who don't want to pay the tolls, nor drive in the congested "free" lanes, to take short cuts through neighborhoods, creating safety and maintenance problems on local roads.

<u>Effect of Proposed Changes</u>
Section 334.30, F.S., is rewritten to make such ventures more of a workable partnership between FDOT and private investors. The section is renamed "public-private transportation facilities," and allows FDOT to use state resources (most likely public right-of-way) for a transportation facility that:

* Is in the public's best interest and,
* Promotes "intelligent transportation system" technology on the State Highway System and which is part of joint project on FDOT property leased by the private entity pursuant to s. 337.251, F.S.; or
* Provides increased mobility on the state system.

All reasonable costs to the state, affected local governments, or utilities related to these transportation projects that are not part of the State Highway System, or that are not publicly owned, shall be borne by the private entities that are partnering with the state.

State funds may be used to advance projects that are in the Five-Year Work Program and which a private entity wants to help build. Or, up to $50 million in FDOT funds could be spent for partnership projects, statewide, that aren't in the work program. Partnership projects that seek more than the $50 million for capital costs would have to be approved by the Legislature.

The amended s. 334.30, F.S., also establishes noticing requirements; specifies the negotiating process with the private entities and allows FDOT at its sole discretion to reject all proposals; and allows DOT to participate in the creation of tax-exempt, public-purpose corporations (dubbed "Internal Revenue Service Ruling 63-20 corporations") that are expected to facilitate private entities' participation in these type projects. These IRS 63-20 corporations may receive loans and grants from the State Transportation Trust Fund, and loans from Toll Facilities Revolving Trust Fund. The corporations must provide credit support or other supporting documents indicating they can repay the DOT loans.

In no event shall the revenue bonds issued by an IRS 63-20 corporation pledge the full faith and credit of the State of Florida, and neither the state nor any of its agencies are responsible for their repayment. The bill clearly specifies that DOT's liability for any debt incurred by one of these projects is limited to the amount approved for it in the agency's 5-Year Work Program.

Additionally, s. 348.0004, F.S., is amended to delete an existing provision allowing expressway authorities to enter into public-private partnerships, and is replaced with a more-detailed process that is nearly identical to the new FDOT provisions in s. 334.30, F.S. A key difference is that the expressway authorities will not be subject to an expenditure limit on the public-private projects, nor will legislative approval be required.

Use of revenues generated by non-Turnpike toll facilities

Current Situation

In addition to the Florida Turnpike, FDOT owns and operates five small toll facilities that are not part of the Turnpike system: the Sunshine Skyway Bridge, Alligator Alley (also known as the Everglades Parkway), Beeline-East Expressway, Pinellas BayWay, and Navarre Bridge. The latter three facilities have retired the bonds issued to build them, and even with annual operation and maintenance costs, they have excess revenues.

Section 338.165, F.S., authorizes the continued collection of tolls from users of toll roads or bridges that have paid off the bonds issued to build them. FDOT, any transportation authority, cities, or counties may continue the toll collection, and may even raise the amount of the toll. The toll revenues first must be used to pay the annual costs of operating, maintaining and improving the toll facility that generated it. Excess revenues from a toll facility may be used, on a cash-flow basis, to construct, maintain, or improve any road on the State Highway System within the county or counties where the toll facility is located.

For only one of these facilities, the Alligator Alley toll road, FDOT may request the Division of Bond Finance to issue bonds to pay for transportation projects in the agency's Five-Year Work Program, which also are in the counties through which Alligator Alley traverses.

Currently, toll revenues in the amount of $3 million annually from the Beeline-East Expressway are being spent by FDOT to widen State Road 520. FDOT has determined that bonding the Beeline-East Expressway toll revenues will result in enough upfront money to complete the State Road 520 project as much as five years early. However, it lacks specific statutory authority to bond the revenues.

Effect of Proposed Changes

Section 338.165, F.S., is amended to clarify that the FDOT has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities. The bond proceeds will be used to fund transportation projects on the State Highway System in the counties in which they are located.

This provision will allow FDOT to proceed with its plans to complete the widening of State Road 520 ahead of schedule. Bonding the Beeline-East Expressway toll revenues will generate approximately $45 million.

FDOT has said it has no immediate plans to issue bonds backed by toll revenues from the other toll facilities.

Turnpike Enterprise bond cap

Current Situation

In 1953, the Legislature created an independent Florida State Turnpike Authority to finance, build, and operate the Sunshine State Parkway. By 1964, the original 265-mile Mainline, connecting Miami to Wildwood, was completed. With the passage of the State Government Reorganization Act of 1969, the authority was dissolved and oversight responsibility of the Florida Turnpike shifted to FDOT.

Today, the Florida Turnpike is 401 miles long, and includes the Beeline West in Orange County, the Veterans Expressway near Tampa, the Suncoast Parkway in Hernando County, the Sawgrass Expressway in Broward County, and the Polk Parkway. Nearly 60 more miles of turnpike are under construction. It is the fourth-largest toll highway system in the United States.

In fiscal year 2001-2002, the Turnpike Enterprise generated nearly $411 million in toll revenues and $8.6 million in concession revenues. This reliable and steady stream of revenues supports the repayment of state-issued bonds to build or improve turnpike projects, and finances the Turnpike's operation and maintenance activities.

The Turnpike Enterprise is a "AA"- rated toll facility, one of only five in the United States. It has issued about $1.9 billion in bonds to date, and its FY 01-02 debt service was $142 million. It maintains at least a 1.6 ratio of net revenues to debt service (known as "debt coverage") – better than the bond-indenture requirement of a 1.2 ratio.

Currently, s. 338.2275, F.S., sets the Turnpike Enterprise's bond cap at $3 billion. That level was established in 1997. The Turnpike Enterprise is planning to seek issuance of $1.1 billion in bonds to pay for its projects in the latest iteration of the FDOT Five-Year Work Program. However, the Turnpike Enterprise's advance project planning for the next 10 years exceeds the current cap. No brand-new Turnpike toll roads are proposed to be built between 2008 and 2012, but the Turnpike Enterprise does have expensive widening and capacity-improvement projects on its existing systems. As the Five-Year Work Program is updated, new projects may be added. One future project is the proposed I-4 express lanes project, but its inclusion in the Work Program depends on a commitment of local funds.

The Turnpike Enterprise's bond indebtedness is not included in the state's debt cap because Turnpike bonds are revenue bonds that pledge tolls, not state taxes, for repayment.

Effect of Proposed Changes
HB 1773 raises from $3 billion to $4.5 billion the Turnpike Enterprise's cap on bond indebtedness. FDOT financial staff say even with the increased level of bond debt, the Turnpike Enterprise will be able to maintain at least a 1.6 net debt coverage. Raising the bond cap will accommodate the Turnpike Enterprise's construction activity through the year 2012.

C. SECTION DIRECTORY:

Section 1: Creates s. 215.617, F.S., providing for the sale of revenue bonds, by the Division of Bond Finance on behalf of FDOT, for State Infrastructure Bank projects. Specifies terms and conditions of the bonds.

Section 2: Amends s. 334.30, F.S. Makes changes throughout to existing law on public-private partnerships to build transportation facilities. Allows FDOT to advance or use state transportation funds on partnership projects on the State Highway System that include intelligent transportation systems or which are designed to increase mobility. Clarifies that the public-private entity must bear costs associated with the projects that are not part of the State Highway System, as well as to privately owned facilities. Limits FDOT's financial contributions to either advancing projects in the adopted Five-Year Work Program, or to a maximum $50 million statewide in capital costs for projects not in the work program. Specifies legislative approval before FDOT can contribute funds in excess of aforementioned limitation. Specifies process for FDOT to receive unsolicited proposals, and to advertise for proposals, and to negotiate with proposers. Gives FDOT authority to create or assist in the creation of tax-exempt, public purpose corporations that would oversee the projects. Specifies the revenue bonds issued under this section are not pledged to the full faith and credit of the State of Florida. Allows FDOT to lend funds from the Toll Facilities Revolving Trust Fund to the corporations for these public-private projects.

Section 3: Amends s. 338.165, F.S., to allow issuance of state revenue bonds secured by the toll revenues collected on the Sunshine Skyway Bridge, Beeline- East Expressway, and Pinellas BayWay to fund transportation projects located within the county or counties with these toll facilities, and which are in the Five-Year Work Program.

Section 4: Amends s. 338.2275, F.S., to raise the Turnpike Enterprise's bond cap from $3 billion to $4.5 billion.

Section 5: Amends s. 348.0004, F.S., to delete obsolete language relating to public-private partnership agreements for expressway authorities. Adds new provisions related to how expressway authorities will handle unsolicited project bids; advertising for such projects; imposition of tolls to pay for such projects; and creating IRS 63-20 corporations. Gives the expressway authority the ability to promulgate rules to implement this section. Requires these projects to comply with all federal, state and local requirements and rules.

Section 6: Specifies this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate, because the amount of revenues made available for these revamped programs will depend on the amount of bonds sold and the market's interest.

   FDOT has indicated that if HB 1773 becomes law and market conditions are favorable, the Division of Bond Finance may in calendar year 2004 issue $45 million in revenue bonds, backed by toll revenues of the Beeline-East Expressway. The bond revenue will finance improvements to State Road 520 in Orange and Brevard counties.

   Also next year, depending on market conditions and investor interest, up to $100 million in SIB loans may be leveraged, generating as much as $600 million for additional loans to cities, counties, expressway authorities, and other entities for transportation projects.

   There will be no immediate revenue impact from the increased bond cap for the Turnpike Enterprise.

   As for public-private partnership ventures, few, if any, revenues likely will flow to FDOT. Excess revenues will more likely accrue to the IRS 63-20 corporation and its private investors. However, FDOT benefits by reprogramming funds originally earmarked for projects that now will be built by the IRS 63-20 corporation.

2. Expenditures:

   Indeterminate. There will be bond issuance and insurance costs, and possibly program administrative expenses, resulting from implementation of HB 1773, but these won't be known until bonds are sold and projects implemented.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. Municipalities, counties and expressway authorities are the most likely beneficiaries of HB 1773's provisions related to SIB, public-private transportation partnerships, and the expanded use of toll revenues from non-Turnpike facilities.

2. Expenditures:

   Indeterminate. Participation in these financing programs is at the option of the local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Private entities seeking to partner with FDOT to build transportation facilities may finally be able to do so, because of the changes to s. 334.30, F.S., that will allow them access to tax-exempt financing through creation of the IRS 63-20 corporations. An entity that builds, operates and maintains one of these public-private transportation projects as a user fee-based system will have to collect at least enough toll or ticket revenues to offset the debt service and turn a profit.

Transportation contractors and related industries also are likely to benefit from the additional funds made available for road, bridge, and related projects, under other provisions of HB 1773.

The motoring public may discover that, due to the lack of funding for new construction, more and more new roads are tolled. Highway users will have to decide whether to pay to use the new, less-congested routes, or continue to drive the existing roads for free.

D. FISCAL COMMENTS:

<u>Toll-revenue bonding and Turnpike Enterprise bond-cap increase</u>
The state Division of Bond Finance has reviewed these proposals and supports them.

<u>Public-private transportation partnerships</u>
HB 1773's provision allowing IRS 63-20 corporations to participate in s. 334.30, F.S., projects has several financial implications. These entities could borrow money from the state's Toll Facilities Revolving Loan Trust Fund and accept DOT grants – for which DOT would likely require reliable assurances that the toll revenues generated by their projects would be sufficient.

Under IRS code, chapter 63-20 corporations also can issue tax-exempt revenue bonds. These bonds are low-grade, but still attractive, investments, typically with a "BBB" rating, which require a debt-service coverage of at least 2 to 1. The corporation would issue these bonds, which would not pledge the full faith and credit of the State of Florida.

State Division of Bond Finance staff previously has expressed concerns about allowing legislatively created authorities or entities to issue bonds -- even bonds described as not pledging the full faith and credit of the State of Florida. In the view of Division staff, just because the state cannot legally or technically be required to repay defaulted bonds, the negative fallout could tarnish Florida's financial reputation, and could result in a lower bond rating for the state's other bond programs or a higher interest cost for capital. Division staff also comments that a generous bond coverage ratio can be misleading; if the projected revenue stream does not materialize, then the debt service can not be paid.

Supporters of the creation of IRS 63-20 corporations as partners in transportation projects have responded that the 2-to-1 coverage required of BBB bonds is higher than what is required by many other types of bonds sold in Florida. Thus, the risk of other types of bond issues failing is greater than that of a BBB bond issue, they say, and in any event, if a BBB bond issue fails, the bondholders alone bear the burden. They also say that Standard & Poor's and Moody's – the nation's top bond-rating agencies – have reviewed the issue of the impact of a default by a properly structured IRS 63-20 corporation, and have concluded that a default by an IRS 63-20 corporation on its BBB bonds would not create a negative impact to a state's bond rating.

In any event, the institutional investors that purchase these type bonds are aware of the risk of revenue shortfalls, and these risks, along with other market factors, determine the bonds' interest rates.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. HB 1773 does not impact the ability of municipalities and counties to raise taxes or require them to spend money.

2. Other:

HB 1773 does not raise any other apparent constitutional issues.

B. RULE-MAKING AUTHORITY:

FDOT appears to have sufficient existing rulemaking authority to implement most of the provisions of HB 1773. The legislation further gives FDOT specific authority to make rules to implement the public-private transportation partnership provisions.

HB 1773 specifically gives the expressway authorities the ability to adopt rules implementing the public-private partnership provisions amended into s. 348.0004, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Tied to HB 1773 is HB 1775, which creates the Transportation Revenue Bond Trust Fund, necessary to hold the receipts of the bonds backed by non-Turnpike toll revenues.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 12, 2003, meeting, the Transportation Systems Subcommittee adopted without objection two amendments to PCB TR 03-02, plus one amendment to the amendment. Briefly:

- Amendment #1 clarified that FDOT has the discretion whether to pay some or all of the operating and maintenance costs of public-private facilities on the State Highway System. For such facilities not on the State Highway System, FDOT shall be reimbursed by the private entity, per agreement, any expenses that it pays. An amendment to the amendment made grammatical changes.
- Amendment #2 amended s. 348.0004, F.S., to delete existing, incomplete language on expressway authorities' ability to enter into public-private partnerships, and replaced it with more extensive, detailed language.

The subcommittee then voted 9-0 in favor of PCB TR 03-02. Staff has incorporated the amendments into the legislation, now designated PCB TR 03-02a.

The full Transportation Committee on March 18, 2003, voted 21-0 in favor of PCB TR 03-02a, with no amendments.