

By Senator Sebesta

16-1555-03

1 A bill to be entitled
2 An act relating to roads; amending s. 334.30,
3 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 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:

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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 may
18 adopt rules to implement this section and shall by rule
19 establish an application fee for the submission of proposals
20 under this section. The fee must be sufficient to pay the
21 costs of evaluating the proposals. The department may engage
22 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

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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.

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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 currently
18 programmed in the adopted 5-year work program or to a maximum
19 statewide total of \$25 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
24 within 30 days in the Florida Administrative Weekly and a
25 newspaper of general circulation at least once a week for 2
26 weeks, stating that the department has received the proposal
27 and will accept, for 60 days after the initial date of
28 publication, other proposals for the same project purpose. A
29 copy of the notice must be mailed to each local government in
30 the affected area. After the public notification period has
31 expired, the department shall rank the proposals in order of

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

16 (4) The department may not commit funds in excess of
17 the limitation in subsection (2) without specific project
18 approval by the Legislature.

19 (5)(2) Agreements entered into pursuant to this
20 section may authorize the private entity to impose tolls or
21 fares for the use of the facility. However, the amount and
22 use of toll or fare revenues may be regulated by the
23 department to avoid unreasonable costs to users of the
24 facility.

25 (6)(3) Each ~~private~~ transportation facility
26 constructed pursuant to this section shall comply with all
27 requirements of federal, state, and local laws; state,
28 regional, and local comprehensive plans; department rules,
29 policies, procedures, and standards for transportation
30 facilities; and any other conditions which the department
31 determines to be in the public's best interest.

1 ~~(7)(4)~~ The department may exercise any power possessed
2 by it, including eminent domain, with respect to the
3 development and construction of state transportation projects
4 to facilitate the development and construction of
5 transportation projects pursuant to this section. For
6 public-private facilities located on the State Highway System,
7 the department may pay all or part of the cost of operating
8 and maintaining the facility. For facilities not located on
9 the State Highway System, the department may provide services
10 to the private entity and-agreements for maintenance, law
11 enforcement, and other services ~~entered into pursuant to this~~
12 ~~section~~ shall provide for full reimbursement for services
13 rendered.

14 ~~(8)(5)~~ Except as herein provided, the provisions of
15 this section are not intended to amend existing laws by
16 granting additional powers to, or further restricting, local
17 governmental entities from regulating and entering into
18 cooperative arrangements with the private sector for the
19 planning, construction, and operation of transportation
20 facilities.

21 ~~(9)~~ The department may create or assist in the
22 creation of tax-exempt, public-purpose Internal Revenue
23 Service Ruling 63-20 corporations. Bonds issued by a 63-20
24 corporation are payable solely from and secured by a lien upon
25 and pledge of the revenues received by the corporation, and do
26 not constitute a general indebtedness of this state, any
27 department or agency thereof, or any political subdivision,
28 within the meaning of any constitutional or statutory
29 provision or limitation. The full faith and credit of this
30 state may not be pledged to the payment of principal or
31 interest of bonds issued by the 63-20 corporation. A bond

1 owner may not require or compel the exercise of the taxing
2 power of the state or any department or agency thereof for
3 payment, and the bonds are not a lien on any property owned by
4 the state or any department or state agency. Bonds issued by
5 the corporation shall be rated investment grade by a
6 nationally recognized credit rating agency. Any bonds issued
7 by a 63-20 corporation to finance a project requiring the use
8 of state money, directly or indirectly, shall be reviewed and
9 approved by the Secretary of Transportation. This subsection
10 does not prohibit credit enhancement of such bonds, whether by
11 private or governmental sources other than sources backed by
12 the taxing power of this state, nor does it prohibit the
13 pledging of additional funds or revenues from private sources
14 to secure such bonds. Internal Revenue Service Ruling 63-20
15 corporations may receive State Transportation Trust Fund
16 grants and loans from the department. The department may enter
17 into public-private partnership agreements with 63-20
18 corporations for projects under this section but may not agree
19 to expend any funds not appropriated for this purpose. Section
20 339.135(6) applies to such agreements.

21 (10) The department may lend funds from the Toll
22 Facilities Revolving Trust Fund, as outlined in s. 338.251, to
23 63-20 corporations that construct projects containing toll
24 facilities approved under this section. To be eligible, a
25 63-20 corporation must comply with s. 338.251 and must provide
26 an indication from a nationally recognized rating agency that
27 the senior bonds of the corporation will be investment grade
28 or must provide credit support, such as a letter of credit or
29 other means acceptable to the department, to ensure that the
30 loans will be fully repaid. The state's liability for debt of
31 a facility is limited to the amount approved for that specific

1 facility in the department's 5-year work program adopted
2 pursuant to s. 339.135.

3 (11)(6) Notwithstanding s. 341.327, a fixed-guideway
4 transportation system authorized by the department to be
5 wholly or partially within the department's right-of-way
6 pursuant to a lease granted under s. 337.251 may operate at
7 any safe speed.

8 Section 2. Paragraph (m) of subsection (2) of section
9 348.0004, Florida Statutes, is repealed.

10 Section 3. Subsection (9) is added to section
11 348.0004, Florida Statutes, to read:

12 348.0004 Purposes and powers.--

13 (9) The Legislature declares that there is a public
14 need for rapid construction of safe and efficient
15 transportation facilities for travel within the state and that
16 it is in the public's interest to provide for public-private
17 partnership agreements to construct additional safe,
18 convenient, and economical transportation facilities.

19 (a) Any expressway authority as defined in s.
20 125.011(1) may receive or solicit proposals and enter into
21 agreements with private entities, or consortia thereof, for
22 the building, operation, ownership, or financing or extensions
23 or other improvements to existing expressway authority
24 transportation facilities or new transportation facilities
25 that are within the jurisdiction of the expressway authority.
26 An expressway authority may adopt rules to implement this
27 subsection and shall, by rule, establish an application fee
28 for the submission of unsolicited proposals under this
29 subsection. The fee must be sufficient to pay the costs of
30 evaluating the proposals. An expressway authority may engage
31 private consultants to assist in the evaluation. Before

1 approval, an expressway authority must determine that a
2 proposed project:

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

4 2. Has adequate safeguards to ensure that additional
5 costs or service disruptions will not be realized by the
6 public if the private entity or consortium defaults or the
7 expressway authority cancels the agreement.

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

1 the proposer. Notwithstanding any other provision of this
2 paragraph, the expressway authority may reject all proposals
3 at any point prior to completion of a contract.

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 use
7 of toll or fare revenues may be regulated by the expressway
8 authority to avoid unreasonable costs to users of the
9 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; the expressway authority's rules,
14 policies, procedures, and standards for transportation
15 facilities; and any other conditions that the expressway
16 authority determines to be in the public's best interest.

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

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

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1 (g) An expressway authority may create or assist in
2 the creation of tax-exempt, public-purpose Internal Revenue
3 Service Ruling 63-20 corporations. Bonds issued by 63-20
4 corporations are payable solely from and secured by liens upon
5 and pledge of the revenues received by the 63-20 corporations
6 and are not a general indebtedness of this state, any
7 department or agency thereof, or any political subdivision
8 thereof within the meaning of any constitutional or statutory
9 provision or limitation. The full faith and credit of the
10 state may not be pledged to the payment of principal or
11 interest on the bonds issued by the 63-20 corporation. A bond
12 owner may not require or compel the exercise of the taxing
13 power of the state or any department or agency of the state
14 for payment thereof, and the bonds are not a lien upon any
15 property owned by the state or any department or state agency.
16 Bonds issued by 63-20 corporations shall be rated investment
17 grade by a nationally recognized credit rating agency. This
18 paragraph does not prohibit credit enhancement of such bonds
19 by private or governmental sources other than sources backed
20 by the taxing power of the state, nor does it prohibit the
21 pledging of additional funds or revenues from private sources
22 to secure such bonds. An expressway authority may enter into
23 public-private partnership agreements with 63-20 corporations
24 for projects under this subsection.

25 (h) An expressway authority or 63-20 corporation
26 created under this subsection may apply for grants and loans
27 from the department for projects under this subsection,
28 subject to the eligibility criteria and terms and conditions
29 that would apply to projects of an expressway authority
30 undertaken without private participation.

31 Section 4. This act shall take effect July 1, 2003.

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SENATE SUMMARY

Revises provisions relating to public-private transportation facilities. Provides procedures and guidelines for the creation of public-private transportation projects by the Department of Transportation or expressway authorities. Provides for the creation of Internal Revenue Service Ruling 63-20 corporations to issue bonds to finance certain projects. Provides limitations on such entities. (See bill for details.)