

By the Committee on Transportation; and Senator Sebesta

306-2414-03

1 A bill to be entitled
2 An act relating to roads; amending s. 334.30,
3 F.S.; providing for public-private partnership
4 agreements for transportation facilities
5 without prior legislative approval; authorizing
6 the department to adopt rules; providing
7 requirements for projects advanced by a
8 public-private partnership or private entity;
9 authorizing the department to request
10 proposals; requiring notice; providing
11 requirements for ranking proposals; 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; creating s.
31 348.9801, F.S.; providing for the "Expressway

1 Authority Public Private Partnership Agreement
2 Law"; creating s. 348.9802, F.S.; providing
3 legislative intent; creating s. 348.9803, F.S.;
4 authorizing expressway authorities to enter
5 into public-private partnerships; creating s.
6 348.9804, F.S.; providing for a proposal
7 process and notification; creating s. 348.9805,
8 F.S.; providing facility requirements; creating
9 s. 348.9806, F.S.; providing expressway
10 authorities' powers; creating s. 348.9807,
11 F.S.; providing that the act is not intended to
12 restrict local entities; creating s. 348.9808,
13 F.S.; providing for the creation of certain
14 tax-exempt public-purpose corporations;
15 authorizing such corporations to issue bonds;
16 providing an effective date.

17

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

19

20 Section 1. Section 334.30, Florida Statutes, is
21 amended to read:

22 334.30 Private transportation facilities.--The
23 Legislature hereby finds and declares that there is a public
24 need for rapid construction of safe and efficient
25 transportation facilities for the purpose of travel within the
26 state, and that it is in the public's interest to provide for
27 public-private partnership agreements to effectuate the
28 construction of additional safe, convenient, and economical
29 transportation facilities.

30 (1) The department may receive or solicit proposals
31 ~~and, with legislative approval by a separate bill for each~~

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

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

13 (b) Complies with the provisions of subsection (2).

14 ~~Would not require state funds to be used unless there is an~~
15 ~~overriding state interest; and~~

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

21
22 The department shall ensure that all reasonable costs to the
23 state related to transportation facilities that are not part
24 of the State Highway System are borne by the public-private
25 entity. The department shall also ensure that all reasonable
26 costs to the state and substantially affected local
27 governments and utilities, related to the private
28 transportation facility, are borne by the public-private
29 private entity for transportation facilities that are owned by
30 private entities.

31

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

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

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

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

26 (3) The department may request proposals from
27 public-private transportation projects or, if the department
28 receives an unsolicited proposal, the department shall publish
29 a notice in the Florida Administrative Weekly and a newspaper
30 of general circulation at least once a week for 2 weeks
31 stating that the department has received the proposal and will

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

24 (4)(2) Agreements entered into pursuant to this
25 section may authorize the private entity to impose tolls or
26 fares for the use of the facility. However, the amount and
27 use of toll or fare revenues may be regulated by the
28 department to avoid unreasonable costs to users of the
29 facility.

30 (5)(3) Each private transportation facility
31 constructed pursuant to this section shall comply with all

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

6 (6)~~(4)~~ The department may exercise any power possessed
7 by it, including eminent domain, with respect to the
8 development and construction of state transportation projects
9 to facilitate the development and construction of
10 transportation projects pursuant to this section. The
11 department may provide services to the private entity and~~-~~
12 agreements for maintenance, law enforcement, and other
13 services ~~entered into pursuant to this section~~ shall provide
14 for full reimbursement for services rendered.

15 (7)~~(5)~~ Except as herein provided, the provisions of
16 this section are not intended to amend existing laws by
17 granting additional powers to, or further restricting, local
18 governmental entities from regulating and entering into
19 cooperative arrangements with the private sector for the
20 planning, construction, and operation of transportation
21 facilities.

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

1 interest of bonds issued by the 63-20 corporation. A bond
2 owner may not require or compel the exercise of the taxing
3 power of the state or any department or agency thereof for
4 payment, and the bonds are not a lien on any property owned by
5 the state or any department or state agency. Bonds issued by
6 the corporation shall be rated investment grade by a
7 nationally recognized credit rating agency. Any bonds issued
8 by a 63-20 corporation to finance a project requiring the use
9 of state money, directly or indirectly, shall be reviewed and
10 approved by the Secretary of Transportation. This subsection
11 does not prohibit credit enhancement of such bonds, whether by
12 private or governmental sources other than sources backed by
13 the taxing power of this state, nor does it prohibit the
14 pledging of additional funds or revenues from private sources
15 to secure such bonds. Internal Revenue Service Ruling 63-20
16 corporations may receive State Transportation Trust Fund
17 grants and loans from the department. The department may enter
18 into public-private partnership agreements with 63-20
19 corporations for projects under this section but may not agree
20 to expend any funds not appropriated for this purpose. Section
21 339.135(6) applies to such agreements.

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

1 a facility is limited to the amount approved for that specific
2 facility in the department's 5-year work program adopted
3 pursuant to s. 339.135.

4 (10)(6) Notwithstanding s. 341.327, a fixed-guideway
5 transportation system authorized by the department to be
6 wholly or partially within the department's right-of-way
7 pursuant to a lease granted under s. 337.251 may operate at
8 any safe speed.

9 Section 2. Paragraph (m) of subsection (2) of section
10 348.0004, Florida Statutes, is repealed.

11 Section 3. Subsection (9) is added to section
12 348.0004, Florida Statutes, to read:

13 348.0004 Purposes and powers.--

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

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

1 private consultants to assist in the evaluation. Before
2 approval, an expressway authority must determine that a
3 proposed project:

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

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

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

1 satisfied with the results, it may terminate negotiations with
2 the proposer. Notwithstanding any other provision of this
3 paragraph, the expressway authority may reject all proposals
4 at any point prior to completion of a contract.

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

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

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

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

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.

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1 Section 4. Section 348.9801, Florida Statutes, is
2 created to read:

3 348.9801 Short title.--Sections 348.9801-348.9808 may
4 be cited as the "Expressway Authority Public-Private
5 Partnership Agreement Law."

6 Section 5. Section 348.9802, Florida Statutes, is
7 created to read:

8 348.9802 Legislative findings.--The Legislature finds
9 and declares that there is a public need for rapid
10 construction of safe and efficient transportation facilities
11 for the purpose of travel within the state and that it is in
12 the public's best interest to provide for public-private
13 partnership agreements to effectuate the construction of
14 additional safe, convenient, and economical transportation
15 facilities.

16 Section 6. Section 348.9803, Florida Statutes, is
17 created to read:

18 348.9803 Public-private partnerships.--Any expressway
19 authority created by chapter 348 or chapter 349 may receive or
20 solicit proposals and enter into agreements with private
21 entities, or consortia thereof, for the building, operation,
22 ownership, or financing of extensions or other improvements to
23 existing expressway authority transportation facilities or new
24 transportation facilities that are within the jurisdiction of
25 the expressway authority. The expressway authority is
26 authorized to adopt rules to implement this section and shall
27 by rule establish an application fee for the submission of
28 unsolicited proposals under this section. The fee must be
29 sufficient to pay the costs of evaluating the proposals. The
30 expressway authority may engage the services of private

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1 consultants to assist in the evaluation. Before approval, the
2 expressway authority must determine that the proposed project:

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

4 (2) Would have adequate safeguards in place to ensure
5 that no additional costs or service disruptions would be
6 realized by the traveling public and citizens of the state in
7 the event of default by the private entity or consortium or
8 cancellation of the agreement by the expressway authority.

9 Section 7. Section 348.9804, Florida Statutes, is
10 created to read:

11 348.9804 Proposal process; notification.--

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

1 the negotiations, the expressway authority may, at its sole
2 discretion, terminate negotiations with the proposer. If these
3 negotiations are unsuccessful, the expressway authority may go
4 to the second and lower-ranked firms in order using this same
5 procedure. If only one proposal is received, the expressway
6 authority may negotiate in good faith and, if the expressway
7 authority is not satisfied with the results of the
8 negotiations, the expressway authority may, at its sole
9 discretion, terminate negotiations with the proposer.
10 Notwithstanding any other provision of this subsection, the
11 expressway authority may, at its sole discretion, reject all
12 proposals at any point in the process prior to execution of a
13 contract with the proposer.

14 (2) Agreements entered into under this act may
15 authorize the private entity to impose tolls or fares for the
16 use of the facility. However, the amount and use of toll or
17 fare revenues may be regulated by the expressway authority to
18 avoid unreasonable costs to users of the facility.

19 Section 8. Section 348.9805, Florida Statutes, is
20 created to read:

21 348.9805 Facility requirements.--Each transportation
22 facility constructed under this act shall comply with all
23 requirements of state, and local laws; state, regional, and
24 local comprehensive plans; the expressway authority's rules,
25 policies, procedures, and standards for transportation
26 facilities; and any other conditions that the expressway
27 authority determines to be in the public's best interest.

28 Section 9. Section 348.9806, Florida Statutes, is
29 created to read:

30 348.9806 Exercise of powers.--The expressway authority
31 may exercise any power possessed by it, including eminent

1 domain, with respect to the development and construction of
2 transportation projects to facilitate the development and
3 construction of transportation projects under this act. The
4 expressway authority may pay all or part of the cost of
5 operating and maintaining the facility or may provide services
6 to the private entity for which it shall be entitled to
7 receive full or partial reimbursement for services rendered.

8 Section 10. Section 348.9807, Florida Statutes, is
9 created to read:

10 348.9807 Intent concerning local governments.--Except
11 as provided in this act, the provisions of this act are not
12 intended to amend existing laws by further expanding or
13 further restricting the authority of local governmental
14 entities to regulate and enter into cooperative arrangements
15 with the private sector for the planning, construction, and
16 operation of transportation facilities.

17 Section 11. Section 348.9808, Florida Statutes, is
18 created to read:

19 348.9808 Establishment of 63-20 corporations.--
20 (1) The expressway shall have the authority to create
21 or assist in the creation of tax-exempt, public-purpose
22 Internal Revenue Service Ruling 63-20 corporations as provided
23 for under the Internal Revenue Code. Any bonds issued by the
24 Internal Revenue Service Ruling 63-20 corporation shall be
25 payable solely from and secured by a lien upon and pledge of
26 the revenues received by the Internal Revenue Service Ruling
27 63-20 corporation. Any bonds issued by the Internal Revenue
28 Service Ruling 63-20 corporation shall not be or constitute a
29 general indebtedness of the state, any department or agency
30 thereof, or any political subdivision thereof within the
31 meaning of any constitutional or statutory provision or

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

21 (2) The expressway authority or Internal Revenue
22 Service Ruling 63-20 corporation created under this act shall
23 be entitled to apply for grants and loans from the expressway
24 authorities for projects under this act, subject to the same
25 eligibility criteria and other terms and conditions as would
26 apply to projects of the expressway authority undertaken
27 without private participation.

28 Section 12. This act shall take effect upon becoming a
29 law.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2580

This CS authorizes FDOT to use state resources and to enter into public-private partnership agreements for a transportation facility project that is either in the FDOT adopted work program or a metropolitan planning organizations long-range plan. The section requires FDOT to ensure all reasonable costs to the state related to transportation facilities are not part of the State Highway System be borne by the public-private entity and all reasonable costs to the state, local governments, and utilities be borne by the public-private entity for transportation facilities that are owned by private entities.

The scope of the CS also extends to all expressway authorities the ability to enter into similar agreements with 63-20 corporations to share in the development of public-private transportation facilities. The CS authorizes 63-20 corporations to issue bonds. Unlike the FDOT, the expressway authorities have no statutory dollar limit for investments in a 63-20 corporation project, and legislative approval is not required.