

By the Committee on Governmental Oversight and Productivity;
and Senator Sebesta

302-2432-04

1 A bill to be entitled
2 An act relating to the Department of
3 Transportation; amending s. 20.23, F.S.;
4 authorizing the secretary of the department to
5 appoint an additional assistant secretary and
6 deputy assistant secretaries or directors;
7 revising the organization of the department to
8 specify areas of program responsibility;
9 authorizing the secretary to reorganize offices
10 within the department in consultation with the
11 Executive Office of the Governor; amending s.
12 110.205, F.S., relating to career service;
13 conforming provisions to changes made by the
14 act; removing the toll on Navarre Bridge in
15 Santa Rosa County; amending s. 338.251, F.S.;
16 authorizing the Emerald Coast Bridge Authority
17 to revise the repayment schedule of any
18 previous advances for funds from the Toll
19 Facilities Revolving Trust Fund within the
20 department; providing that such repayment
21 schedule is not a failure to repay under
22 certain conditions; amending s. 334.30, F.S.;
23 revising provisions for public-private
24 construction of transportation facilities;
25 providing procedures for requests for proposals
26 and receipt of unsolicited proposals by the
27 department; providing for use of certain funds
28 under described conditions; repealing s.
29 348.0004(2)(m), F.S., relating to an obsolete
30 provision authorizing expressway authorities to
31 enter into public-private transportation

1 partnerships; amending s. 348.0004, F.S.;

2 creating a new process for expressway

3 authorities to enter into public-private

4 partnerships with private entities; directing

5 the expressway authorities to adopt rules

6 related to the public-private partnerships;

7 specifying public notice requirements;

8 specifying that public-private entities may

9 impose tolls on the new facilities, but the

10 expressway authority may regulate the amount

11 and use of such tolls; providing that the

12 Department of Transportation may loan funds

13 from the Toll Facilities Revolving Loan Trust

14 Fund for eligible projects; specifying project

15 requirements; authorizing an expressway

16 authority to exercise certain powers to

17 facilitate the partnership projects; providing

18 that intent of the act is not to amend or

19 impact other existing laws; providing an

20 effective date.

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

Section 1. Paragraph (d) of subsection (1), subsection (3), and paragraph (b) of subsection (4) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.--There is created a Department of Transportation which shall be a decentralized agency.

(1)

1 (d) The secretary may ~~shall~~ appoint up to three ~~two~~
2 assistant secretaries who shall be directly responsible to the
3 secretary and who shall perform such duties as are assigned by
4 the secretary. The secretary may delegate to any assistant
5 secretary the authority to act in the absence of the
6 secretary.

7 (3)(a) The central office shall establish departmental
8 policies, rules, procedures, and standards and shall monitor
9 the implementation of such policies, rules, procedures, and
10 standards in order to ensure uniform compliance and quality
11 performance by the districts and central office units that
12 implement transportation programs. Major transportation
13 policy initiatives or revisions shall be submitted to the
14 commission for review.

15 ~~(b) The secretary shall appoint an Assistant Secretary~~
16 ~~for Transportation Development and Operations and an Assistant~~
17 ~~Secretary for Transportation Support.~~

18 **(b)(c)** The secretary may appoint positions at the
19 level of deputy assistant secretary or director which the
20 secretary deems necessary to accomplish the mission and goals
21 of the department, including, but not limited to, the areas of
22 program responsibility provided in this paragraph following
23 ~~offices are established and shall be headed by a manager, each~~
24 ~~of whom shall be appointed by and serve at the pleasure of the~~
25 ~~secretary. The secretary may combine, separate, or delete~~
26 offices as needed in consultation with the Executive Office of
27 the Governor. The department's areas of program responsibility
28 include, but are not limited to ~~positions shall be classified~~
29 ~~at a level equal to a division director:~~

- 30 1. ~~The Office of Administration;~~

1 2. ~~The Office of Planning and Environmental~~
2 ~~Management;~~

3 3. ~~The Office of Design;~~

4 4. ~~The Office of Highway operations;~~

5 5. ~~The Office of Right-of-way;~~

6 6. ~~The Office of Toll operations;~~

7 7. ~~The Office of Information systems;~~

8 8. ~~The Office of Motor carrier compliance;~~

9 9. ~~The Office of Management and budget;~~

10 10. ~~The Office of Comptroller;~~

11 11. ~~The Office of Construction;~~

12 12. ~~The Office of Maintenance; and~~

13 13. ~~The Office of Materials.~~

14 (c)~~(d)~~ Other offices may be established in accordance
15 with s. 20.04(7). The heads of such offices are exempt from
16 part II of chapter 110. ~~No office or organization shall be~~
17 ~~created at a level equal to or higher than a division without~~
18 ~~specific legislative authority.~~

19 (d)~~(e)~~ The secretary shall appoint an inspector
20 general pursuant to s. 20.055 who shall be directly
21 responsible to the secretary and shall serve at the pleasure
22 of the secretary.

23 (e)~~(f)~~ The secretary shall appoint a general counsel
24 who shall be directly responsible to the secretary. The
25 general counsel is responsible for all legal matters of the
26 department. The department may employ as many attorneys as it
27 deems necessary to advise and represent the department in all
28 transportation matters.

29 (g)~~(g)~~ ~~The secretary shall appoint a state transportation~~
30 ~~development administrator. This position shall be classified~~
31 ~~at a level equal to a deputy assistant secretary.~~

1 ~~(h) The secretary shall appoint a state transportation~~
2 ~~operations administrator. This position shall be classified at~~
3 ~~a level equal to a deputy assistant secretary.~~

4 ~~(i) The secretary shall appoint a state public~~
5 ~~transportation and modal administrator. This position shall be~~
6 ~~classified at a level equal to a deputy assistant secretary.~~

7 (4)

8 (b) Each district secretary may appoint up to three a
9 district directors ~~director for transportation development, a~~
10 ~~district director for transportation operations, and a~~
11 ~~district director for transportation support~~ or, until July 1,
12 2005, each district secretary may appoint up to four a
13 district directors ~~director for planning and programming, a~~
14 ~~district director for production, a district director for~~
15 ~~operations, and a district director for administration.~~ These
16 positions are exempt from part II of chapter 110.

17 Section 2. Paragraphs (j) and (m) of subsection (2) of
18 section 110.205, Florida Statutes, are amended to read:

19 110.205 Career service; exemptions.--

20 (2) EXEMPT POSITIONS.--The exempt positions that are
21 not covered by this part include the following:

22 (j) The appointed secretaries, assistant secretaries,
23 deputy secretaries, and deputy assistant secretaries of all
24 departments; the executive directors, assistant executive
25 directors, deputy executive directors, and deputy assistant
26 executive directors of all departments; the directors of all
27 divisions and those positions determined by the department to
28 have managerial responsibilities comparable to such positions,
29 which positions include, but are not limited to, program
30 directors, assistant program directors, district
31 administrators, deputy district administrators, the Director

1 of Central Operations Services of the Department of Children
2 and Family Services, the State Transportation Development
3 Administrator, State Public Transportation and Modal
4 Administrator, district secretaries, district directors of
5 transportation development, transportation operations,
6 transportation support, and the managers of the offices
7 specified in s. 20.23(3)(b)~~s. 20.23(3)(c)~~, of the Department
8 of Transportation. Unless otherwise fixed by law, the
9 department shall set the salary and benefits of these
10 positions in accordance with the rules of the Senior
11 Management Service; and the county health department directors
12 and county health department administrators of the Department
13 of Health.

14 (m) All assistant division director, deputy division
15 director, and bureau chief positions in any department, and
16 those positions determined by the department to have
17 managerial responsibilities comparable to such positions,
18 which positions include, but are not limited to:

19 1. Positions in the Department of Health and the
20 Department of Children and Family Services that are assigned
21 primary duties of serving as the superintendent or assistant
22 superintendent of an institution.

23 2. Positions in the Department of Corrections that are
24 assigned primary duties of serving as the warden, assistant
25 warden, colonel, or major of an institution or that are
26 assigned primary duties of serving as the circuit
27 administrator or deputy circuit administrator.

28 3. Positions in the Department of Transportation that
29 are assigned primary duties of serving as regional toll
30 managers and managers of offices as defined in s. 20.23(3)(b)
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1 ~~s. 20.23(3)(c)~~ and (4)(d), and captains and majors of the
2 Office of Motor Carrier Compliance.

3 4. Positions in the Department of Environmental
4 Protection that are assigned the duty of an Environmental
5 Administrator or program administrator.

6 5. Positions in the Department of Health that are
7 assigned the duties of Environmental Administrator, Assistant
8 County Health Department Director, and County Health
9 Department Financial Administrator.

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11 Unless otherwise fixed by law, the department shall set the
12 salary and benefits of the positions listed in this paragraph
13 in accordance with the rules established for the Selected
14 Exempt Service.

15 Section 3. Notwithstanding section 338.165, Florida
16 Statutes, or any other provision of law or rule, the
17 Department of Transportation may not collect a toll for use of
18 the Navarre Bridge in Santa Rosa County and a toll may not be
19 charged or collected on that bridge.

20 Section 4. Subsection (12) is added to section
21 338.251, Florida Statutes, to read:

22 338.251 Toll Facilities Revolving Trust Fund.--The
23 Toll Facilities Revolving Trust Fund is hereby created for the
24 purpose of encouraging the development and enhancing the
25 financial feasibility of revenue-producing road projects
26 undertaken by local governmental entities in a county or
27 combination of contiguous counties and the turnpike
28 enterprise.

29 (12) Notwithstanding subsection (4), by agreement with
30 the department, the Emerald Coast Bridge Authority may revise
31 the repayment schedule of any previous advances, which may not

1 be considered a failure to repay if the effort to undertake a
2 revenue-producing road project is being conducted in good
3 faith and all other requirements of law are met.

4 Section 5. Section 334.30, Florida Statutes, is
5 amended to read:

6 334.30 Public-private ~~Private~~ transportation
7 facilities.--The Legislature hereby finds and declares that
8 there is a public need for rapid construction of safe and
9 efficient transportation facilities for the purpose of travel
10 within the state, and that it is in the public's interest to
11 provide for 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 as evidenced by approval of the
15 project in the department's work program ~~by a separate bill~~
16 ~~for each facility~~, enter into agreements with private
17 entities, or consortia thereof, for the building, operation,
18 ownership, or financing of transportation facilities. The
19 department may advance projects programmed in the adopted
20 5-year work program using funds provided by public-private
21 partnerships or private entities to be reimbursed from
22 department funds for the project as programmed in the adopted
23 work program.The department shall by rule establish an
24 application fee for the submission of proposals under this
25 section. The fee must be sufficient to pay the costs of
26 evaluating the proposals. The department may engage the
27 services of private consultants to assist in the evaluation.
28 Before ~~seeking legislative~~ approval, the department must
29 determine that the proposed project:

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

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1 (b) Would not require state funds to be used unless
2 the project is on the State Highway System ~~there is an~~
3 ~~overriding state interest~~; and

4 (c) 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 or cancellation of the agreement by the
8 department.

9
10 The department shall ensure that all reasonable costs to the
11 state ~~and substantially affected local governments and~~
12 ~~utilities~~, related to ~~the private~~ transportation facilities
13 that are not part of the State Highway System facility, are
14 borne by the private entity. The department shall also ensure
15 that all reasonable costs to the state and substantially
16 affected local governments and utilities, related to the
17 private transportation facility, are borne by the private
18 entity for transportation facilities that are owned by private
19 entities. For projects on the State Highway System, the
20 department may use state resources to participate in funding
21 and financing the project as provided for under the
22 department's enabling legislation.

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

28 (3) Each private transportation facility constructed
29 pursuant to this section shall comply with all requirements of
30 federal, state, and local laws; state, regional, and local
31 comprehensive plans; department rules, policies, procedures,

1 and standards for transportation facilities; and any other
2 conditions which the department determines to be in the
3 public's best interest.

4 (4) The department may exercise any power possessed by
5 it, including eminent domain, with respect to the development
6 and construction of state transportation projects to
7 facilitate the development and construction of transportation
8 projects pursuant to this section. The department may provide
9 services to the private entity. Agreements for maintenance,
10 law enforcement, and other services entered into pursuant to
11 this section shall provide for full reimbursement for services
12 rendered for projects not on the State Highway System.

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

20 (6) The department may request proposals from private
21 entities for public-private transportation projects or, if the
22 department receives an unsolicited proposal, the department
23 shall publish a notice in the Florida Administrative Weekly
24 and a newspaper of general circulation at least once a week
25 for 2 weeks stating that the department has received the
26 proposal and will accept, for 60 days after the initial date
27 of publication, other proposals for the same project purpose.
28 A copy of the notice must be mailed to each local government
29 in the affected area. After the public notification period has
30 expired, the department shall rank the proposals in order of
31 preference. In ranking the proposals the department may

1 consider factors, including, but not limited to, professional
2 qualifications, general business terms, innovative engineering
3 or cost-reduction terms, finance plans, and the need for state
4 funds to deliver the project. If the department is not
5 satisfied with the results of the negotiations, the department
6 may, at its sole discretion, terminate negotiations with the
7 proposer. If these negotiations are unsuccessful, the
8 department may go to the second-ranked and lower-ranked firms,
9 in order, using this same procedure. If only one proposal is
10 received, the department may negotiate in good faith and, if
11 the department is not satisfied with the results of the
12 negotiations, the department may, at its sole discretion,
13 terminate negotiations with the proposer. Notwithstanding this
14 subsection, the department may, at its discretion, reject all
15 proposals at any point in the process up to completion of a
16 contract with the proposer.

17 (7) The department may lend funds from the Toll
18 Facilities Revolving Trust Fund, as outlined in s. 338.251, to
19 private entities that construct projects on the State Highway
20 System containing toll facilities that are approved under this
21 section. To be eligible, a private entity must comply with s.
22 338.251 and must provide an indication from a nationally
23 recognized rating agency that the senior bonds for the project
24 will be investment grade, or must provide credit support such
25 as a letter of credit or other means acceptable to the
26 department, to ensure that the loans will be fully repaid. The
27 state's liability for the funding of a facility is limited to
28 the amount approved for that specific facility in the
29 department's 5-year work program adopted pursuant to s.
30 339.135.

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1 ~~(8)(6)~~ A fixed-guideway transportation system
2 authorized by the department to be wholly or partially within
3 the department's right-of-way pursuant to a lease granted
4 under s. 337.251 may operate at any safe speed.

5 Section 6. Paragraph (m) of subsection (2) of section
6 348.0004, Florida Statutes, is repealed.

7 Section 7. Subsection (9) is added to section
8 348.0004, Florida Statutes, to read:

9 348.0004 Purposes and powers.--

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

17 (a) Any expressway authority may receive or solicit
18 proposals and enter into agreements with private entities, or
19 consortia thereof, for the building, operation, ownership, or
20 financing of expressway authority transportation facilities or
21 new transportation facilities within the jurisdiction of the
22 expressway authority. An expressway authority is authorized to
23 adopt rules to implement this subsection and shall, by rule,
24 establish an application fee for the submission of unsolicited
25 proposals under this subsection. The fee must be sufficient to
26 pay the costs of evaluating the proposals. An expressway
27 authority may engage private consultants to assist in the
28 evaluation. Before approval, an expressway authority must
29 determine that a proposed project:

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

1 2. Would not require state funds to be used unless the
2 project is on or provides increased mobility on the State
3 Highway System.

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

9 (b) An expressway authority shall ensure that all
10 reasonable costs to the state, related to transportation
11 facilities that are not part of the State Highway System, are
12 borne by the private entity. An expressway authority shall
13 also ensure that all reasonable costs to the state and
14 substantially affected local governments and utilities related
15 to the private transportation facility are borne by the
16 private entity for transportation facilities that are owned by
17 private entities. For projects on the State Highway System,
18 the department may use state resources to participate in
19 funding and financing the project as provided for under the
20 department's enabling legislation.

21 (c) The expressway authority may request proposals for
22 public-private transportation projects or, if it receives an
23 unsolicited proposal, it must publish a notice in the Florida
24 Administrative Weekly and a newspaper of general circulation
25 in the county in which it is located at least once a week for
26 2 weeks, stating that it has received the proposal and will
27 accept, for 60 days after the initial date of publication,
28 other proposals for the same project purpose. A copy of the
29 notice must be mailed to each local government in the affected
30 areas. After the public notification period has expired, the
31 expressway authority shall rank the proposals in order of

1 preference. In ranking the proposals, the expressway authority
2 shall consider professional qualifications, general business
3 terms, innovative engineering or cost-reduction terms, finance
4 plans, and the need for state funds to deliver the proposal.
5 If the expressway authority is not satisfied with the results
6 of the negotiations, it may, at its sole discretion, terminate
7 negotiations with the proposer. If these negotiations are
8 unsuccessful, the expressway authority may go to the second
9 and lower-ranked firms, in order, using the same procedure. If
10 only one proposal is received, the expressway authority may
11 negotiate in good faith, and if it is not satisfied with the
12 results, it may, at its sole discretion, terminate
13 negotiations with the proposer. Notwithstanding this
14 paragraph, the expressway authority may, at its discretion,
15 reject all proposals at any point in the process up to
16 completion of a contract with the proposer.

17 (d) The department may lend funds from the Toll
18 Facilities Revolving Trust Fund, as outlined in s. 338.251, to
19 public-private partnerships. To be eligible a private entity
20 must comply with s. 338.251 and must provide an indication
21 from a nationally recognized rating agency that the senior
22 bonds for the project will be investment grade or must provide
23 credit support, such as a letter of credit or other means
24 acceptable to the department, to ensure that the loans will be
25 fully repaid.

26 (e) Agreements entered into pursuant to this
27 subsection may authorize the public-private entity to impose
28 tolls or fares for the use of the facility. However, the
29 amount and use of toll or fare revenues may be regulated by
30 the expressway authority to avoid unreasonable costs to users
31 of the facility.

1 (f) Each public-private transportation facility
2 constructed pursuant to this subsection shall comply with all
3 requirements of federal, state, and local laws; state,
4 regional, and local comprehensive plans; the expressway
5 authority's rules, policies, procedures, and standards for
6 transportation facilities; and any other conditions that the
7 expressway authority determines to be in the public's best
8 interest.

9 (g) An expressway authority may exercise any power
10 possessed by it, including eminent domain, to facilitate the
11 development and construction of transportation projects
12 pursuant to this subsection. An expressway authority may pay
13 all or part of the cost of operating and maintaining the
14 facility or may provide services to the private entity for
15 which it receives full or partial reimbursement for services
16 rendered.

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

23 Section 8. This act shall take effect upon becoming a
24 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1456

The CS removes the tolls from the Navarre Bridge and permits a continuation of the indebtedness assumed by the predecessor entity to the Emerald Coast Area Bridge Authority. The CS further authorizes both the Florida Department of Transportation and the several expressway authorities to enter into public-private partnerships for highway capacity expansion using alternative means. Limitations and preconditions are provided on the use of such partnerships.