

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation Committee

BILL: CS/SB 954

INTRODUCER: Transportation Committee and Senator Sebesta

SUBJECT: Transportation

DATE: March 21, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute (CS) for SB 954 concerns expressway authorities' ability to contract with outside parties for services. The CS clarifies the ability for all expressway authorities to engage in public-private partnerships. The Orlando-Orange County Expressway Authority (OOCEA) is provided authorization to waive the requirement for surety bonds on projects less than \$500,000 when the contract is awarded under the provisions of a local economic development program.

This CS substantially amends sections 348.004, 348.0012, and 348.754 of the Florida Statutes.

II. Present Situation:

Florida's expressway authorities are formed by the Florida Expressway Authority Act (Chapter 348, Part I of the Florida Statutes) or by act (Parts II through X) of the Legislature for the purpose of constructing, maintaining, and operating tolled transportation facilities complementing the State Highway System and the Florida Turnpike Enterprise. Most existing expressway authorities were created before Chapter 348, Part I, was enacted in 1990 and are, therefore, not subject to many of its provisions.

Public Private Partnerships (P³)

Public-private partnerships are arrangements of roles and relationships in which public and private entities coordinate or combine complementary resources and share risks and rewards in order to improve public services in the most effective and efficient manner. Generally, private partnerships are new forms of relationships between government transportation agencies and private entities designed to:

- Facilitate improved faster delivery of transportation facilities

- Access additional sources of revenue and finance
- Improve the performance of maintenance and operation

Section 348.0004 (9), F.S., was amended by the Legislature in 2005 to provide expressway authorities the ability to engage in public-private partnerships. The section:

- provides expressway authorities may receive or solicit proposals and contract with private parties for the building, operation, ownership, or financing of transportation facilities if:
 - The project is in the public's best interest,
 - No state funds are required unless the project provides increased mobility on the State Highway System (SHS), and
 - No additional costs or service disruptions would be borne by the public.
- The cost of reviewing public-private project submissions is borne by the private entity
- Any tolls or fares imposed by the private entity are subject to regulation by the expressway authority.
- P³ projects must comply with all applicable federal, state, and local laws, comprehensive plans, rules, policies, procedures, and standards, as well as any other conditions which the expressway authority determines to be in the public's interest.
- The expressway authority may provide development and construction services, including eminent domain. Expressway authorities may pay all or part of the operating and maintenance costs or provide services for which it receives full or partial reimbursement.
- If an expressway authority receives an unsolicited proposal, the authority shall publish weekly for two weeks, an invitation for competing proposals which will be received for up to 60 days from the initial publication. Proposals will be ranked and the authority may negotiate with multiple proposers.
- Loans from the Toll Facilities Revolving Trust Fund may be made for P³ toll facilities.

Since the changes made in 2005 were placed in Part I of chapter 348, some concern has been raised relative to the provisions' applicability to expressway authorities formed in Parts II through X.

Payment and performance bonds for public construction projects

Section 255.05(1)(a), F.S., provides any person who enters into a formal contract with the state or any county, city, political subdivision, or other public authority, for the construction or repairs of a public building or other public work, is required to deliver to the public owner a payment and performance bond with a state authorized surety insurer.

Such bonds, also called sureties, are contracts where a surety company is paid a premium by a principal, e.g., a general contractor, and agrees to stand in the place of the principal in the event the principal defaults either as to performance of the contract or as to payment of its subcontractors/suppliers.

Currently, OOCEA has a program that seeks to encourage Orlando-area small-business owners to bid on components of expressway authority projects. In its eight years' of existence, the "micro-contract" program has attracted more than 100 small companies to perform such tasks as erecting guard rails, installing landscaping, and striping toll roads. One of the benefits of the

program to small businesses has been the waiver of a performance bond for project contracts of \$200,000 or less. This waiver is available to all state agencies. See s. 255.05, F.S. Persons or entities awarded public contracts greater than \$200,000 must post a surety bond to guarantee the work will be performed to the state agency's specifications. The recent unprecedented increases in transportation construction materials and labor in Florida have resulted in increased bid prices for these micro-contracts, according to OOCEA staff. The OOCEA is proposing amending s. 348.754, F.S., which specifies the OOCEA's purposes and powers, to raise the \$200,000 threshold to \$500,000.

III. Effect of Proposed Changes:

Section 1 creates a new paragraph (6) of s. 348.754, F.S., authorizing the OOCEA to waive the requirements for payment and performance bonds (surety) on public construction projects of \$500,000 or less, when the project is awarded under the provisions of an economic development program for the encouragement of local small businesses. The legislation limits participation in the program to independent businesses principally headquartered in the Orange County Standard Metropolitan Statistical Area and employing a maximum of 25 persons. Eligible businesses also must have gross annual construction sales averaging \$3 million or less over the previous three calendar years; be accepted into OOCEA's economic-development program; and participate in OOCEA technical assistance or other educational programs. The waiver of surety does not affect the OOCEA's obligation to pay for services rendered. Any small business which has been the successful bidder on six micro-contracts is ineligible to continue participating in the program. OOCEA is required to prepare a report on the program every two years and submit it to the Orange County legislative delegation, beginning December 31, 2008.

Section 2 amends s. 348.0004, F.S., to clarify any expressway authority, transportation authority, bridge authority, or toll authority established in Part I of chapter 348, F.S., or any other statute may engage in public-private partnerships.

Section 3 amends s. 348.0012, F.S., to clarify the Florida Expressway Authority Act (Part I, ch. 348, F.S.) does not apply to other parts of the chapter, except as expressly provided within Part I.

Section 4 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private business firms may benefit from enhanced opportunities to contract with public agencies.

C. Government Sector Impact:

Public agencies may benefit for increased competition to provide public goods and services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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