

By the Committee on Transportation; and Senator Sebesta

596-1939-06

1                                   A bill to be entitled  
2           An act relating to transportation; amending s.  
3           348.754, F.S.; authorizing the Orlando-Orange  
4           County Expressway Authority to waive payment  
5           and performance bonds on certain construction  
6           contracts if the contract is awarded pursuant  
7           to an economic development program for the  
8           encouragement of local small businesses;  
9           providing criteria for participation in the  
10          program; providing criteria for the bond  
11          waiver; providing for certain determinations by  
12          the authority's executive director or a  
13          designee as to the suitability of a project;  
14          providing for certain payment obligations if a  
15          payment and performance bond is waived;  
16          requiring the authority to record notice of the  
17          obligation; limiting eligibility to bid on the  
18          projects; providing for the authority to  
19          conduct bond-eligibility training for certain  
20          businesses; requiring the authority to submit  
21          biennial reports to the Orange County  
22          legislative delegation; amending s. 348.0004,  
23          F.S.; authorizing transportation authorities,  
24          bridge authorities, or toll authorities to  
25          enter agreements with private entities to  
26          provide transportation facilities; amending s.  
27          348.0012, F.S.; clarifying certain exemptions  
28          from the Florida Expressway Authority Act;  
29          providing an effective date.  
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31   Be It Enacted by the Legislature of the State of Florida:

1           Section 1. Subsection (6) is added to section 348.754,  
2 Florida Statutes, to read:

3           348.754 Purposes and powers.--

4           (6)(a) Notwithstanding s. 255.05, the Orlando-Orange  
5 County Expressway Authority may waive payment and performance  
6 bonds on construction contracts for the construction of a  
7 public building, for the prosecution and completion of a  
8 public work, or for repairs on a public building or public  
9 work that has a cost of \$500,000 or less and when the project  
10 is awarded pursuant to an economic development program for the  
11 encouragement of local small businesses which has been adopted  
12 by the governing body of the Orlando-Orange County Expressway  
13 Authority pursuant to a resolution or policy.

14           (b) The authority's adopted criteria for participation  
15 in the economic development program for local small businesses  
16 requires that a participant:

17           1. Be an independent business.

18           2. Be principally domiciled in the Orange County  
19 Standard Metropolitan Statistical Area.

20           3. Employ 25 or fewer full-time employees.

21           4. Have gross annual sales averaging \$3 million or  
22 less over the immediately preceding 3 calendar years with  
23 regard to any construction element of the program.

24           5. Be accepted as a participant in the Orlando-Orange  
25 County Expressway Authority's microcontracts program or such  
26 other small business program as may be hereinafter enacted by  
27 the Orlando-Orange County Expressway Authority.

28           6. Participate in an educational curriculum or  
29 technical assistance program for business development which  
30 will assist the small business in becoming eligible for  
31 bonding.

1           (c) The authority's adopted procedures for waiving  
2 payment and performance bonds on projects having values not  
3 less than \$200,000 and not exceeding \$500,000 shall provide  
4 that payment and performance bonds may be waived only on  
5 projects that have been set aside to be competitively bid on  
6 by participants in an economic development program for local  
7 small businesses. The authority's executive director or his or  
8 her designee shall determine whether specific construction  
9 projects are suitable for:

- 10           1. Bidding under the authority's microcontracts  
11 program by registered local small businesses; and  
12           2. Waiver of the payment and performance bond.

13  
14 The decision of the authority's executive director or deputy  
15 executive director to waive the payment and performance bond  
16 shall be based upon his or her investigation and conclusion  
17 that there exists sufficient competition so that the authority  
18 receives a fair price and does not undertake any unusual risk  
19 with respect to such project.

20           (d) For any contract for which a payment and  
21 performance bond has been waived pursuant to the authority set  
22 forth in this section, the Orlando-Orange County Expressway  
23 Authority shall pay all persons defined in s. 713.01 who  
24 furnish labor, services, or materials for the prosecution of  
25 the work provided for in the contract to the same extent and  
26 upon the same conditions that a surety on the payment bond  
27 under s. 255.05 would have been obligated to pay such persons  
28 if the payment and performance bond had not been waived. The  
29 authority shall record notice of this obligation in the manner  
30 in which and at the location where surety bonds are recorded.  
31 The notice must include the information describing the

1 contract that s. 255.05(1) requires be stated on the front  
2 page of the bond. Notwithstanding that s. 255.05(9) generally  
3 applies when a performance and payment bond is required, s.  
4 255.05(9) shall apply under this subsection to any contract  
5 for which performance or payment bonds are waived, and any  
6 claim to payment under this subsection shall be treated as a  
7 contract claim pursuant to s. 255.05(9).

8 (e) A small business that has been the successful  
9 bidder on six projects for which the payment and performance  
10 bond was waived by the authority pursuant to paragraph (a)  
11 shall be ineligible to bid on additional projects for which  
12 the payment and performance bond is to be waived. The local  
13 small business may continue to participate in other elements  
14 of the economic development program for local small businesses  
15 as long as it is eligible to do so.

16 (f) The authority shall conduct bond-eligibility  
17 training for businesses qualifying for bond waiver under this  
18 subsection to encourage and promote bond eligibility for such  
19 businesses.

20 (g) The authority shall prepare a biennial report on  
21 the activities undertaken pursuant to this subsection to be  
22 submitted to the Orange County legislative delegation. The  
23 initial report shall be due December 31, 2008.

24 Section 2. Subsection (9) of section 348.0004, Florida  
25 Statutes, is amended to read:

26 348.0004 Purposes and powers.--

27 (9) The Legislature declares that there is a public  
28 need for rapid construction of safe and efficient  
29 transportation facilities for travel within the state and that  
30 it is in the public's interest to provide for public-private  
31 partnership agreements to effectuate the construction of

1 additional safe, convenient, and economical transportation  
2 facilities.

3 (a) Notwithstanding any other provision of the Florida  
4 Expressway Authority Act, any expressway authority,  
5 transportation authority, bridge authority, or toll authority  
6 established under this part or any other statute may receive  
7 or solicit proposals and enter into agreements with private  
8 entities, or consortia thereof, for the building, operation,  
9 ownership, or financing of ~~expressway~~ authority transportation  
10 facilities or new transportation facilities within the  
11 jurisdiction of the ~~expressway~~ authority. An ~~expressway~~  
12 authority is authorized to adopt rules to implement this  
13 subsection and shall, by rule, establish an application fee  
14 for the submission of unsolicited proposals under this  
15 subsection. The fee must be sufficient to pay the costs of  
16 evaluating the proposals. An ~~expressway~~ authority may engage  
17 private consultants to assist in the evaluation. Before  
18 approval, an ~~expressway~~ authority must determine that a  
19 proposed project:

- 20 1. Is in the public's best interest.
- 21 2. Would not require state funds to be used unless the  
22 project is on or provides increased mobility on the State  
23 Highway System.
- 24 3. Would have adequate safeguards to ensure that no  
25 additional costs or service disruptions would be realized by  
26 the traveling public and residents ~~citizens~~ of the state in  
27 the event of default or the cancellation of the agreement by  
28 the ~~expressway~~ authority.

29 (b) An ~~expressway~~ authority shall ensure that all  
30 reasonable costs to the state which are, related to  
31 transportation facilities that are not part of the State

1 Highway System<sup>7</sup> are borne by the private entity. An ~~expressway~~  
2 authority shall also ensure that all reasonable costs to the  
3 state and substantially affected local governments and  
4 utilities related to the private transportation facility are  
5 borne by the private entity for transportation facilities that  
6 are owned by private entities. For projects on the State  
7 Highway System, the department may use state resources to  
8 participate in funding and financing the project as provided  
9 for under the department's enabling legislation.

10 (c) The ~~expressway~~ authority may request proposals for  
11 public-private transportation projects or, if it receives an  
12 unsolicited proposal, it must publish a notice in the Florida  
13 Administrative Weekly and a newspaper of general circulation  
14 in the county in which it is located at least once a week for  
15 2 weeks<sup>7</sup>, stating that it has received the proposal and will  
16 accept, for 60 days after the initial date of publication,  
17 other proposals for the same project purpose. A copy of the  
18 notice must be mailed to each local government in the affected  
19 areas. After the public notification period has expired, the  
20 ~~expressway~~ authority shall rank the proposals in order of  
21 preference. In ranking the proposals, the ~~expressway~~ authority  
22 shall consider professional qualifications, general business  
23 terms, innovative engineering or cost-reduction terms, finance  
24 plans, and the need for state funds to deliver the proposal.  
25 If the ~~expressway~~ authority is not satisfied with the results  
26 of the negotiations, it may, at its sole discretion, terminate  
27 negotiations with the proposer. If these negotiations are  
28 unsuccessful, the ~~expressway~~ authority may go to the second  
29 and lower-ranked firms, in order, using the same procedure. If  
30 only one proposal is received, the ~~expressway~~ authority may  
31 negotiate in good faith, and if it is not satisfied with the

1 results, it may, at its sole discretion, terminate  
2 negotiations with the proposer. Notwithstanding this  
3 paragraph, the ~~expressway~~ authority may, at its discretion,  
4 reject all proposals at any point in the process up to  
5 completion of a contract with the proposer.

6 (d) The department may lend funds from the Toll  
7 Facilities Revolving Trust Fund, as outlined in s. 338.251, to  
8 public-private partnerships. To be eligible a private entity  
9 must comply with s. 338.251 and must provide an indication  
10 from a nationally recognized rating agency that the senior  
11 bonds for the project will be investment grade or must provide  
12 credit support, such as a letter of credit or other means  
13 acceptable to the department, to ensure that the loans will be  
14 fully repaid.

15 (e) Agreements entered into pursuant to this  
16 subsection may authorize the public-private entity to impose  
17 tolls or fares for the use of the facility. However, the  
18 amount and use of toll or fare revenues shall be regulated by  
19 the ~~expressway~~ authority to avoid unreasonable costs to users  
20 of the facility.

21 (f) Each public-private transportation facility  
22 constructed pursuant to this subsection shall comply with all  
23 requirements of federal, state, and local laws; state,  
24 regional, and local comprehensive plans; the ~~expressway~~  
25 authority's rules, policies, procedures, and standards for  
26 transportation facilities; and any other conditions that the  
27 ~~expressway~~ authority determines to be in the public's best  
28 interest.

29 (g) An ~~expressway~~ authority may exercise any power  
30 possessed by it, including eminent domain, to facilitate the  
31 development and construction of transportation projects

1 pursuant to this subsection. An ~~expressway~~ authority may pay  
2 all or part of the cost of operating and maintaining the  
3 facility or may provide services to the private entity for  
4 which it receives full or partial reimbursement for services  
5 rendered.

6 (h) Except as herein provided, this subsection is not  
7 intended to amend existing laws by granting additional powers  
8 to or further restricting the governmental entities from  
9 regulating and entering into cooperative arrangements with the  
10 private sector for the planning, construction, and operation  
11 of transportation facilities. Use of the powers granted in  
12 this subsection may not subject a statutorily created  
13 expressway authority, transportation authority, bridge  
14 authority, or toll authority, other than one statutorily  
15 created under this part, to any of the requirements of this  
16 part other than those contained in this subsection.

17 Section 3. Section 348.0012, Florida Statutes, is  
18 amended to read:

19 348.0012 Exemptions from applicability.--The Florida  
20 Expressway Authority Act does not apply:

21 (1) In a county in which an expressway authority has  
22 been created pursuant to other parts ~~II-IX~~ of this chapter,  
23 except as expressly provided in this part; or

24 (2) To a transportation authority created pursuant to  
25 chapter 349.

26 Section 4. This act shall take effect July 1, 2006.



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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 954

The CS clarifies existing provisions of the Florida Expressway Authority Act, allowing any statutorily created transportation, bridge, or toll authority to engage in public-private partnerships. The CS allows the Orlando-Orange County Expressway Authority to waive performance bond requirements for public projects under \$500,000 in order to promote a small business contractor program.