

Bill No. CS for CS for CS for SB 2804

Barcode 504538

CHAMBER ACTION

Senate

House

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The Committee on Transportation and Economic Development  
Appropriations (Webster) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 26, between lines 30 and 31,

insert:

Section 18. Section 334.30, F.S., is amended to read:

334.30 Public-private transportation facilities.--The

Legislature hereby finds and declares that there is a public  
need for rapid construction of safe and efficient  
transportation facilities for the purpose of travel within the  
state, and that it is in the public's interest to provide for  
the construction of additional safe, convenient, and  
economical transportation facilities.

(1) The department may receive or solicit proposals  
and, with legislative approval as evidenced by approval of the  
project in the department's work program, enter into  
agreements with private entities, or consortia thereof, for  
the building, operation, ownership, or financing of  
transportation facilities which increase transportation

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1 capacity. Except as provided in s. 337.25, s. 337.251, s.  
 2 338.234, and s. 338.235, the department may not sell or lease  
 3 any transportation facility owned by the department. The  
 4 department may advance projects programmed in the adopted  
 5 5-year work program using funds provided by public-private  
 6 partnerships or private entities to be reimbursed from  
 7 department funds for the project as programmed in the adopted  
 8 work program. The department shall by rule establish an  
 9 application fee for the submission of unsolicited proposals  
 10 under this section. The fee must be sufficient to pay the  
 11 costs of evaluating the proposals. The department may engage  
 12 the services of private consultants to assist in the  
 13 evaluation. Before approval, the department must determine  
 14 that the proposed project:

- 15 (a) Is in the public's best interest;
- 16 (b) Would not require state funds to be used unless
- 17 the project is on the State Highway System; and
- 18 (c) Would have adequate safeguards in place to ensure
- 19 that no additional costs or service disruptions would be
- 20 realized by the traveling public and citizens of the state in
- 21 the event of default or cancellation of the agreement by the
- 22 department.

23 (d) Would have adequate safeguards in place to ensure  
 24 the department or the private entity has the opportunity to  
 25 add capacity to the proposed project and other transportation  
 26 facilities serving similar origins and destinations.

27 (e) Would be owned by the department upon completion  
 28 or termination of the agreement.

29 (2) Agreements entered into pursuant to this section  
 30 may authorize the private entity to impose tolls or fares for  
 31 the use of the facility. However, the amount and use of toll

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1 or fare revenues shall be regulated by the department to avoid  
2 unreasonable costs to users of the facility.

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

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

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

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

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

23 (7) The department may lend funds from the Toll  
24 Facilities Revolving Trust Fund, as outlined in s. 338.251, to  
25 private entities that construct projects on the State Highway  
26 System containing toll facilities that are approved under this  
27 section. To be eligible, a private entity must comply with s.  
28 338.251 and must provide an indication from a nationally  
29 recognized rating agency that the senior bonds for the project  
30 will be investment grade, or must provide credit support such  
31 as a letter of credit or other means acceptable to the

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1 department, to ensure that the loans will be fully repaid. The  
 2 state's liability for the funding of a facility is limited to  
 3 the amount approved for that specific facility in the  
 4 department's 5-year work program adopted pursuant to s.  
 5 339.135.

6 ~~(8) A fixed-guideway transportation system authorized~~  
 7 ~~by the department to be wholly or partially within the~~  
 8 ~~department's right-of-way pursuant to a lease granted under s.~~  
 9 ~~337.251 may operate at any safe speed.~~

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

22 Section 19. Subsection (9) of section 348.0004,  
 23 Florida Statutes, is amended to read:

24 348.0004 Purposes and powers.--

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

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1 (a) Notwithstanding any other provision of the Florida  
2 Expressway Authority Act, any expressway authority,  
3 transportation authority, bridge authority, or toll authority  
4 established under this part or any other statute may receive  
5 or solicit proposals and enter into agreements with private  
6 entities, or consortia thereof, for the building, operation,  
7 ownership, or financing of ~~expressway~~ authority transportation  
8 facilities or new transportation facilities within the  
9 jurisdiction of the ~~expressway~~ authority which increase  
10 transportation capacity. An authority may not sell or lease  
11 any transportation facility owned by the authority. An  
12 ~~expressway~~ authority is authorized to adopt rules to implement  
13 this subsection and shall, by rule, establish an application  
14 fee 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 4. Would have adequate safeguards in place to ensure  
30 the department or the private entity has the opportunity to  
31 add capacity to the proposed project and other transportation

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1 facilities serving similar origins and destinations.

2 5. Would be owned by the authority upon completion or  
3 termination of the agreement.

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

16 (c) The ~~expressway~~ authority may request proposals for  
17 public-private transportation projects or, if it receives an  
18 unsolicited proposal, it must publish a notice in the Florida  
19 Administrative Weekly and a newspaper of general circulation  
20 in the county in which it is located at least once a week for  
21 2 weeks, stating that it has received the proposal and will  
22 accept, for 60 days after the initial date of publication,  
23 other proposals for the same project purpose. A copy of the  
24 notice must be mailed to each local government in the affected  
25 areas. After the public notification period has expired, the  
26 ~~expressway~~ authority shall rank the proposals in order of  
27 preference. In ranking the proposals, the ~~expressway~~ authority  
28 shall consider professional qualifications, general business  
29 terms, innovative engineering or cost-reduction terms, finance  
30 plans, and the need for state funds to deliver the proposal.

31 If the ~~expressway~~ authority is not satisfied with the results

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

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

21 (e) Agreements entered into pursuant to this  
 22 subsection may authorize the public-private entity to impose  
 23 tolls or fares for the use of the facility. However, the  
 24 amount and use of toll or fare revenues shall be regulated by  
 25 the ~~expressway~~ authority to avoid unreasonable costs to users  
 26 of the facility.

27 (f) Each public-private transportation facility  
 28 constructed pursuant to this subsection shall comply with all  
 29 requirements of federal, state, and local laws; state,  
 30 regional, and local comprehensive plans; the ~~expressway~~  
 31 authority's rules, policies, procedures, and standards for



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1 transportation facilities; and any other conditions that the  
2 ~~expressway~~ authority determines to be in the public's best  
3 interest.

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

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

23  
24 (Redesignate subsequent sections.)

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26  
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 On page 4, line 3, after the semicolon

30  
31 insert:

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1 amending s. 334.30, F.S.; authorizing the  
2 Department of Transportation to enter into  
3 agreements with private entities for the  
4 building, operation, ownership, or financing of  
5 transportation facilities; establishing  
6 criteria for agreements; amending s. 338.0004,  
7 F.S.; authorizing certain  
8 transportation-related authorities to enter  
9 into agreements with private entities for the  
10 building, operation, ownership, or financing of  
11 transportation facilities;

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