

Bill No. CS/CS/HB 985, 2nd Eng.

Barcode 885916

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Baker moved the following **amendment to amendment**
(671544):

Senate Amendment

On page 97, line 11 through page 102, line 14, delete
those lines

and insert:

(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. The department may advance projects
programmed in the adopted 5-year work program or projects
increasing transportation capacity and greater than \$500
million in the 10-year Strategic Intermodal Plan using funds
provided by public-private partnerships or private entities to
be reimbursed from department funds for the project as
programmed in the adopted work program. The department shall
by rule establish an application fee for the submission of

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1 unsolicited proposals under this section. The fee must be
2 sufficient to pay the costs of evaluating the proposals. The
3 department may engage the services of private consultants to
4 assist in the evaluation. Before approval, the department must
5 determine that the proposed project:

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

7 (b) Would not require state funds to be used unless
8 the project is on the State Highway System; ~~and~~

9 (c) Would have adequate safeguards in place to ensure
10 that no additional costs or service disruptions would be
11 realized by the traveling public and residents ~~citizens~~ of the
12 state in the event of default or cancellation of the agreement
13 by the department;~~-~~

14 (d) Would have adequate safeguards in place to ensure
15 that the department or the private entity has the opportunity
16 to add capacity to the proposed project and other
17 transportation facilities serving similar origins and
18 destinations; and

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

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 private entity.
25 The department shall also ensure that all reasonable costs to
26 the state and substantially affected local governments and
27 utilities, related to the private transportation facility, are
28 borne by the private entity for transportation facilities that
29 are owned by private entities. For projects on the State
30 Highway System, the department may use state resources to
31 participate in funding and financing the project as provided

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1 for under the department's enabling legislation.

2 (2) Agreements entered into pursuant to this section
3 may authorize the private entity to impose tolls or fares for
4 the use of the facility. The following provisions shall apply
5 to such agreements: ~~However, the amount and use of toll or~~
6 ~~fare revenues shall be regulated by the department to avoid~~
7 ~~unreasonable costs to users of the facility.~~

8 (a) With the exception of the Florida Turnpike System,
9 the department may lease existing toll facilities through
10 public-private partnerships. The public-private partnership
11 agreement must ensure that the transportation facility is
12 properly operated, maintained, and renewed in accordance with
13 department standards.

14 (b) The department may develop new toll facilities or
15 increase capacity on existing toll facilities through
16 public-private partnerships. The public-private partnership
17 agreement must ensure that the toll facility is properly
18 operated, maintained, and renewed in accordance with
19 department standards.

20 (c) Any toll revenues shall be regulated by the
21 department pursuant to s. 338.165(3). The regulations
22 governing the future increase of toll or fare revenues shall
23 be included in the public-private partnership agreement.

24 (d) The department shall provide the analysis required
25 in subsection (6)(e)2. of this section to the Legislative
26 Budget Commission created pursuant to s. 11.90 for review and
27 approval prior to awarding a contract on a lease of an
28 existing toll facility.

29 (e) The department shall include provisions in the
30 public-private partnership agreement that ensure a negotiated
31 portion of revenues from tolled or fare generating projects

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1 are returned to the department over the life of the
 2 public-private partnership agreement. In the case of a lease
 3 of an existing toll facility, the department shall receive a
 4 portion of funds upon closing on the agreements and shall also
 5 include provisions in the agreement to receive payment of a
 6 portion of excess revenues over the life of the public-private
 7 partnership.

8 (f) The private entity shall provide an investment
 9 grade traffic and revenue study prepared by an internationally
 10 recognized traffic and revenue expert that is accepted by the
 11 national bond rating agencies. The private entity shall also
 12 provide a finance plan that identifies the project cost,
 13 revenues by source, financing, major assumptions, internal
 14 rate of return on private investments, and whether any
 15 government funds are assumed to deliver a cost feasible
 16 project, and a total cash flow analysis beginning with
 17 implementation of the project and extending for the term of
 18 the agreement.

19 (3) Each private transportation facility constructed
 20 pursuant to this section shall comply with all requirements of
 21 federal, state, and local laws; state, regional, and local
 22 comprehensive plans; department rules, policies, procedures,
 23 and standards for transportation facilities; and any other
 24 conditions which the department determines to be in the
 25 public's best interest.

26 (4) The department may exercise any power possessed by
 27 it, including eminent domain, with respect to the development
 28 and construction of state transportation projects to
 29 facilitate the development and construction of transportation
 30 projects pursuant to this section. The department may provide
 31 services to the private entity. Agreements for maintenance,

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1 law enforcement, and other services entered into pursuant to
2 this section shall provide for full reimbursement for services
3 rendered for projects not on the State Highway System.

4 (5) Except as herein provided, the provisions of this
5 section are not intended to amend existing laws by granting
6 additional powers to, or further restricting, local
7 governmental entities from regulating and entering into
8 cooperative arrangements with the private sector for the
9 planning, construction, and operation of transportation
10 facilities.

11 (6) The procurement of public-private partnerships by
12 the department shall follow the provisions of this section.
13 Sections 337.025, 337.11, 337.14, 337.141, 337.145, 337.175,
14 337.18, 337.185, 337.19, 337.221, and 337.251 shall not apply
15 to procurements under this section unless a provision is
16 included in the procurement documents. The department shall
17 ensure that generally accepted business practices for
18 exemptions provided by this subsection are part of the
19 procurement process or are included in the public-private
20 partnership agreement.

21 (a) The department may request proposals from private
22 entities for public-private transportation projects or, if the
23 department receives an unsolicited proposal, the department
24 shall publish a notice in the Florida Administrative Weekly
25 and a newspaper of general circulation at least once a week
26 for 2 weeks stating that the department has received the
27 proposal and will accept, for 120 ~~60~~ days after the initial
28 date of publication, other proposals for the same project
29 purpose. A copy of the notice must be mailed to each local
30 government in the affected area.

31 (b) Public-private partnerships shall be qualified by

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1 the department as part of the procurement process as outlined
2 in the procurement documents, provided such process ensures
3 that the private firm meets at least the minimum department
4 standards for qualification in department rule for
5 professional engineering services and road and bridge
6 contracting prior to submitting a proposal under the
7 procurement.

8 (c) The department shall ensure that procurement
9 documents include provisions for performance of the private
10 entity and payment of subcontractors, including, but not
11 limited to, surety bonds, letters of credit, parent company
12 guarantees, and lender and equity partner guarantees. The
13 department shall balance the structure of the security package
14 for the public-private partnership that ensures performance
15 and payment of subcontractors with the cost of the security to
16 ensure the most efficient pricing.

17 (d) After the public notification period has expired,
18 the department shall rank the proposals in order of
19 preference. In ranking the proposals, the department may
20 consider factors ~~that include, including,~~ but are not limited
21 to, professional qualifications, general business terms,
22 innovative engineering or cost-reduction terms, finance plans,
23 and the need for state funds to deliver the project. If the
24 department is not satisfied with the results of the
25 negotiations, the department may, at its sole discretion,
26 terminate negotiations with the proposer. If these
27 negotiations are unsuccessful, the department may go to the
28 second-ranked and lower-ranked firms, in order, using this
29 same procedure. If only one proposal is received, the
30 department may negotiate in good faith and, if the department
31 is not satisfied with the results of the negotiations, the

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

6 (e) The department shall provide an independent
7 analysis of the proposed public-private partnership that
8 demonstrates the cost-effectiveness and overall public benefit
9 at the following times:

- 10 1. Prior to moving forward with the procurement; and
11 2. If the procurement moves forward, prior to awarding
12 the contract.

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