



147402

CHAMBER ACTION

Senate

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House

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

3  
4 **Senate Amendment (with title amendment)**

5 Between lines 487-488

6 and insert:

7  
8 Section 13. The Legislature finds that prudent and sound  
9 infrastructure investments by the State Board of Administration  
10 of funds from the Lawton Chiles Endowment Fund in Florida  
11 infrastructure, specifically state-owned toll roads and toll  
12 facilities, that have potential to earn stable and competitive  
13 returns will serve the broad interests of the beneficiaries of  
14 the trust fund. The Legislature further finds that such  
15 infrastructure investments are being made by public investment  
16 funds worldwide and are being made or evaluated by public  
17 investment funds in many other states in this country. Therefore,



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18 it is a policy of this state that the State Board of  
19 Administration identify and invest in Florida infrastructure  
20 investments if such investments are consistent with and do not  
21 compromise or conflict with the obligations of the State Board of  
22 Administration.

23 Section 14. Subsection (5) of section 215.44, Florida  
24 Statutes, is amended to read:

25 215.44 Board of Administration; powers and duties in  
26 relation to investment of trust funds.--

27 (5) On or before January 1 of each year, the board shall  
28 provide to the Legislature a report including the following items  
29 for each fund which, by law, has been entrusted to the board for  
30 investment:

31 (a) A schedule of the annual beginning and ending asset  
32 values and changes and sources of changes in the asset value of:

- 33 1. Each fund managed by the board; and  
34 2. Each asset class and portfolio within the Florida  
35 Retirement System Trust Fund;

36 (b) A description of the investment policy for each fund,  
37 and changes in investment policy for each fund since the previous  
38 annual report;

39 (c) A description of compliance with investment strategy  
40 for each fund;

41 (d) A description of the risks inherent in investing in  
42 financial instruments of the major asset classes held in the  
43 fund; ~~and~~

44 (e) A summary of the type and amount of infrastructure  
45 investments held in the fund; and

46 (f) ~~(e)~~ Other information deemed of interest by the  
47 executive director of the board.



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48 Section 15. Subsection (14) of section 215.47, Florida  
49 Statutes, is amended to read:

50 215.47 Investments; authorized securities; loan of  
51 securities.--Subject to the limitations and conditions of the  
52 State Constitution or of the trust agreement relating to a trust  
53 fund, moneys available for investments under ss. 215.44-215.53  
54 may be invested as follows:

55 (14) With no more in aggregate than 10 ~~5~~ percent of any  
56 fund in alternative investments, as defined in s.  
57 215.44(8)(c)1.a., through participation in the vehicles defined  
58 in s. 215.44(8)(c)1.b. or infrastructure investments or  
59 securities or investments that are not publicly traded and are  
60 not otherwise authorized by this section. As used in this  
61 subsection, the term "infrastructure investments" includes but is  
62 not limited to investments in transportation, communication,  
63 social and utility infrastructure assets that have from time to  
64 time been owned and operated or funded by governments.  
65 Infrastructure assets include, but are not limited to toll roads,  
66 toll facilities, tunnels, rail facilities, intermodal facilities,  
67 airports, seaports, water distribution, sewage and desalination  
68 treatment facilities, cell towers, cable networks, broadcast  
69 towers and energy production and transmission facilities.  
70 Investments that are the subject of this paragraph may be  
71 effected through separate accounts, commingled vehicles,  
72 including, but not limited to, limited partnerships or limited  
73 liability companies, and direct equity, debt, mezzanine, claims,  
74 leases or other financial arrangements without reference to  
75 limitations within this section. Expenditures associated with  
76 the acquisition and operation of actual or potential



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77 infrastructure assets shall be included as part of the cost of  
78 infrastructure investment.

79 Section 16. Paragraph (f) is added to subsection (4) of  
80 section 215.5601, Florida Statutes, to read:

81 215.5601 Lawton Chiles Endowment Fund.--

82 (4) ADMINISTRATION.--

83 (f) Notwithstanding other provisions of law, the board,  
84 consistent with its fiduciary duties, shall lease, for up to 50  
85 years and in whole or in part, the Alligator Alley from the  
86 Florida Department of Transportation with funds in the endowment  
87 if such investments are determined to provide an adequate rate of  
88 return to the endowment considering all investment risks  
89 involved, and if the amount of such investments shall be no less  
90 than 25 percent and no more than 50 percent of the assets of the  
91 endowment at the time. The State Board of Administration shall  
92 strive to make such investments prior to the end of the 2009-2010  
93 fiscal year, consistent with its fiduciary duties. The board  
94 shall make a progress report to the President of the Senate and  
95 Speaker of the House of Representatives by March 1, 2009. The  
96 board may contract with the Florida Department of Transportation,  
97 other governmental entities, public benefit corporation or  
98 private sector entities, as appropriate, to operate and maintain  
99 the toll facility consistent with applicable federal and state  
100 laws and rules.

101 Section 17. Section 334.305, Florida Statutes, is created  
102 to read:

103 334.305 .-- Lease of transportation facilities.--The  
104 Legislature finds and declares that there is a public need for  
105 the lease of transportation facilities to assist in the funding  
106 of the rapid construction of other safe and efficient



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107 transportation facilities for the purpose of promoting the  
108 mobility of persons and goods within this state, and that it is  
109 in the public's interest to provide for such lease to advance the  
110 construction of additional safe, convenient, and economical  
111 transportation facilities. The Legislature further finds and  
112 declares that any lease agreement of transportation facilities by  
113 and between the State Board of Administration, acting on behalf  
114 of a trust fund, and the department, shall be and remain fair to  
115 the beneficiaries of such trust fund and that any such agreement  
116 and the resulting infrastructure investment shall not be impaired  
117 by any act of this state or of any local government of this  
118 state.

119 (1) (a) The department is authorized to enter into a lease  
120 agreement for up to 50 years with the State Board of  
121 Administration for Alligator Alley. Before approval, the  
122 department must determine that the proposed lease is in the  
123 public's best interest. The department and the State Board of  
124 Administration may separately engage the services of private  
125 consultants to assist in developing the lease agreement. In the  
126 terms and conditions of the lease agreement, the State Board of  
127 Administration, acting on behalf of trust fund participants and  
128 beneficiaries, shall not be disadvantaged relative to industry  
129 standard terms and conditions for institutional infrastructure  
130 investments. For the purpose of this section, the lease agreement  
131 may be maintained as an asset within a holding company  
132 established by the State Board of Administration and the holding  
133 company may sell non-controlling divisible interests, units or  
134 notes.



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135       (b) The department shall deposit all funds received from a  
136 lease agreement pursuant to this section into the State  
137 Transportation Trust Fund.

138       (2) Agreements entered into pursuant to this section must  
139 provide for annual financial analysis of revenues and expenses  
140 required by the lease agreement and for any annual toll increases  
141 necessary to ensure that the terms of the lease agreement are  
142 met. The following provisions shall apply to such agreement:

143       (a) The department shall lease, for up to 50 years and in  
144 whole or in part, Alligator Alley to the State Board of  
145 Administration. The lease agreement must ensure the  
146 transportation facility is properly operated, maintained,  
147 reconstructed and restored in accordance with state and federal  
148 laws and commercial standards applicable to other comparable  
149 infrastructure investments.

150       (b) Any toll revenues shall be regulated pursuant to this  
151 section and to any provisions of s. 338.165(3) not in conflict  
152 with this section. The regulations governing the future increase  
153 of toll or fare revenues shall be included in the lease  
154 agreement, shall provide an adequate rate of return considering  
155 all risks involved, and may not subsequently be waived without  
156 prior express consent of the State Board of Administration.

157       (c) If any law or rule of the state or any local  
158 government, or any Florida constitutional amendment, is passed  
159 that has the effect of materially impairing the lease agreement  
160 or the related infrastructure investment, either directly or  
161 indirectly, then the state, acting through the department or any  
162 other agency, shall immediately take action to remedy the  
163 situation by any means available, including taking back the  
164 leased infrastructure assets and making whole the effected trust



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165 fund. This provision may be enforced by legal or equitable  
166 action brought on behalf of the effected trust fund without  
167 regard to sovereign immunity.

168 (d) The department shall provide an independent analysis  
169 that demonstrates the cost effectiveness and overall public  
170 benefit of the lease to the Legislature. Prior to completing the  
171 lease, in whole or in part, of Alligator Alley, the department  
172 shall submit pursuant to ch. 216 any budget amendments necessary  
173 for the expenditure of moneys received pursuant to the agreement  
174 for the operation and maintenance of the toll facility.

175 (e) Prior to the development of the lease agreement, the  
176 department in consultation and concurrence with the State Board  
177 of Administration shall provide an investment grade traffic and  
178 revenue study prepared by a qualified and internationally  
179 recognized traffic and revenue expert that is accepted by the  
180 national bond rating agencies. The State Board of Administration  
181 may utilize independent experts to review or conduct such  
182 studies.

183 (f) The agreement between the department and the State Board  
184 of Administration shall contain a provision that the department  
185 shall expend any funds received under this agreement only on  
186 transportation projects. Accountability for funds from the  
187 endowment which have been invested by the board shall reside with  
188 the department. The board is not responsible for the proper  
189 expenditure of or accountability concerning funds from the  
190 endowment after investment with the department.

191 (3) The agreement for each toll facility leased, in whole  
192 or in part, pursuant to this section shall specify the  
193 requirements of federal, state, and local laws; state, regional,



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194 and local comprehensive plans; and department specifications for  
195 construction and engineering of roads and bridges.

196 (4) The department may provide services to the State Board  
197 of Administration. Agreements for maintenance, law enforcement,  
198 and other services entered into pursuant to this section shall  
199 provide for full reimbursement for services rendered.

200 (5) Using funds received from such lease, the department  
201 may submit a plan for approval to the Legislative Budget  
202 Commission to advance projects programmed in the adopted 5-year  
203 work program or projects increasing transportation capacity and  
204 costing greater than \$500 million in the 10-year Strategic  
205 Intermodal Plan.

206 (6) Notwithstanding s. 338.165 or any other provision of  
207 law, any remaining toll revenue shall be used as established in  
208 the lease agreement and in s.338.26.

209 Section 18. Nothing in this act shall prohibit the State  
210 Board of Administration from pursuing or making infrastructure  
211 investments, especially in government-owned infrastructure in  
212 this state.

213  
214 ===== T I T L E A M E N D M E N T =====

215 And the title is amended as follows:

216 Between lines 48-49

217 and insert:

218 providing legislative findings relating to investment of  
219 funds from the Lawton Chiles Endowment Fund in Florida  
220 infrastructure by the State Board of Administration;  
221 providing that such investment be the policy of the State  
222 Board of Administration; amending s. 215.44; including  
223 infrastructure investments in State Board of





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224 Administration annual reporting requirements; amending s.  
225 215.47; increasing the maximum allowable percent of any  
226 fund in alternative investments or infrastructure  
227 investments; defining infrastructure investments; amending  
228 s. 215.5601; directing the State Board of Administration  
229 to lease Alligator Alley for up to 50 years from the  
230 Department of Transportation using funds from the Lawton  
231 Chiles Endowment; limiting the investment of funds to  
232 between 25 and 50 percent of the endowment's assets;  
233 requiring a report to the Legislature; authorizing the  
234 board to contract with other government, public, and  
235 private entities to operate and maintain the toll  
236 facility; creating s. 334.305; providing a finding of  
237 public need for leasing transportation facilities to  
238 expedite provision of additional facilities; providing  
239 that infrastructure investment agreements may not be  
240 impaired by state or local act; authorizing a lease  
241 agreement of up to 50 years for Alligator Alley;  
242 authorizing the engagement of private consultants to  
243 develop the agreement; directing funds received by the  
244 department under this section to the State Transportation  
245 Trust Fund; providing lease agreement requirements;  
246 requiring adherence to state and federal laws and  
247 standards for transportation facilities operation and  
248 maintenance; requiring regulation of toll increases;  
249 authorizing state action to remedy impairments to the  
250 lease agreement; requiring an independent cost  
251 effectiveness analysis and traffic and revenue study;  
252 limiting the use of funds received under this act to  
253 transportation uses; requiring construction, engineering,



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254 | maintenance, and law enforcement specifications in lease  
255 | agreements; allowing the department to submit to the  
256 | Legislative Budget Commission a plan for advancing  
257 | transportation projects using funds received from a lease;  
258 | requiring remaining toll revenue to be used in accordance  
259 | with the lease agreement and s. 338.26; confirming the  
260 | State Board of Administration's ability to invest in  
261 | government-owned infrastructure;