



405472

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 **substitute for**  
3 **amendment (147402)** :

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

6 Between lines 487 and 488

7 insert:

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 in whole or in part, the Alligator Alley from the Florida  
86 Department of Transportation with funds in the endowment if such  
87 investments are determined to provide an adequate rate of return  
88 to the endowment considering all investment risks involved, and  
89 if the amount of such investments shall be no less than 20  
90 percent and no more than 50 percent of the assets of the  
91 endowment at the time. The State Board of Administration shall  
92 make such investments prior to the end of the 2009-2010 fiscal  
93 year, and shall strive to make such investments prior to the end  
94 of the 2008-2009 fiscal year, consistent with its fiduciary  
95 duties. The board shall make a progress report to the President  
96 of the Senate and Speaker of the House of Representatives by  
97 March 1, 2009. The board may contract with the Florida Department  
98 of Transportation, other governmental entities, public benefit  
99 corporation or private sector entities, as appropriate, to  
100 operate and maintain the toll facility consistent with applicable  
101 federal and state laws and rules.

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

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



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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

210 Section 18. (1)Nothing in this act shall prohibit the State  
211 Board of Administration from pursuing or making infrastructure  
212 investments, especially in government-owned infrastructure in  
213 this state.

214 (2) The State Board of Administration shall report to the  
215 Legislature prior to the 2009 regular legislative session, on its  
216 ability to invest in infrastructure, including specifically  
217 addressing its ability to invest in government-owned  
218 infrastructure in this state.

219  
220 ===== T I T L E A M E N D M E N T =====

221 And the title is amended as follows:

222 Between lines 48 and 49

223 insert:





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224 providing legislative findings relating to investment of  
225 funds from the Lawton Chiles Endowment Fund in Florida  
226 infrastructure by the State Board of Administration;  
227 providing that such investment be the policy of the State  
228 Board of Administration; amending s. 215.44; including  
229 infrastructure investments in State Board of  
230 Administration annual reporting requirements; amending s.  
231 215.47; increasing the maximum allowable percent of any  
232 fund in alternative investments or infrastructure  
233 investments; defining infrastructure investments; amending  
234 s. 215.5601; directing the State Board of Administration  
235 to lease Alligator Alley for up to 50 years from the  
236 Department of Transportation using funds from the Lawton  
237 Chiles Endowment; limiting the investment of funds to  
238 between 20 and 50 percent of the endowment's assets;  
239 requiring a report to the Legislature; authorizing the  
240 board to contract with other government, public, and  
241 private entities to operate and maintain the toll  
242 facility; creating s. 334.305; providing a finding of  
243 public need for leasing transportation facilities to  
244 expedite provision of additional facilities; providing  
245 that infrastructure investment agreements may not be  
246 impaired by state or local act; authorizing a lease  
247 agreement of up to 50 years for Alligator Alley;  
248 authorizing the engagement of private consultants to  
249 develop the agreement; directing funds received by the  
250 department under this section to the State Transportation  
251 Trust Fund; providing lease agreement requirements;  
252 requiring adherence to state and federal laws and  
253 standards for transportation facilities operation and



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254 maintenance; requiring regulation of toll increases;  
255 authorizing state action to remedy impairments to the  
256 lease agreement; requiring an independent cost  
257 effectiveness analysis and traffic and revenue study;  
258 limiting the use of funds received under this act to  
259 transportation uses; requiring construction, engineering,  
260 maintenance, and law enforcement specifications in lease  
261 agreements; allowing the department to submit to the  
262 Legislative Budget Commission a plan for advancing  
263 transportation projects using funds received from a lease;  
264 requiring remaining toll revenue to be used in accordance  
265 with the lease agreement and s. 338.26; confirming the  
266 State Board of Administration's ability to invest in  
267 government-owned infrastructure;