

1 A bill to be entitled
2 An act relating to transportation projects; amending s.
3 334.30, F.S.; revising requirements for approval of
4 agreements between the Department of Transportation and
5 private entities for the building, operation, ownership,
6 or financing of transportation facilities; requiring a
7 public-private partnership to provide certain financial
8 benefits to the state and the counties where any tolls are
9 collected or where the facility is located; revising
10 provisions for agreements under which the department may
11 lease existing toll facilities through public-private
12 partnerships; limiting distribution of proceeds from
13 leases of facilities on the State Highway System to
14 funding improvement projects on the State Highway System;
15 providing requirements for selection of such projects;
16 requiring distribution of proceeds to be in accordance
17 with specified provisions; requiring certain coordination
18 between the department and counties and municipalities
19 where such tolls will be collected; requiring such
20 distributions to provide an increase in current funding;
21 requiring the department to share a required independent
22 analysis with the local governments impacted by any
23 proposed lease; amending s. 338.165, F.S.; providing
24 requirements for use of revenues generated pursuant to the
25 lease of an existing toll facility under specified
26 provisions; requiring that such revenue be used to pay
27 debt service on any bond indebtedness related to the
28 facility and for the construction, maintenance, or

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29 improvement of any road on the State Highway System within
30 the county or counties in which the existing toll facility
31 is located; directing a metropolitan planning organization
32 in a county where a leased toll facility is located to
33 submit a list of projects to be funded; providing
34 requirements for such list; prohibiting funding for such
35 projects from supplanting funds committed in the
36 department's 5-year work program or from reducing future
37 allocations to a district; providing that use of funds is
38 subject to department approval; amending s. 339.135, F.S.;
39 restricting reductions in fund allocations to a county for
40 projects in the department's tentative work program;
41 providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

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45 Section 1. Subsections (1) and (2) and paragraphs (d) and
46 (e) of subsection (6) of section 334.30, Florida Statutes, are
47 amended to read:

48 334.30 Public-private transportation facilities.--The
49 Legislature finds and declares that there is a public need for
50 the rapid construction of safe and efficient transportation
51 facilities for the purpose of traveling within the state, and
52 that it is in the public's interest to provide for the
53 construction of additional safe, convenient, and economical
54 transportation facilities.

55 (1) The department may receive or solicit proposals and,
56 with legislative approval as evidenced by approval of the

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57 | project in the department's work program, enter into agreements
58 | with private entities, or consortia thereof, for the building,
59 | operation, ownership, or financing of transportation facilities.
60 | The department may advance projects programmed in the adopted 5-
61 | year work program or projects increasing transportation capacity
62 | and greater than \$500 million in the 10-year Strategic
63 | Intermodal System Plan using funds provided by public-private
64 | partnerships or private entities to be reimbursed from
65 | department funds for the project as programmed in the adopted
66 | work program. The department shall by rule establish an
67 | application fee for the submission of unsolicited proposals
68 | under this section. The fee must be sufficient to pay the costs
69 | of evaluating the proposals. The department may engage the
70 | services of private consultants to assist in the evaluation.
71 | Before approval, the department must determine that the proposed
72 | project:

- 73 | (a) Is in the public's best interest;
- 74 | (b) Would not require state funds to be used unless the
75 | project is on the State Highway System;
- 76 | (c) Would have adequate safeguards in place to ensure that
77 | no additional costs or service disruptions would be realized by
78 | the traveling public and residents of the state in the event of
79 | default or cancellation of the agreement by the department;
- 80 | (d) Would have adequate safeguards in place to ensure that
81 | the department or the private entity has the opportunity to add
82 | capacity to the proposed project and other transportation
83 | facilities serving similar origins and destinations;

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84 (e) Would provide transportation funding benefits to the
85 state and the counties where any tolls are collected or where
86 the facility is located, which benefits are above the funding
87 levels projected without the public-private partnership in the
88 department's adopted work program; and

89 (f)-(e) Would be owned by the department upon completion or
90 termination of the agreement.

91

92 The department shall ensure that all reasonable costs to the
93 state, related to transportation facilities that are not part of
94 the State Highway System, are borne by the private entity. The
95 department shall also ensure that all reasonable costs to the
96 state and substantially affected local governments and
97 utilities, related to the private transportation facility, are
98 borne by the private entity for transportation facilities that
99 are owned by private entities. For projects on the State Highway
100 System, the department may use state resources to participate in
101 funding and financing the project as provided for under the
102 department's enabling legislation.

103 (2) Agreements entered into pursuant to this section may
104 authorize the private entity to impose tolls or fares for the
105 use of the facility. The following provisions shall apply to
106 such agreements:

107 (a) With the exception of the Florida Turnpike System, the
108 department may lease existing toll facilities through public-
109 private partnerships. The public-private partnership agreement
110 must ensure that the transportation facility is properly

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111 operated, maintained, and renewed in accordance with department
112 standards.

113 (b) Where leasing of existing toll facilities through
114 public-private partnerships is considered on the State Highway
115 System, the department must limit the distribution of proceeds
116 from such leases to funding improvements on the State Highway
117 System. Improvements to be funded shall be selected from the
118 department's adopted 5-year work program, projects contained in
119 the 10-year Strategic Intermodal System Plan that increase
120 transportation capacity, or projects included within the long-
121 range transportation plan of the local metropolitan planning
122 organizations for the counties where tolls will be collected
123 under the lease. The department shall make every effort to
124 select projects from the list provided by the local metropolitan
125 planning organization under s. 338.165(7)(b). All projects
126 selected shall be consistent with the Florida Transportation
127 Plan.

128 (c) Proceeds from leasing of existing toll facilities
129 through public-private partnerships on the State Highway System
130 must be distributed in accordance with the provisions of s.
131 338.165. Prior to awarding a lease for existing toll facilities
132 to any public-private partnership, the department shall
133 coordinate with local governments within the county or counties
134 where tolls will be collected as a part of such lease. As part
135 of the coordination, the department must provide the county or
136 counties with the details of the intended county-by-county
137 distribution of proceeds from the lease. The coordination shall
138 also include a review of projects contained on the transmittal

139 of a list of projects to be funded by lease proceeds in
 140 accordance with paragraph (b).

141 (d) Distribution of the lease proceeds must represent an
 142 increase in funding to the affected county equal to the lease
 143 amount over and above the current funding contained within the
 144 adopted 5-year work program of the department or the 10-year
 145 Strategic Intermodal System Plan for each of the counties
 146 affected.

147 (e)~~(b)~~ The department may develop new toll facilities or
 148 increase capacity on existing toll facilities through public-
 149 private partnerships. The public-private partnership agreement
 150 must ensure that the toll facility is properly operated,
 151 maintained, and renewed in accordance with department standards.

152 (f)~~(e)~~ Any toll revenues shall be regulated by the
 153 department pursuant to s. 338.165(3). The regulations governing
 154 the future increase of toll or fare revenues shall be included
 155 in the public-private partnership agreement.

156 (g)~~(d)~~ The department shall provide the analysis required
 157 in subparagraph (6)(e)2. to the Legislative Budget Commission
 158 created pursuant to s. 11.90 for review and approval prior to
 159 awarding a contract on a lease of an existing toll facility.

160 (h)~~(e)~~ The department shall include provisions in the
 161 public-private partnership agreement that ensure a negotiated
 162 portion of revenues from tolled or fare generating projects are
 163 returned to the department over the life of the public-private
 164 partnership agreement and,~~,-~~ in the case of a lease of an
 165 existing toll facility, shall include a minimum amount due to
 166 the department, as follows:

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167 1. The amount shall exceed, on an annualized basis, the
168 department's existing annual revenues related to the facility
169 prior to the lease.

170 2. The department shall receive a portion of funds upon
171 closing on the agreements and shall also include provisions in
172 the agreement to receive payment of a portion of excess revenues
173 over the life of the public-private partnership, and such funds
174 shall be subject to the provisions of this subsection, s.
175 338.165, or s. 338.26.

176 (i)~~(f)~~ The private entity shall provide an investment
177 grade traffic and revenue study prepared by an internationally
178 recognized traffic and revenue expert that is accepted by the
179 national bond rating agencies. The private entity shall also
180 provide a finance plan that identifies the project cost,
181 revenues by source, financing, major assumptions, internal rate
182 of return on private investments, and whether any government
183 funds are assumed to deliver a cost-feasible project, and a
184 total cash flow analysis beginning with implementation of the
185 project and extending for the term of the agreement.

186 (6) The procurement of public-private partnerships by the
187 department shall follow the provisions of this section. Sections
188 337.025, 337.11, 337.14, 337.141, 337.145, 337.175, 337.18,
189 337.185, 337.19, 337.221, and 337.251 shall not apply to
190 procurements under this section unless a provision is included
191 in the procurement documents. The department shall ensure that
192 generally accepted business practices for exemptions provided by
193 this subsection are part of the procurement process or are
194 included in the public-private partnership agreement.

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195 (d) After the public notification period has expired, the
196 department shall rank the proposals in order of preference. In
197 ranking the proposals, the department may consider factors that
198 include, but are not limited to, professional qualifications,
199 general business terms, innovative engineering or cost-reduction
200 terms, finance plans, the estimated transportation funding
201 benefits to the state and counties where the project is located
202 compared with public ownership and operation of the project, and
203 the need for state funds to deliver the project. If the
204 department is not satisfied with the results of the
205 negotiations, the department may, at its sole discretion,
206 terminate negotiations with the proposer. If these negotiations
207 are unsuccessful, the department may go to the second-ranked and
208 lower-ranked firms, in order, using this same procedure. If only
209 one proposal is received, the department may negotiate in good
210 faith and, if the department is not satisfied with the results
211 of the negotiations, the department may, at its sole discretion,
212 terminate negotiations with the proposer. Notwithstanding this
213 subsection, the department may, at its discretion, reject all
214 proposals at any point in the process up to completion of a
215 contract with the proposer.

216 (e) The department shall provide an independent analysis
217 of the proposed public-private partnership that demonstrates the
218 cost-effectiveness and overall public benefit at the following
219 times:

- 220 1. Prior to moving forward with the procurement; and
- 221 2. If the procurement moves forward, prior to awarding the
- 222 contract.

223
224 The department must share the initial findings of the
225 independent analysis with the local governments impacted by any
226 proposed lease to demonstrate the overall public benefit.

227 Section 2. Subsections (7) and (8) of section 338.165,
228 Florida Statutes, are renumbered as subsections (8) and (9),
229 respectively, and a new subsection (7) is added to that section
230 to read:

231 338.165 Continuation of tolls.--

232 (7) Notwithstanding any other provision of this section,
233 revenues generated pursuant to the lease of an existing toll
234 facility as provided in s. 334.30, including any funds received
235 upon closing on the public-private partnership agreement, shall
236 be used on an annual basis in the following order:

237 (a) To pay debt service on any bond indebtedness related
238 to the facility.

239 (b) For the construction, maintenance, or improvement of
240 any road on the State Highway System within the county or
241 counties in which the existing toll facility is located.

242 1. A metropolitan planning organization in a county where
243 a leased toll facility is located shall, with its annual
244 submission pursuant to s. 339.175(8)(b), submit a list of
245 projects to be funded from revenues paid to the department
246 pursuant to s. 334.30(2)(h), including the priority of such
247 projects. The list of projects submitted shall be consistent
248 with the Florida Transportation Plan.

249 2. Funding for such projects may not be used to supplant
250 existing funds already committed in the department's adopted 5-

251 year work program or to reduce future allocations to a district
 252 pursuant to s. 339.135.

253 3. The use of such funds for a specific project is subject
 254 to department approval.

255 Section 3. Paragraph (a) of subsection (4) of section
 256 339.135, Florida Statutes, is amended to read:

257 339.135 Work program; legislative budget request;
 258 definitions; preparation, adoption, execution, and amendment.--

259 (4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.--

260 (a)1. To assure that no district or county is penalized
 261 for local efforts to improve the State Highway System, the
 262 department shall, for the purpose of developing a tentative work
 263 program, allocate funds for new construction to the districts,
 264 except for the turnpike enterprise, based on equal parts of
 265 population and motor fuel tax collections. Funds for
 266 resurfacing, bridge repair and rehabilitation, bridge fender
 267 system construction or repair, public transit projects except
 268 public transit block grants as provided in s. 341.052, and other
 269 programs with quantitative needs assessments shall be allocated
 270 based on the results of these assessments, provided that no
 271 county's allocation shall be reduced to an amount less than that
 272 produced by equal parts of population and motor fuel tax
 273 collections without the affected county's consent. The
 274 department may not transfer any funds allocated to a district
 275 under this paragraph to any other district except as provided in
 276 subsection (7). Funds for public transit block grants shall be
 277 allocated to the districts pursuant to s. 341.052. Funds for the
 278 intercity bus program provided for under s. 5311(f) of the

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279 federal nonurbanized area formula program shall be administered
280 and allocated directly to eligible bus carriers as defined in s.
281 341.031(12) at the state level rather than the district. In
282 order to provide state funding to support the intercity bus
283 program provided for under provisions of the federal 5311(f)
284 program, the department shall allocate an amount equal to the
285 federal share of the 5311(f) program from amounts calculated
286 pursuant to s. 206.46(3).

287 2. Notwithstanding the provisions of subparagraph 1., the
288 department shall allocate at least 50 percent of any new
289 discretionary highway capacity funds to the Florida Strategic
290 Intermodal System created pursuant to s. 339.61. Any remaining
291 new discretionary highway capacity funds shall be allocated to
292 the districts for new construction as provided in subparagraph
293 1. For the purposes of this subparagraph, the term "new
294 discretionary highway capacity funds" means any funds available
295 to the department above the prior year funding level for
296 capacity improvements, which the department has the discretion
297 to allocate to highway projects.

298 Section 4. This act shall take effect July 1, 2009.