

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 2060

INTRODUCER: Senator Baker

SUBJECT: Public-Private Partnership Infrastructure Projects

DATE: March 27, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Favorable
2.			CA	
3.			FT	
4.			GA	
5.				
6.				

I. Summary:

This bill would authorize all levels of government in Florida to enter into public-private infrastructure agreements for the construction of public works infrastructure projects, and require the involvement of the Department of Management Services in such projects.

This bill creates section 287.09475 of the Florida Statutes.

II. Present Situation:

Public-Private Transportation Facilities

Section 334.30, F.S., provides for the Department of Transportation (DOT) to 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, and specifies requirements for the agreements for such public-private transportation facilities.

DMS Project Management Duties

The Department of Management Services (DMS) currently provides project management services pursuant to s. 255.31, F.S. This includes the oversight of the fixed capital outlay funds, contracts administration and construction project management oversight. Construction project management oversight involves managing the delivery process as the public representative, through private engineers, architects and contractors. The DMS performs these activities through a data system known as the Facilities Accountability and Communication Tool (FACT). This system was specifically designed to comply with Florida's laws when delivering public construction projects, including the tracking of project funds.

III. Effect of Proposed Changes:

The bill, which extensively uses s. 334.30, F.S., as an organizational framework, creates section 287.09475, Florida Statutes, relating to public-private partnerships, and declares that there is a public need for the rapid construction of public works infrastructure projects.

The bill defines various terms used in the section, including “participating governmental unit,” which, by extension of the definition of “government” in the bill, means “the state or a political subdivision of the state.” The bill specifies various roles and duties for the Department of Management Services when a participating governmental unit seeks to enter into a public-private infrastructure project agreement. Some of the bills’ duties apply only to the DMS, and some apply to the DMS and the participating governmental unit.

The bill would authorize the DMS, other state agencies and local governments to receive or solicit proposals to enter into a public works infrastructure projects with a private entity or a consortium of private entities. The purpose would be to build, operate, or finance a public works infrastructure projects. It would establish the criteria for the selection of projects and for public-private partnership agreements to build or operate a project. The DMS would be required to compile a summary of new projects each year.

The bill would require all reasonable costs to the state, which are not part of the governmental unit's work plan, to be borne by the private entity. Private entities would be authorized to impose public user fees for the use of the infrastructure project through a financing and revenue criteria established in the infrastructure project agreement. DMS and a participating governmental unit would have authority to use innovative financing techniques for infrastructure projects.

Each infrastructure facility would require compliance with all applicable federal, state, and local laws, construction standards, and performance standards. The bill would authorize each participating governmental unit to exercise any lawful power possessed by it to aid in the development and construction. Specific procedures for requesting and considering proposals are provided. There would be a specified term limitation requirement for infrastructure project agreements. However, the head of the participating governmental unit would be able to authorize an increase in the term of a project by 25 years.

The DMS would have sole or partial responsibility for the following duties in the bill:

- Establish a cost recovery application fee for the submission of unsolicited proposals, which could come from governmental or private entities.
- Utilize private consultants to assist in evaluating proposals.
- Follow specific guidelines before approval of a proposed infrastructure project.
- Ensure reasonable costs to the state and that all non-governmental costs are borne by the private entity.
- Implement projects under current laws and department rules, policies, procedures and standards.
- Include in agreements full reimbursement for services from private entities.
- Operate using generally accepted business practices during the procurement process.

- Request proposals from private entities for infrastructure projects.
- Publish unsolicited proposals in the Florida Administrative Weekly and newspapers.
- Accept other proposals for the same project within a standard time frame.
- Qualify private entities through specific documents they provide.
- Ensure that the bonding security of projects are in order.
- Rank proposals in order of preference based on specific elements.
- Terminate negotiations when not satisfied with results and negotiate with consecutive ranked proposals.
- Provide an independent analysis of the proposals before contracting.
- Use innovative finance techniques including federal or commercial bank loans.
- Utilize an option of extended term agreements of annual payments based on specific conditions and subject to annual appropriations by the Legislature.
- Compile an annual summary of new projects with specific requirements included.

The effective date is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private entities that finance or construct public infrastructure projects could see increased business as a result of this bill.

C. Government Sector Impact:

The DMS has preliminarily indicated potential, but indeterminate, costs associated with implementing this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear why the DMS should be involved in purely local projects, and its role in the process established by the bill raises some issues and potential conflicts. For example, which entity's rules and requirements would apply in procurements -Chapter 287, F.S., or the governmental unit's requirements- and, who would bear the financial cost of complying with those requirements? Which entity actually makes the sourcing decisions, and how are conflicts resolved? When there is a problem in the contracting process, which forum for dispute resolution will be used?

For state agencies, these kinds of projects would potentially need to comply with provisions requiring a business case before outsourcing pursuant to ss. 287.0571, F.S., et seq. Because the DMS would be involved with non-state agency projects, it is not clear whether the business case process would be required.

Section 334.30, F.S., upon which this bill is based, requires legislative approval of potential projects in the DOT's work program. This bill does not appear to contain an equivalent requirement, though it does contain a provision that participating governmental units may advance a project programmed in the governmental unit's adopted work program or its 10-year plan. It is unclear whether all the governmental units to which this bill will apply have adopted work programs or 10-year plans.

It is unclear how the provisions in the bill will work in conjunction with the Rural Infrastructure Fund provisions in s. 288.0655, F.S.

Though "political subdivision" is not defined in the bill, it is defined in s. 1.01(8), F.S., to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state. This definition would appear to include special districts, of which there are over one thousand. Since the bill would require the DMS to be involved in projects for all such entities, the impact on governments and the DMS is potentially massive. As an example, the bill requires that if the DMS receives an unsolicited proposal, it must publish a notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for 2 weeks stating that the DMS has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose, and a copy of the notice must be mailed to each local government in the affected area.

It is unclear whether the duty to provide notice of receipt of unsolicited proposals applies to such proposals received by a participating governmental unit.

The bill contains more detail for procurement requirements than for the contract requirements. The Legislature may wish to consider whether to provide further guidance as to the provisions that should be included in these kinds of complex agreements.

The bill provides that annual payments must be subject to annual appropriation by the Legislature as specified in the General Appropriations Act, but this provision would seem to be inapplicable to governmental units over which the Legislature has no budget authority.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
