

By Senator Richter

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

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

45
46 Be It Enacted by the Legislature of the State of Florida:

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

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

58 (1) The department may receive or solicit proposals and,

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

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

77 (b) Would not require state funds to be used unless the
78 project is on the State Highway System;

79 (c) Would have adequate safeguards in place to ensure that
80 no additional costs or service disruptions would be realized by
81 the traveling public and residents of the state in the event of
82 default or cancellation of the agreement by the department;

83 (d) Would have adequate safeguards in place to ensure that
84 the department or the private entity has the opportunity to add
85 capacity to the proposed project and other transportation
86 facilities serving similar origins and destinations;

87 (e) Would provide transportation funding benefits to the

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88 state and the counties where any tolls are collected or where
89 the facility is located, which benefits are above the funding
90 levels projected without the public-private partnership in the
91 department's adopted work program; and

92 (f)~~(e)~~ Would be owned by the department upon completion or
93 termination of the agreement.

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

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

110 (a) With the exception of the Florida Turnpike System, the
111 department may lease existing toll facilities through public-
112 private partnerships. The public-private partnership agreement
113 must ensure that the transportation facility is properly
114 operated, maintained, and renewed in accordance with department
115 standards.

116 (b) Where leasing of existing toll facilities through

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

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

144 (d) Distribution of the lease proceeds must represent an
145 increase in funding to the affected county equal to the lease

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146 amount over and above the current funding contained within the
147 adopted 5-year work program of the department or the 10-year
148 Strategic Intermodal System Plan for each of the counties
149 affected.

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

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

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

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

170 1. The amount shall exceed, on an annualized basis, the
171 department's existing annual revenues related to the facility
172 prior to the lease.

173 2. The department shall receive a portion of funds upon
174 closing on the agreements and shall also include provisions in

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175 the agreement to receive payment of a portion of excess revenues
176 over the life of the public-private partnership, and such funds
177 shall be subject to the provisions of this subsection, s.
178 338.165, or s. 338.26.

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

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

198 (d) After the public notification period has expired, the
199 department shall rank the proposals in order of preference. In
200 ranking the proposals, the department may consider factors that
201 include, but are not limited to, professional qualifications,
202 general business terms, innovative engineering or cost-reduction
203 terms, finance plans, the estimated transportation funding

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204 benefits to the state and counties where the project is located
205 compared with public ownership and operation of the project, and
206 the need for state funds to deliver the project. If the
207 department is not satisfied with the results of the
208 negotiations, the department may, at its sole discretion,
209 terminate negotiations with the proposer. If these negotiations
210 are unsuccessful, the department may go to the second-ranked and
211 lower-ranked firms, in order, using this same procedure. If only
212 one proposal is received, the department may negotiate in good
213 faith and, if the department is not satisfied with the results
214 of the negotiations, the department may, at its sole discretion,
215 terminate negotiations with the proposer. Notwithstanding this
216 subsection, the department may, at its discretion, reject all
217 proposals at any point in the process up to completion of a
218 contract with the proposer.

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

- 223 1. Prior to moving forward with the procurement; and
- 224 2. If the procurement moves forward, prior to awarding the
225 contract.

226

227 The department must share the initial findings of the
228 independent analysis with the local governments impacted by any
229 proposed lease to demonstrate the overall public benefit.

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

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233 to read:

234 338.165 Continuation of tolls.-

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

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

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

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

252 2. Funding for such projects may not be used to supplant
253 existing funds already committed in the department's adopted 5-
254 year work program or to reduce future allocations to a district
255 pursuant to s. 339.135.

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

258 Section 3. Paragraph (a) of subsection (4) of section
259 339.135, Florida Statutes, is amended to read:

260 339.135 Work program; legislative budget request;
261 definitions; preparation, adoption, execution, and amendment.-

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262 (4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

263 (a)1. To assure that no district or county is penalized for
264 local efforts to improve the State Highway System, the
265 department shall, for the purpose of developing a tentative work
266 program, allocate funds for new construction to the districts,
267 except for the turnpike enterprise, based on equal parts of
268 population and motor fuel tax collections. Funds for
269 resurfacing, bridge repair and rehabilitation, bridge fender
270 system construction or repair, public transit projects except
271 public transit block grants as provided in s. 341.052, and other
272 programs with quantitative needs assessments shall be allocated
273 based on the results of these assessments, provided that no
274 county's allocation shall be reduced to an amount less than that
275 produced by equal parts of population and motor fuel tax
276 collections without the affected county's consent. The
277 department may not transfer any funds allocated to a district
278 under this paragraph to any other district except as provided in
279 subsection (7). Funds for public transit block grants shall be
280 allocated to the districts pursuant to s. 341.052. Funds for the
281 intercity bus program provided for under s. 5311(f) of the
282 federal nonurbanized area formula program shall be administered
283 and allocated directly to eligible bus carriers as defined in s.
284 341.031(12) at the state level rather than the district. In
285 order to provide state funding to support the intercity bus
286 program provided for under provisions of the federal 5311(f)
287 program, the department shall allocate an amount equal to the
288 federal share of the 5311(f) program from amounts calculated
289 pursuant to s. 206.46(3).

290 2. Notwithstanding the provisions of subparagraph 1., the

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

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