SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1582

SPONSOR: Governmental Oversight and Productivity Committee and Senator Villalobos

SUBJECT: Transportation

DATE: March 5, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAuliffe	Meyer	TR	Favorable
2.	Wilson	Wilson	GO	Favorable/CS
3.			CM	
4.			AGG	
5.			AP	
6.				

I. Summary:

This bill provides for the development of toll roads and other transportation projects that combine public and private resources. The Florida Department of Transportation is authorized to engage in alternative financing arrangements with a public-private partnership using provisions of the Internal Revenue Code. Under this bill, State Transportation Trust Fund (STTF) funds could be used on these projects that are in the Florida Department of Transportation's (FDOT's) 5-Year Work Program, or which the FDOT otherwise believes serves an overriding public interest. In such a case, no more than $50 million in STTF monies could be spent annually by the FDOT. Legislative approval is necessary only if the FDOT and its private-sector partner want to build projects valued in excess of the $50 million. The FDOT also could contribute operating and maintenance funds to these projects, without being reimbursed by its private-sector partner. The FDOT retains the discretion to decide whether to participate in one of these public-private partnership projects. The bill also specifies all reasonable costs associated with a project that is not a part of the State Highway System or that is a private facility, be borne by the public-private entity.

In addition, s. 348.0004, F.S., is amended with similar provisions to allow the Miami-Dade County Expressway Authority to participate in these public-private partnerships. However, there are no limits on the expressway authority's financial investment, and the expressway authority doesn't need legislative approval for projects over a certain dollar amount.

This bill substantially amends ss. 334.30 and 348.0004, and deletes s. 348.0004 (2)(m) of the Florida Statutes.

II. Present Situation:

Section 334.30, F.S., provides for the development of private transportation facilities, such as toll roads or passenger rail service, that would serve to reduce burdens on public highway systems. The section authorizes a private entity developing a transportation facility to charge tolls or fares for its use, under agreement with the FDOT, and the FDOT could regulate the amount charged, if the proposal was determined to be unreasonable to users. The section also provides each facility must have legislative approval. No state funds were to be expended on these projects, except those with an "overriding state interest," in which case the FDOT had the discretion to exercise eminent domain and other powers to assist in such projects, and any maintenance, law enforcement, or other services provided by the FDOT had to be fully reimbursed by the private entity.

According to the FDOT, this section of law has never been used in the 10 years since it was created. Some speculate that is because the entire financial burden typically would be on the private developer.

However, earlier this year the FDOT received a series of unsolicited trial proposals from the Toll Road Corporation of America for an "I-95 Reversible HOT Lane System" in Miami that could be a candidate for this program, if certain legislative changes are made. The proposed project involves the construction of reversible toll lanes in the median of I-95. This could make anywhere from 11 to 13 lanes, rather than the current 10, available for motorists' use. The Miami-Dade County Metropolitan Planning Organization recently included a version of this I-95 HOT Lane project in its long-range Transportation Improvement Plan.

III. Effect of Proposed Changes:

This bill rewrites s. 334.30, F.S., throughout. The section is renamed "public-private transportation facilities," and allows the FDOT to use state "resources" for a transportation facility that is either on the State Highway System or which provides increased mobility for the state system. State funds could be used to advance projects that are in the 5-year work program and which a private entity wants to help build, or up to $50 million in FDOT funds could be spent for partnership projects, statewide, that are not in the work program. Partnership projects that seek more than the $50 million for capital costs would have to be approved by the Legislature. Also, the transformation into a public-private transportation partnership that builds, operates and maintains public-purpose projects provides sovereign immunity for any liability that may occur.

The amended s. 334.30, F.S., also establishes noticing requirements; allows the FDOT to participate in funding operating and maintenance costs of partnership projects that are on the State Highway System; allows the FDOT to participate in the creation of tax-exempt, public-purpose corporations (dubbed "Internal Revenue Service Ruling 63-20 corporations"); and allows the lending of toll revenues to these corporations for eligible projects.

The bill clearly specifies that the FDOT's liability for any debt incurred by one of these projects is limited to the amount approved for it in the agency's 5-Year Work Program. Additionally, all reasonable costs to the state, affected local governments, or utilities related to these

transportation projects that are not part of the State Highway System, or that are not publicly owned, shall be borne by the 63-20 corporation that is partnering with the state.

The scope of the bill also extends to expressway authorities in counties defined in s. 125.011(1), F.S., the ability to enter into similar agreements with 63-20 corporations to share in the development of public-private transportation facilities. Only the Miami-Dade County Expressway Authority is eligible, under the bill as written. Unlike the FDOT, the expressway authority has no statutory dollar limit for its investment in a 63-20 corporation project, nor does it need to seek legislative approval to exceed a certain dollar amount.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. The private entity that builds, operates and maintains one of these user fee-based transportation systems would have to collect at least enough user revenues to offset the debt service. Other private-sector beneficiaries could be business owners and property owners along the route.

C. Government Sector Impact:

This bill does not require the FDOT to participate in these public-private partnerships to build user fee-based transportation systems. However, if it chose to participate, the FDOT could contribute funds as well as right-of-way. For projects not in the 5-Year Work Program and in excess of $50 million, the FDOT would need legislative approval. The FDOT also could incur operating and maintenance costs, for projects that are built on the State Highway System.

The bill's provision allowing IRS Chapter 63-20 corporations to participate in these projects has several financial implications. These entities could borrow money from the state's Toll Facilities Revolving Loan Trust Fund and accept FDOT grants – for which

the FDOT would likely require reliable assurances that the toll revenues generated by the public/private project would be sufficient.

Under IRS code, chapter 63-20 corporations also could issue tax-exempt revenue bonds. These bonds are low-grade investments, typically with a "BBB" rating, which require a debt-service coverage of at least 2 to 1. The corporation would issue these bonds, which would not pledge the full faith and credit of the State of Florida.

State Division of Bond Finance staff has expressed concerns about allowing legislatively created authorities or entities to issue bonds -- even bonds described as not pledging the full faith and credit of the State of Florida. In the view of division staff, even though the state cannot legally or technically be required to repay defaulted bonds, the negative fallout could tarnish Florida's financial reputation and could result in a lower bond rating for the state's other bond programs.

Supporters of this bill answer these concerns by pointing out that the 2 to 1 coverage required of BBB bonds is higher than what is required by many other types of bonds sold in Florida. Thus, the risk of other types of bond issues failing is greater than that of a BBB bond issue, they say. In any event, if a BBB bond issue fails, the bondholders alone bear the burden.

Bill supporters also say that if the 63-20 corporation were properly structured, no liability for a bond failure would fall to the state or other public entity. Supporters add that Standard & Poor's and Moody's – the nation's top bond-rating agencies – have reviewed the issue of the impact of a default by a properly structured 63-20 corporation, and have concluded that such an event would not cause a negative impact to a state's bond rating.

On February 22, 2002, the Division of Bond Finance prepared an amortization of indebtedness using two interest rate assumptions based upon AA-rated and BBB-rated securities, as follows:

AA-Rated Competitive Sale vs. BBB-Rated Negotiated Sale, Revenue Bonds, Par Value $ 50 MM

	AA Rating	BBB Rating	Increase (Decrease)
Arbitrage Yield	4.89%	5.60%	.71%
Total Debt Service	$ 96,332,000	$ 104,330,000	$ 7,998,000
Annual Debt Service	$ 3,210,000	$ 3,478,000	$ 268,000
Underwriter Spread	$ 175,000	$ 425,000	$ 250,000
Issuance Cost	$ 211,975	$ 241,975	$ 30,000
Net Proceeds	$ 46,400,000	$ 45,900,000	($ 500,000)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Recent events suggest uncomfortable comparisons between this approach and another that partially precipitated a large-scale corporate failure of continuing national debate. Those events have themselves been the subject of a special review by the Senate Governmental Oversight and Productivity Committee as they affected losses sustained in the equity and fixed income asset classes of the Florida Retirement System Trust Fund. A principal design feature of this bill is the creation of one or more not-for-profit corporations whose purpose is to act as a debt issuance intermediary, otherwise shielding these obligations as recognized budgetary expenses of a public agency. The Committee Substitute attempts to address the design characteristics of the original bill with an alternative that provides sufficient discretion and credit safeguards to the respective public bodies in their assessment of the appropriateness of this approach, its advantages, and its risks.

Article VII, s. 10, State Constitution, prohibits the State of Florida from acting as a joint owner with or lending its taxing power to any private corporation. Cases interpreting this provision have tended to give deference to statements of legislative purpose that precede such relationships. *State v. Orange County Development Authority*, 417 So.2d 959 (Fla. 1982); *Poe v. Hillsborough County*, 695 So.2d 672 (Fla. 1997). Caution should be exercised in this bill as the nexus between the corporation's instruments of debt and its relationship to the public entity appears to be quite close. Necessary disclaimers are provided in the Committee Substitute to disassociate any of the debt as pledging the taxing power or full faith and credit of public agencies in this regard.

VIII. Amendments:

None.