

STORAGE NAME: h0435a.fpr.doc

DATE: February 8, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: CS/HB 435

RELATING TO: Transportation/Public-Private Transportation Facilities

SPONSOR(S): Committee on Transportation and Representative(s) Kyle

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 11 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 12 NAYS 0
- (3) COUNCIL FOR READY INFRASTRUCTURE
- (4)
- (5)

I. SUMMARY:

Section 334.30, F.S., provides for the development of private transportation facilities, such as toll roads or passenger rail service, that would offer less-congested routes for travelers willing to pay a fee to use them. The benefit to the state or local governments is that capacity on public roads or systems would be reduced. The private entity developing the new transportation facility would be able to charge tolls or fares for its use, under agreement with the state Department of Transportation (DOT), which could regulate the amount charged, if the proposed toll was determined to be unreasonable to users. Currently, no project costs are passed on to state or local taxpayers.

This statute has never been used, but in recent months a private toll-road developer has been meeting with DOT to draft amendments to s. 334.30, F.S., that recast the statute as a public-private partnership to offer transportation alternatives.

CS/HB 435 is the result of those efforts. It provides for the development of toll roads and other transportation projects that combine public and private resources. Under this bill, State Transportation Trust Fund (STTF) monies could be used on these s. 334.30, F.S. projects that are in DOT's 5-Year Work Program, or which DOT otherwise believes serves an overriding public interest. In such a case, no more than \$50 million in STTF monies could be spent annually by DOT. Legislative approval is necessary only if DOT and its private-sector partner want to build projects valued in excess of the \$50 million. DOT also could contribute operating and maintenance funds to these projects, without being reimbursed by its private-sector partner. DOT retains the discretion to decide whether to participate in one of these public-private partnership projects. The bill also specifies that all reasonable costs to the state, any affected local governments, or utilities, associated with a project that is not a part of the State Highway System or 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.

CS/HB 435 takes effect upon becoming a law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

HOT lanes

High-occupancy toll (HOT) lanes use electronic toll collection technology to collect tolls at highway speeds. HOT lanes attract motorists willing to pay a fee to use them, because less congestion means traffic flows quicker. Typically, motorists attach transponders – similar to Florida's SunPass - to their vehicles that record their usage of the HOT lane, at what time and how many miles. The motorists are either billed or, more commonly, their pre-arranged accounts are debited.

Four communities in the United States have fully operating HOT lanes: in San Diego, Orange and Santa Cruz counties in California, and in Houston, Texas. According to the "Blueprint: Ideas for a New Century" website, HOT lane projects are under consideration or development in nine other states. California Route 91, opened in 1995 in Orange County, was the first fully automated HOT lane and the first "congestion-priced" toll road in the nation. "Congestion-pricing" means the toll paid by the motorist varies based on the time of day and level of congestion in the HOT lane. For example, the toll on the Interstate 15 HOT lane in San Diego ranges from 50 cents, when the lane opens at 6 a.m., to \$4 at peak rush hour; but these tolls fluctuate if traffic sensors detect unexpected traffic flow.

Time savings for using HOT lanes rather than the free lanes varies; in California, some commuters cut their rush-hour travel time by an hour.

HOT lanes have been dubbed "Lexus Lanes" because of the perception that primarily wealthy motorists use them. A 1998 study by the California Polytechnic Institute indicated that 58 percent of rush-hour commuters in the Route 91 HOT lanes earned annual incomes of at least \$60,000; A San Diego State University indicated that 76 percent of HOT lane users along Interstate 15 in San Diego earn at least \$80,000 annually. But other surveys indicate that less-affluent motorists use HOT lanes on occasions when they must arrive at a destination on time.

Supporters of HOT lanes say they are an effective tool for addressing highway congestion and an alternative to building additional lanes as a way to add capacity. They argue that motorists want the option to choose between what is more valuable to them: time or money. Opponents describe the HOT lanes as elitist, saying the savings in drive time may offset by the long lines on access roads to even get onto a HOT lane. They also contend that HOT lanes may exacerbate traffic problems by encouraging motorists who don't want to pay the tolls, nor drive in the congested "free" lanes, to take short cuts through neighborhoods.

Florida's law on private transportation facilities

Section 334.30, F.S., was created in 1991 to allow 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 private entity developing the transportation facility would be able to charge tolls or fares for its use, under agreement with DOT, and DOT could regulate the amount charged, if the proposal was determined to be unreasonable to users. No state funds were to be expended on these projects, except those with an "overriding state interest," in which case DOT 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 DOT had to be fully reimbursed by the private entity.

According to DOT, 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 DOT 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.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 435 rewrites s. 334.30, F.S., throughout. The section is renamed "public-private transportation facilities," and allows DOT to use state "resources" (most likely public right-of-way) 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 DOT funds could be spent for partnership projects, statewide, that aren't 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 DOT to participate in funding operating and maintenance costs of partnership projects that are on the State Highway System allows DOT to participate in the creation of tax-exempt, public-purpose corporations (dubbed "Internal Revenue Service Ruling 63-20 corporations") and to lend toll revenues to these corporations for eligible projects.

The bill clearly specifies that DOT'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 DOT, 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.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 334.30, F.S., throughout. Renames the program a “public-private partnership.” Deletes existing requirement for legislative approval of each proposed project in an individual bill. Authorizes DOT to adopt rules to implement this section. Specifies that DOT may use state resources for one of these public-private partnership projects if it is on the State Highway System or if it provides for increased mobility on the state system. Re-emphasizes requirement that DOT ensure that all reasonable costs of such projects to the state and substantially affected local governments and utilities be paid by the private entity. Limits use of STTF to 5-Year Work Program projects that are being advanced, or to a total of \$50 million annually for projects not in the Work Program. Specifies process for DOT to request proposals. Prohibits DOT from committing funds in excess of the \$50 million limitation without legislative approval. Specifies that DOT may pay all or a part of the operating and maintenance costs for projects located on the State Highway System. For projects not on the State Highway System, DOT shall be reimbursed if it provides such services. Allows DOT to create, or assist in creation of, Internal Revenue Service Ruling 63-20 corporations as partners in these projects. Specifies that these corporations may receive grants or loans from DOT. Specifies that corporations must provide credit support or other supporting documents indicating they can repay the DOT loans.

Section 2: Repeals paragraph (m) of subsection (2) of section 348.0004, F.S., which is obsolete language pertaining to certain expressway authorities being able to participate in public-private partnerships to build transportation facilities.

Section 3: Creates subsection (9) of s. 348.0004, F.S., to allow the Miami-Dade County Expressway Authority to participate in partnerships with consortia or other private entities to build toll roads and other transportation facilities within the jurisdiction of the authority. Gives the expressway authority rulemaking authority. Specifies conditions by which the expressway authority evaluates the proposal. Specifies process for soliciting proposals and for handling unsolicited proposals. Allows the private entity to impose tolls or fees on users of the transportation facility, but allows the expressway authority to regulate the amount and use of such tolls or fees. Specifies projects must comply with applicable laws. Allows the expressway authority to pay all or part of the cost of operating and maintaining the project, for which it may be entitled to total or partial reimbursement. Allows expressway authority to create, or assist in creation of, a tax-exempt, public-purpose Internal Revenue Service Ruling 63-20 corporation to perform the project. Makes such corporations eligible for grants or loans from the expressway authority.

Section 4: Specifies that this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

CS/HB 435 does not require DOT to participate in these public-private partnerships to build user fee-based transportation systems. However, if it chose to participate, DOT could

contribute funds, as well as right-of-way. For projects not in the 5-Year Work Program and in excess of \$50 million, DOT would need legislative approval. DOT also could incur operating and maintenance costs, for projects that are built on the State Highway System.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

CS/HB 435 revamps the existing provision allowing the Miami-Dade County Expressway Authority to participate in public-private partnerships, consistent with the changes in statutes affecting DOT. As such, the expressway authority could incur some costs – at its discretion – in participating in a 63-20-corporation project. Unlike DOT, however, there is no cap on the expressway authority's fiscal participation.

As for local governments in general, it is possible that a city or county could partner with DOT, an expressway authority, and the private entity involved in one of these projects, and contribute funds toward land acquisition or project construction.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

CS/HB 435's provision allowing IRS Ruling 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 DOT grants – for which DOT would likely require reliable assurances that the toll revenues generated by the HOT-HOV lanes would be sufficient.

Under IRS code, chapter 63-20 corporations also could issue tax-exempt revenue bonds. These bonds are low-grade, but still attractive, 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, just because 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 CS/HB 435 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.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of CS/HB 435 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 435 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

CS/HB 435 does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Section 1 of CS/HB 435 gives DOT specific rulemaking authority, and section 3 gives the Miami-Dade County Expressway Authority specific rulemaking authority, to implement the new public-private partnership program to build transportation facilities.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On December 18, 2001, the Transportation Committee adopted 7 amendments to HB 435. Five of the amendments were requested by DOT to clarify the limitations of the agency's financial responsibility for public-private transportation projects. A lengthy amendment, an amendment to the amendment, added the revised language allowing the Miami-Dade County Expressway Authority to participate.

The Transportation Committee then voted 11-0 in favor of the bill as a committee substitute.

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VI. SIGNATURES:

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