

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/CS/SB 1752

SPONSOR: Finance and Taxation Committee, Transportation Committee and Senator Sebestsa

SUBJECT: Transportation Department

DATE: April 15, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
4.	_____	_____	<u>ATD</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

Section 215.617, F.S., is created to authorize the issuance of revenue bonds for the purpose of financing or refinancing the construction, reconstruction, and improvement of projects eligible to receive state-funded infrastructure bank assistance.

The CS further clarifies that the Florida Department of Transportation (FDOT) may use bond proceeds from the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway not only for improvements for the respective toll facility itself, but also for other transportation improvements within the county or counties in which the toll facility is located.

Section 334.30, F.S., is amended to authorize the FDOT to use state resources and enter into public-private partnership agreements for a transportation facility project that is either in the FDOT adopted work program or a metropolitan planning organizations long-range plan. The CS also amends s. 338.2275, F.S., to raise the amount of bonds allowed to be issued to fund approved turnpike projects from \$3 billion to \$4.5 billion.

Section 338.235(2), F.S., is amended to authorize the Turnpike Enterprise to secure by competitive solicitation products, services, and business opportunities authorized by s. 338.234, F.S., and to establish a mechanism for responding to unsolicited proposals.

Section 335.02, F.S., is amended to define, for the purposes of Title XXVI, the phrase "jurisdiction and control".

This CS substantially amends ss. 334.30, 335.02, 338.165, 338.2275, 338.235 and creates s. 215.617 of the Florida Statutes.

II. Present Situation:

State-Funded Infrastructure Bank

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB), which provides loans to help fund transportation projects that otherwise may be delayed or not built. The loans are repaid from revenues generated by the project such as a toll road or other pledged resources. The repayments are then re-loaned to fund new transportation projects.

The section authorizes the SIB to lend capital costs or provide credit enhancements for a transportation facility project on the State Highway System or which provides for increased mobility on the state's transportation system, or which provides intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals. The section further provides that loans from the SIB may be subordinated to senior project debt that has an investment grade rating of "BBB" or higher. Loans from the SIB may bear interest at or below market interest rates, as determined by the FDOT. Repayment of any SIB loan must begin no later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.

The FDOT may consider, but is not limited to, the following criteria for evaluation of projects for SIB assistance:

- (1) The credit worthiness of the project.
- (2) A demonstration that the project will encourage, enhance, or create economic benefits.
- (3) The likelihood assistance would enable the project to proceed at an earlier date than would otherwise be possible.
- (4) The extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.
- (5) The extent to which the project would use new technologies, including intelligent transportation systems, that would enhance the efficient operation of the project.
- (6) The extent to which the project would maintain or protect the environment.
- (7) A demonstration that the project includes transportation benefits for improving intermodalism, cargo and freight movement, and safety.
- (8) The amount of the proposed assistance as a percentage of the overall project costs with emphasis on local and private participation.
- (9) The extent to which the project will provide for connectivity between the State Highway System and airports, seaports, rail facilities, and other transportation terminals and intermodal options pursuant to s. 341.053, F.S., for the increased accessibility and movement of people and goods.

Capitalization of the SIB was first funded through general revenue and state transportation funds at \$50 million a year for three years. The first \$50 million was deposited in the SIB in FY 2000-01. Due to budget constraints and a general revenue shortfall, the capitalization was reduced to \$43.5 million in FY 2001-02 and no funding in FY 2002-03. A fund shift of \$33.5 million from the State Transportation Trust Fund was made in state FY 2002-03 to allow funding for projects currently loaned and possible future loans. According to the FDOT, without additional resources the SIB cannot disburse additional loans until FY 2007-08.

Public-Private Partnerships

Section 334.30, F.S., provides for the building and financing of transportation facilities by private entities. The section provides that the FDOT may receive or solicit proposals and, with Legislative approval, enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities.

An applicant seeking to construct a private transportation facility pursuant to this section must submit an application fee with the submission of the proposal sufficient to pay the costs of evaluating the proposal (\$50,000). The FDOT must determine a proposed project: (1) is in the public's best interest; (2) does not require state funds to be used unless there is an overriding state interest; and (3) would have adequate safeguards to ensure no additional costs or service disruptions by the traveling public. The section requires all reasonable costs for the project to be borne by the private entity. Agreements between the FDOT and the private entity may authorize the private entity to impose tolls; however, the amount of tolls and use of toll revenues may be regulated by the FDOT.

Each private transportation facility constructed pursuant to this section must comply with all requirements of federal, state, and local laws; state, regional and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions which FDOT determines to be in the public's best interest.

The FDOT has not entered into any agreements under this law and has only had two proposals submitted for review. Both proposals have been unable to secure adequate financial backing to produce a project.

Toll Bonding

Section 338.165 (2), F.S., provides for use of toll revenues for improvements to State Highway System roads within the county or counties in which a toll facility is located. Currently, toll revenues from the Beeline-East Expressway are being utilized for four-laning State Road 520. During preparation for the bond sales, the FDOT has been advised by the Division of Bond Finance that statutory modification is required to clarify the ability to use bond proceeds for projects other than on the specific facility generating the revenue.

Turnpike Bond Cap

The Florida's Turnpike Enterprise is a 450-mile system of limited-access toll highways. Its Turnpike mainline passes through 11 counties from North Miami to a junction with Interstate 75 in north central Florida.

In addition to the 265-mile mainline, the Turnpike Enterprise includes the 47-mile Homestead Extension, which takes motorists to the top of the Florida Keys; the 23-mile Sawgrass Expressway/Toll 869 in Broward County; the 19-mile Seminole Expressway/Toll 417 in Seminole County; the 15-mile Veterans Expressway/Toll 589 in Tampa; an eight-mile portion of the Bee Line Expressway/Toll 528 in Orlando; the six-mile Southern Connector Extension of the

Central Florida GreeneWay/Toll 417 in Orlando; the 25-mile Polk Parkway; and the 42-mile Suncoast Parkway.

Section 338.2275, F.S., authorizes the Turnpike Enterprise to issue a maximum of \$3 billion in bonds to fund approved turnpike projects. The Turnpike has issued \$1.86 billion in bonds of this maximum through fiscal year 2002 in order to fund improvements and expansions of the system. As of June 30, 2002, only \$1.14 billion of the maximum is available for future issuances. The Turnpike Enterprise's work program contemplates the issuance of an additional \$2.13 billion to fund the necessary improvements and expansion of the turnpike system through fiscal year 2012. In order to develop and produce a work program that is balanced to available resources, the Turnpike Enterprise would need to raise the maximum amount of bonds allowed to be sold by at least \$1 billion.

Unsolicited Proposals

Section 338.235, F.S., authorizes the sale of specified services, products, or business opportunities on the turnpike system that benefit the traveling public or provide additional revenue to the turnpike system. Section 338.235(2), F.S., currently provides that contracts for the provision of products and services be secured through the request for proposal process. Other procurement methods included under competitive solicitation are not mentioned, nor is any provision made for unsolicited proposals received by the Turnpike Enterprise.

Authority to Locate Transportation Facilities

Section 335.02, F.S., provides to the Department of Transportation, the authority to locate and designate certain transportation facilities as part of the State Highway System and to construct and maintain them with funds available to the department. Any such transportation facility shall become the property of the state and shall be under the jurisdiction and control of the department.

III. Effect of Proposed Changes:

State-Funded Infrastructure Bank

Section 1. Amends s. 215.617, F.S., authorizing the issuance of revenue bonds for the purpose of financing or refinancing the construction, reconstruction, and improvement of projects eligible to receive state infrastructure bank assistance as provided in s. 339.55, F.S. Legislative approval of the department's tentative work program that contains the state-funded infrastructure bank projects constitutes approval as required by s. 11(f), Art. VII of the State Constitution.

Public-Private Partnerships

Section 2. Amends s. 334.30, F.S., authorizing the FDOT to use state resources and to enter into public-private partnership agreements for a transportation facility project that is either in the FDOT adopted work program or a metropolitan planning organization's long-range plan. The section requires the FDOT to ensure that all reasonable state costs related to transportation facilities that are not part of the State Highway System are to be borne by the public-private

entity. All reasonable costs to the state, local governments and utilities also are to be borne by the public-private entity for transportation facilities that are owned by private entities.

Public-private partnerships or a private entity may advance projects:

1. Programmed in the first 3 years of the adopted work program to be reimbursed from FDOT funds for the project as programmed in the adopted work program.
2. Programmed in the fourth and fifth years of the adopted work program to be reimbursed from FDOT funds for the project as programmed in the adopted work program. The total capital costs to the FDOT for these projects may not exceed \$50 million without specific project approval by the Legislature.
3. On the Florida Intrastate Highway System and programmed in the adopted 5-year work program to be reimbursed from FDOT funds for the project as programmed in the adopted work program.
4. Not programmed in the adopted 5-year work program but which are on the State Highway System and included in the local metropolitan planning organization's or the FDOT's long-range transportation plans, to be reimbursed from FDOT funds for the project beyond the 5-year adopted work program. The total capital costs to the FDOT for these projects may not exceed \$50 million without specific project approval by the Legislature.

The section is further amended to authorize the FDOT to request proposals for projects or, if the FDOT receives an unsolicited proposal the FDOT must publish notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for 2 weeks stating that the FDOT has received the proposal and will accept other proposals for the same project for 60 days after the initial publication. A copy of the notice must be mailed to each local government in the affected area.

After the public notification period has expired, the FDOT will rank the proposals in order of preference. When ranking the proposals, the FDOT may consider professional qualification, general business terms, innovative engineering or cost reduction terms, finance plans, and the need for state funds. The FDOT will negotiate with the top-ranked proposer, and if the FDOT is not satisfied with the results of the negotiations, the FDOT may terminate negotiations with the top-ranked proposer and begin negotiations with the lower ranked proposer using the same procedure. If there is only one proposer, the FDOT may negotiate in good faith, and terminate negotiations if the FDOT is not satisfied with the results of the negotiations. The section provides that the FDOT, at its discretion, may reject all proposals at any point in the process up to completion of a contract with a proposer.

Toll Bonding

Section 3. Amends s. 338.165, F.S., clarifying that the FDOT has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities to provide funding for needed transportation projects on the State Highway System in the counties in which they are located, which are Brevard, Orange, Pinellas, Manatee and Hillsborough Counties.

Turnpike Bond Cap

Section 4. Amends s. 338.2275, F.S., raising the amount of bonds allowed to be issued to fund approved turnpike projects from \$3 billion to \$4.5 billion.

Unsolicited Proposals

Section 5. Amends s. 338.235(2), F.S., authorizing the Turnpike Enterprise to secure by competitive solicitation products, services, and business opportunities authorized by s. 338.234, F.S., and to establish a mechanism for responding to unsolicited proposals. If the FDOT receives an unsolicited proposal for products, services, or business opportunities which it wishes to consider, the FDOT must publish notice in a newspaper of general circulation at least once a week for two weeks, or may broadcast such notice by electronic media for two weeks stating the FDOT has received the proposal and will accept other proposals for the same project for 30 days after the initial publication.

Section 6. Amends s. 335.02, F.S., defining, for the purposes of Title XXVI, the phrase “jurisdiction and control”. “Jurisdiction and control” means that local governmental ordinances and regulations are inapplicable to state projects to build designated transportation facilities to the extent that they conflict with any rules or regulations promulgated by the Department of Transportation or impose with regards to any designated transportation facility, any additional burden, financial or otherwise, on the department.

Section 7. This act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article VII, s. 10, of the State Constitution, prohibits the State of Florida from acting as a joint owner with or lending its taxing power to any private corporation. However, the Constitution does allow: (1) the investment of public trust funds; (2) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities; (3) the issuance of revenue bonds to finance or refinance capital costs for airport and seaport facilities; (4) the issuance of revenue bonds to finance or refinance capital projects for certain industrial or manufacturing plants; and (5) the lending or using

taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Bonding the Sunshine Skyway toll revenues would provide approximately \$130 million for funding transportation projects in Pinellas, Manatee and Hillsborough Counties. Bonding the Beeline-East toll revenues would provide approximately \$54 million for funding transportation projects in Brevard and Orange Counties.

According to the FDOT, a leveraged SIB program could conservatively generate \$100 million in available loan capacity annually, as early as FY 2003-2004.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
