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A bill to be entitled

An act relating to transportation facilities; creating s. 215.617, F.S.; providing for issuance of state bonds to fund state infrastructure bank projects; authorizing the Division of Bond Finance to issue such bonds; providing for debt service; providing for terms of such bonds; providing that such bonds shall not constitute a debt or general obligation of the state; providing covenant with bondholders; providing for jurisdiction of complaints for validation of such bonds; amending s. 334.30, F.S.; revising provisions for construction of additional described facilities; providing for public-private agreements to effectuate construction; revising requirements for approval of projects; authorizing the Department of Transportation to adopt rules; providing requirements for the use of funds from the State Transportation Trust Fund; providing procedures with respect to proposals; providing for a selection process; providing for specific project approval by the Legislature for certain projects; authorizing the department to create or assist creation of certain tax-exempt corporations for the construction of facilities; authorizing such corporations to issue bonds; limiting state liability; authorizing the department to lend certain funds to such corporations; amending s. 338.165, F.S.; authorizing the department to request the Division of Bond Finance to issue bonds secured by toll revenues from Alligator Alley, Sunshine Skyway Bridge, Beeline-East Expressway, and the Pinellas Bayway for certain projects; amending s. 338.2275, F.S.; revising provisions for projects approved



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31 to be included in tentative work programs; revising
 32 limitation of turnpike enterprise bonds; amending s.
 33 348.0004, F.S.; revising powers and duties of expressway
 34 authorities formed under the Florida Expressway Authority
 35 Act; providing legislative findings of public necessity;
 36 providing for described public-private partnership
 37 agreements to facilitate construction or improvement of
 38 certain transportation facilities; authorizing the
 39 expressway authority to adopt rules; providing for
 40 described fees; requiring certain determinations prior to
 41 entering into such agreements; providing for project
 42 proposals; providing procedures; authorizing the private
 43 entity to impose certain tolls or fares; requiring
 44 compliance with certain rules, regulations, policies, and
 45 procedures; authorizing the expressway authority to
 46 exercise certain authority and pay certain costs;
 47 authorizing the expressway authority to create certain
 48 corporations; authorizing such corporations to issue
 49 bonds; authorizing the expressway authority to enter into
 50 public-private partnership agreements with such
 51 corporations; authorizing such corporations to apply for
 52 described grants and loans from the department; providing
 53 an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Section 215.617, Florida Statutes, is created
 58 to read:

59 215.617 State bonds for state infrastructure bank.--

60 (1) Upon the request of the Department of Transportation,



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61 the Division of Bond Finance is authorized pursuant to s. 11,
62 Art. VII of the State Constitution and the State Bond Act to
63 issue revenue bonds, for and on behalf of the Department of
64 Transportation, for the purpose of financing or refinancing the
65 construction, reconstruction, and improvement of projects that
66 are eligible to receive state infrastructure bank assistance as
67 provided in s. 339.55. The facilities to be financed with the
68 proceeds of such bonds are designated as state fixed capital
69 outlay projects for the purposes of s. 11(d), Art. VII of the
70 State Constitution, and the specific facilities to be financed
71 shall be determined by the Department of Transportation in
72 accordance with s. 339.55. Each project to be financed with the
73 proceeds of the bonds issued pursuant to this section is hereby
74 approved as required by s. 11(f), Art. VII of the State
75 Constitution. The Division of Bond Finance is authorized to
76 consider innovative financing techniques, which may include, but
77 are not limited to, innovative bidding and structures of
78 potential financings that may result in negotiated transactions.

79 (2) Any bonds issued pursuant to this section shall be
80 payable primarily from a prior and superior claim on all state
81 infrastructure bank repayments received each year with respect
82 to state infrastructure bank projects undertaken in accordance
83 with the provisions of s. 339.55.

84 (3) The term of the bonds shall not exceed 30 years.

85 (4) The bonds issued under this section shall not
86 constitute a debt or general obligation of the state or a pledge
87 of the full faith and credit or taxing power of the state. The
88 bonds shall be secured by and are payable from the revenues
89 pledged in accordance with this section and the resolution
90 authorizing their issuance.



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91 (5) The state does covenant with the holders of bonds
92 issued under this section that it will not take any action which
93 will materially and adversely affect the rights of such
94 bondholders as long as the bonds authorized by this section are
95 outstanding.

96 (6) Any complaint for such validation of bonds issued
97 pursuant to this section shall be filed only in the circuit
98 court of the county where the seat of state government is
99 situated, the notice required to be published by s. 75.06 shall
100 be published only in the county where the complaint is filed,
101 and the complaint and order of the circuit court shall be served
102 only on the state attorney of the circuit in which the action is
103 pending.

104 Section 2. Section 334.30, Florida Statutes, is amended to
105 read:

106 334.30 Public-private ~~Private~~ transportation
107 facilities.--The Legislature hereby finds and declares that
108 there is a public need for rapid construction of safe and
109 efficient transportation facilities for the purpose of travel
110 within the state, and that it is in the public's interest to
111 provide for public-private partnership agreements to effectuate
112 the construction of additional safe, convenient, and economical
113 transportation facilities.

114 (1) The department may receive or solicit proposals and,
115 ~~with legislative approval by a separate bill for each facility,~~
116 enter into agreements with private entities, or consortia
117 thereof, for the building, operation, ownership, or financing of
118 transportation facilities. The department is authorized to adopt
119 rules to implement this section and shall by rule establish an
120 application fee for the submission of proposals under this



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121 section. The fee must be sufficient to pay the costs of
 122 evaluating the proposals. The department may engage the services
 123 of private consultants to assist in the evaluation. Before
 124 ~~seeking legislative~~ approval, the department must determine that
 125 the proposed project:

126 (a) Is in the public's best interest. ~~;~~

127 (b) Would not require state funds to be used unless there
 128 is an overriding state interest; however, the department may use
 129 or advance state resources for an intelligent transportation
 130 system on the State Highway System that is part of a joint
 131 public-private development project on department property leased
 132 for such purpose pursuant to s. 337.251, or for a project that
 133 provides for increased mobility on the state's transportation
 134 system. ~~and~~

135 (c) Would have adequate safeguards in place to ensure that
 136 no additional costs or service disruptions would be realized by
 137 the traveling public and citizens of the state in the event of
 138 default or cancellation of the agreement by the department.

139
 140 The department shall ensure that all reasonable costs to the
 141 state related to transportation facilities that are not part of
 142 the State Highway System are borne by the public-private entity.
 143 The department shall also ensure that all reasonable costs to
 144 the state, and substantially affected local governments, and
 145 utilities, related to the private transportation facility, are
 146 borne by the public-private private entity for transportation
 147 facilities that are owned by private entities.

148 (2) The use of funds from the State Transportation Trust
 149 Fund is limited to advancing projects already programmed in the
 150 adopted 5-year work program or to no more than a statewide total



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151 of \$50 million in capital costs for all projects not programmed
152 in the adopted 5-year work program.

153 (3) The department may request proposals for public-private
154 transportation projects or, if the department receives an
155 unsolicited proposal, shall publish a notice in the Florida
156 Administrative Weekly and a newspaper of general circulation at
157 least once a week for 2 weeks stating that the department has
158 received the proposal and will accept, for 60 days after the
159 initial date of publication, other proposals for the same project
160 purpose. A copy of the notice must be mailed to each local
161 government in the affected area. After the public notification
162 period has expired, the department shall then rank the proposals
163 in order of preference. In ranking the proposals the department
164 may consider, but is not limited to considering, professional
165 qualifications, general business terms, innovative engineering or
166 cost-reduction terms, finance plans, and the need for state funds
167 to deliver the proposal. The department shall negotiate with the
168 top-ranked proposer in good faith and, if the department is not
169 satisfied with the results of the negotiations, the department
170 may, at its sole discretion, terminate negotiations with the
171 proposer. If these negotiations are unsuccessful, the department
172 may go to the second and lower-ranked firms in order using this
173 same procedure. If only one proposal is received, the department
174 may negotiate in good faith and, if the department is not
175 satisfied with the results of the negotiations, the department
176 may, at its sole discretion, terminate negotiations with the
177 proposer. Notwithstanding any other provision of this subsection,
178 the department may, at its sole discretion, reject all proposals
179 at any point in the process up to completion of a contract with
180 the proposer.



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181 (4) The department shall not commit funds in excess of the
182 limitation in subsection (2) without specific project approval by
183 the Legislature.

184 (5)-(2) Agreements entered into pursuant to this section
185 may authorize the private entity to impose tolls or fares for
186 the use of the facility. However, the amount and use of toll or
187 fare revenues may be regulated by the department to avoid
188 unreasonable costs to users of the facility.

189 (6)-(3) Each ~~private~~ transportation facility constructed
190 pursuant to this section shall comply with all requirements of
191 federal, state, and local laws; state, regional, and local
192 comprehensive plans; department rules, policies, procedures, and
193 standards for transportation facilities; and any other
194 conditions which the department determines to be in the public's
195 best interest.

196 (7)-(4) The department may exercise any power possessed by
197 it, including eminent domain, with respect to the development
198 and construction of state transportation projects to facilitate
199 the development and construction of transportation projects
200 pursuant to this section. For public-private facilities located
201 on the State Highway System, the department may pay all or part
202 of the cost of operating and maintaining the State Highway
203 System. For public-private facilities not located on the State
204 Highway System, the department may provide, by agreement,
205 services to the private entity, including, but not limited to,
206 maintenance and law enforcement. Such agreements shall provide
207 for full reimbursement to the department for services rendered
208 ~~The department may provide services to the private entity.~~
209 ~~Agreements for maintenance, law enforcement, and other services~~



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210 ~~entered into pursuant to this section shall provide for full~~
211 ~~reimbursement for services rendered.~~

212 (8)~~(5)~~ Except as herein provided, the provisions of this
213 section are not intended to amend existing laws by granting
214 additional powers to, or further restricting, local governmental
215 entities from regulating and entering into cooperative
216 arrangements with the private sector for the planning,
217 construction, and operation of transportation facilities.

218 (9) The department is authorized to create or assist in
219 the creation of tax-exempt, public-purpose Internal Revenue
220 Service Ruling 63-20 corporations as provided for under the
221 Internal Revenue Code. Any bonds issued by the Internal Revenue
222 Service Ruling 63-20 corporation shall be payable solely from
223 and secured by a lien upon and pledge of the revenues received
224 by the Internal Revenue Service Ruling 63-20 corporation. Any
225 bonds issued by the Internal Revenue Service Ruling 63-20
226 corporation shall not be or constitute a general indebtedness of
227 the state, any department or agency thereof, or any political
228 subdivision thereof within the meaning of any constitutional or
229 statutory provision or limitation. The full faith and credit of
230 the state shall not be pledged to the payment of the principal
231 of or interest on the bonds issued by the Internal Revenue
232 Service Ruling 63-20 corporation. No owner of any of the bonds
233 shall ever have the right to require or compel the exercise of
234 the taxing power of the state or any department or agency of the
235 state for payment thereof, and the bonds shall not constitute a
236 lien upon any property owned by the state or any department or
237 agency of the state. Bonds issued by the Internal Revenue
238 Service Ruling 63-20 corporation shall be rated investment grade
239 by a nationally recognized credit rating agency. Nothing in this



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240 subsection is intended to prohibit credit enhancement of such
 241 bonds, whether provided by private or governmental sources other
 242 than sources backed by the taxing power of the state. Nothing in
 243 this subsection is intended to prohibit the pledging of
 244 additional funds or revenues from private sources to secure such
 245 bonds. Internal Revenue Service Ruling 63-20 corporations may
 246 receive State Transportation Trust Fund grants and loans from
 247 the department. The department shall be empowered to enter into
 248 public-private partnership agreements with Internal Revenue
 249 Service Ruling 63-20 corporations for projects under this
 250 section but shall not agree to expend any funds not appropriated
 251 for this purpose. The provisions of s. 339.135(6) shall apply to
 252 such agreements.

253 (10) The department may lend funds from the Toll
 254 Facilities Revolving Trust Fund, as outlined in s. 338.251, to
 255 Internal Revenue Service Ruling 63-20 corporations that
 256 construct projects containing toll facilities approved under
 257 this section. To be eligible, the Internal Revenue Service
 258 Ruling 63-20 corporation must meet the provisions of s. 338.251
 259 and must either provide an indication from a nationally
 260 recognized credit rating agency that the senior bonds of the
 261 Internal Revenue Service Ruling 63-20 corporation will be
 262 investment grade or must provide credit support, such as a
 263 letter of credit or other means acceptable to the department, to
 264 ensure that the loans will be fully repaid as required by law.
 265 The state's liability for debt of a facility shall be limited to
 266 the amount approved for that specific facility in the
 267 department's 5-year work program adopted pursuant to s. 339.135.

268 (11)(6) A fixed-guideway transportation system authorized
 269 by the department to be wholly or partially within the



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270 department's right-of-way pursuant to a lease granted under s.
 271 337.251 may operate at any safe speed.

272 Section 3. Subsection (3) of section 338.165, Florida
 273 Statutes, is amended to read:

274 338.165 Continuation of tolls.--

275 (3) Notwithstanding any other law to the contrary,
 276 pursuant to s. 11, Art. VII of the State Constitution, and
 277 subject to the requirements of subsection (2), the Department of
 278 Transportation may request the Division of Bond Finance to issue
 279 bonds secured by toll revenues collected on the Alligator Alley,
 280 Sunshine Skyway Bridge, Beeline-East Expressway, and Pinellas
 281 Bayway to fund transportation projects located within the county
 282 or counties in which the facility is located and contained in
 283 the ~~1993-1994 Adopted Work Program or in any subsequent adopted~~
 284 work program of the department.

285 Section 4. Subsection (1) of section 338.2275, Florida
 286 Statutes, is amended to read:

287 338.2275 Approved turnpike projects.--

288 (1) Legislative approval of the department's tentative
 289 work program that contains the turnpike project constitutes
 290 approval to issue bonds as required by s. 11(f), Art. VII of the
 291 State Constitution. Turnpike projects approved to be included in
 292 future tentative work programs include, but are not limited to,
 293 projects contained in the 2003-2004 ~~1997-1998~~ tentative work
 294 program, ~~and potential expansion projects listed in the January~~
 295 ~~25, 1997, report submitted to the Florida Transportation~~
 296 ~~Commission titled "Florida's Turnpike Building on the Past—~~
 297 ~~Preparing for the Future."~~ A maximum of \$4.5 ~~\$3~~ billion of bonds
 298 may be issued to fund approved turnpike projects.



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299 Section 5. Paragraph (m) of subsection (2) of section
300 348.0004, Florida Statutes, is amended, and subsection (9) is
301 added to said section, to read:

302 348.0004 Purposes and powers.--

303 (2) Each authority may exercise all powers necessary,
304 appurtenant, convenient, or incidental to the carrying out of
305 its purposes, including, but not limited to, the following
306 rights and powers:

307 ~~(m) An expressway authority in any county as defined in s.~~
308 ~~125.011(1) may consider any unsolicited proposals from private~~
309 ~~entities and all factors it deems important in evaluating such~~
310 ~~proposals. Such an expressway authority shall adopt rules or~~
311 ~~policies in compliance with s. 334.30 for the receipt,~~
312 ~~evaluation, and consideration of such proposals in order to~~
313 ~~enter into agreements for the planning design, engineering,~~
314 ~~construction, operation, ownership, or financing of additional~~
315 ~~expressways in that county. Such rules must require~~
316 ~~substantially similar technical information as is required by~~
317 ~~rule 14-107.0011(3)(a)-(e), Florida Administrative Code. In~~
318 ~~accepting a proposal and entering into such an agreement, the~~
319 ~~expressway authority and the private entity shall for all~~
320 ~~purposes be deemed to have complied with chapters 255 and 287.~~
321 ~~Similar proposals shall be reviewed and acted on by the~~
322 ~~authority in the order in which they were received. An~~
323 ~~additional expressway may not be constructed under this section~~
324 ~~without the prior express written consent of the board of county~~
325 ~~commissioners of each county located within the geographical~~
326 ~~boundaries of the authority. The powers granted by this section~~
327 ~~are in addition to all other powers of the authority granted by~~
328 ~~this chapter.~~



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329 (9) The Legislature finds and declares that there is a
330 public need for rapid construction of safe and efficient
331 transportation facilities for the purpose of travel within the
332 state and that it is in the public's best interest to provide
333 for public-private partnership agreements to effectuate the
334 construction of additional safe, convenient, and economical
335 transportation facilities.

336 (a) An expressway authority in any county may receive or
337 solicit proposals and enter into agreements with private
338 entities, or consortia thereof, for the building, operation,
339 ownership, or financing of extensions or other improvements to
340 existing expressway authority transportation facilities or new
341 transportation facilities that are within the jurisdiction of
342 the expressway authority. The expressway authority is authorized
343 to adopt rules to implement this subsection and shall by rule
344 establish an application fee for the submission of unsolicited
345 proposals under this subsection. The fee must be sufficient to
346 pay the costs of evaluating the proposals. The expressway
347 authority may engage the services of private consultants to
348 assist in the evaluation. Before approval, the expressway
349 authority must determine that the proposed project:

- 350 1. Is in the public's best interest.
351 2. Would have adequate safeguards in place to ensure that
352 no additional costs or service disruptions would be realized by
353 the traveling public and citizens of the state in the event of
354 default by the private entity or consortium or cancellation of
355 the agreement by the expressway authority.

356 (b) The expressway authority may request proposals for
357 public-private transportation projects or, if the expressway
358 authority receives an unsolicited proposal that it has an



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359 interest in evaluating, it shall publish a notice in the Florida
360 Administrative Weekly and a newspaper of general circulation in
361 the county in which the expressway authority is located at least
362 once a week for 2 weeks stating that the expressway authority
363 has received the proposal and will accept, for 60 days after the
364 initial date of publication, other proposals for the same
365 project purpose. A copy of the notice must be mailed to each
366 local government in the affected areas. After the public
367 notification period has expired, the expressway authority shall
368 then rank the proposals in order of preference. In ranking the
369 proposals, the expressway authority may consider, but is not
370 limited to considering, professional qualifications, general
371 business terms, innovative engineering or cost-reduction terms,
372 finance plans, and the need for state funds to deliver the
373 proposal. The expressway authority shall negotiate with the top-
374 ranked proposer in good faith, and, if the expressway authority
375 is not satisfied with the results of said negotiations, the
376 expressway authority may, at its sole discretion, terminate
377 negotiations with said proposer. If these negotiations are
378 unsuccessful, the expressway authority may go to the second and
379 lower-ranked firms in order using this same procedure. If only
380 one proposal is received, the expressway authority may negotiate
381 in good faith, and, if the expressway authority is not satisfied
382 with the results of said negotiations, the expressway authority
383 may, at its sole discretion, terminate negotiations with the
384 proposer. Notwithstanding any other provision of this paragraph,
385 the expressway authority may, at its sole discretion, reject all
386 proposals at any point in the process prior to execution of a
387 contract with the proposer.

388 (c) Agreements entered into pursuant to this subsection



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389 may authorize the private entity to impose tolls or fares for
390 the use of the facility. However, the amount and use of toll or
391 fare revenues may be regulated by the expressway authority to
392 avoid unreasonable costs to users of the facility.

393 (d) Each transportation facility constructed pursuant to
394 this subsection shall comply with all requirements of federal,
395 state, and local laws; state, regional, and local comprehensive
396 plans; the expressway authority's rules, policies, procedures,
397 and standards for transportation facilities; and any other
398 conditions that the expressway authority determines to be in the
399 public's best interest.

400 (e) The expressway authority may exercise any power
401 possessed by it, including eminent domain, with respect to the
402 development and construction of transportation projects to
403 facilitate the development and construction of transportation
404 projects pursuant to this subsection. The expressway authority
405 may pay all or part of the cost of operating and maintaining the
406 facility or may provide services to the private entity for which
407 it shall be entitled to receive full or partial reimbursement
408 for services rendered.

409 (f) Except as herein provided, the provisions of this
410 subsection are not intended to amend existing laws by further
411 expanding or further restricting the authority of local
412 governmental entities to regulate and enter into cooperative
413 arrangements with the private sector for the planning,
414 construction, and operation of transportation facilities.

415 (g) The expressway authority shall have the authority to
416 create or assist in the creation of tax-exempt, public-purpose
417 Internal Revenue Service Ruling 63-20 corporations as provided
418 for under the Internal Revenue Code. Any bonds issued by the



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419 Internal Revenue Service Ruling 63-20 corporation shall be
420 payable solely from and secured by a lien upon and pledge of the
421 revenues received by the Internal Revenue Service Ruling 63-20
422 corporation. Any bonds issued by the Internal Revenue Service
423 Ruling 63-20 corporation shall not be or constitute a general
424 indebtedness of the state, any department or agency thereof, or
425 any political subdivision thereof within the meaning of any
426 constitutional or statutory provision or limitation. The full
427 faith and credit of the state shall not be pledged to the
428 payment of the principal of or interest on the bonds issued by
429 the Internal Revenue Service Ruling 63-20 corporation. No owner
430 of any of the bonds shall have the right to require or compel
431 the exercise of the taxing power of the state or any department
432 or agency of the state for payment thereof, and the bonds shall
433 not constitute a lien upon any property owned by the state or
434 any department or agency of the state. Bonds issued by the
435 Internal Revenue Service Ruling 63-20 corporation shall be rated
436 investment grade by a nationally recognized credit rating
437 agency. Nothing in this paragraph is intended to prohibit credit
438 enhancement of such bonds, whether provided by private or
439 governmental sources other than sources backed by the taxing
440 power of the state. Nothing in this paragraph is intended to
441 prohibit the pledging of additional funds or revenues from
442 private sources to secure such bonds. The expressway authority
443 shall be empowered to enter into public-private partnership
444 agreements with Internal Revenue Service Ruling 63-20
445 corporations for projects under this subsection.

446 (h) The expressway authority or Internal Revenue Service
447 Ruling 63-20 corporation created under this subsection shall be
448 entitled to apply for grants and loans from the department for



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449 projects under this subsection, subject to the same eligibility
450 criteria and other terms and conditions as would apply to
451 projects of the expressway authority undertaken without private
452 participation.

453 Section 6. This act shall take effect upon becoming a law.