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 2580

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Public-private Transportation

DATE: April 15, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAuliffe	Meyer	TR	Fav/CS
2.			FT	
3.			ATD	
4.			AP	
5.				
6.				

I. Summary:

This CS authorizes 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 organizations long-range plan. The section requires FDOT to ensure all reasonable costs to the state related to transportation facilities are not part of the State Highway System be borne by the public-private entity and all reasonable costs to the state, local governments, and utilities be borne by the public-private entity for transportation facilities that are owned by private entities.

The scope of the CS also extends to all expressway authorities the ability to enter into similar agreements with 63-20 corporations to share in the development of public-private transportation facilities. The CS authorizes 63-20 corporations to issue bonds. Unlike the FDOT, the expressway authorities have 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.

This CS substantially amends ss. 334.30 and 348.0004; deletes s. 348.0004 (2)(m); creates ss. 348.9801, 348.9802, 348.9803, 348.9804, 348.9805, 348.9806, 348.9807, and 348.9808 of the Florida Statutes.

II. Present Situation:

Section 334.30, F.S., provides for the building and financing of transportation facilities by private entities. The section provides 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 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.

However, early last year the FDOT received a series of unsolicited 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. 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.

Section 348.0004, F.S., establishes the purpose and powers of expressway authorities created by the Florida Expressway Authority Act. The Miami-Dade County Expressway Authority is the only functioning expressway authority created by the Florida Expressway Authority Act. Section 348.0004(2)(m), F.S., authorizes the Miami-Dade County Expressway Authority to consider unsolicited proposal from private entities for the planning, designing, engineering, constructing, operating, maintaining, and owning of additional expressways in Miami-Dade County.

III. Effect of Proposed Changes:

Section 334.30, F.S., is amended to authorize 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 organizations long-range plan. The section requires FDOT to ensure all reasonable costs to the state related to transportation facilities are not part of the State Highway System be borne by the public-private entity and all reasonable costs to the state, local governments, and utilities 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 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 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 FDOT for these projects may not exceed $50 million without specific project approval by the Legislature.

The section is further amended to authorize FDOT to request proposals for projects or, if FDOT receives an unsolicited proposal FDOT must publish notice in Florida Administrative Weekly and a newspaper of general circulation at least once a week for 2 weeks stating 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, FDOT will rank the proposals in order of preference. When ranking the proposals, 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 FDOT is not satisfied with the results of the negotiations, 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, FDOT may negotiate in good faith, and terminate negotiations if FDOT is not satisfied with the results of the negotiations. The section provides FDOT, at its discretion, may reject all proposals at any point in the process up to completion of a contract with a proposer.

The scope of the CS also extends to all expressway authorities the ability to enter into similar agreements with 63-20 corporations to share in the development of public-private transportation facilities. The CS authorizes 63-20 corporations to issue bonds (see Government Sector Impact), and to receive loans and grants from the State Transportation Trust Fund. The CS further authorizes loans from the Toll Facilities Revolving Trust Fund to 63-20 corporations. Unlike the FDOT, the expressway authorities have 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.

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:

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 CS 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, 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 CS'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 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 CS answer these concerns by pointing out 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.

CS 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 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 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:

None.

VIII. Amendments:

None.