

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1055 Taxation of Public-Private Transportation Facilities
SPONSOR(S): Carroll
TIED BILLS: **IDEN./SIM. BILLS:** SB 2248

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	16 Y, 0 N, As CS	Cater	Miller
2)	Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	Cater	Tinker
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

Section 334.30, F.S. permits the Department of Transportation (DOT) to enter into public-private partnerships for the construction of additional safe, convenient, and economical transportation facilities. DOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, to build, operate, own, or finance transportation facilities.

The bill provides Legislative recognition that the private entities involved in these transportation projects perform a governmental or public purpose or function. The bill provides that the private entity, or consortia thereof, that enter into a public-private partnership agreement with DOT, will be treated, for the purposes of ad valorem tax purposes as a government entity. This treatment only applies with respect to the design, construction, operation, and maintenance of the transportation facility.

Since it is unknown what public-private partnerships DOT may enter into, and the exact terms of those arrangements, the fiscal impact is unquantifiable.

This act shall take effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 334.30, F.S. permits the Department of Transportation (DOT) to enter into public-private partnerships for the construction of additional safe, convenient, and economical transportation facilities. DOT is allowed to receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, to build, operate, own, or finance transportation facilities.

DOT may advance projects programmed in the adopted 5-year work program or projects increasing transportation capacity and greater than \$500 million in the 10-year Strategic Intermodal Plan. Such advancement of a project may use funds provided by public-private partnerships or private entities to be reimbursed from DOT funds for the project as programmed in the adopted work program.

Before approving a project through a public-private partnership, DOT must determine that the proposed project:

- Is in the public's best interest;
- Would not require state funds to be used unless the project is on the State Highway System;
- Would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the department;
- Would have adequate safeguards in place to ensure that the DOT or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and
- Would be owned by DOT upon completion or termination of the agreement.

DOT is required to ensure that all reasonable costs to the state related to transportation facilities that are not part of the State Highway System are borne by the private entity. DOT is also required to ensure all reasonable costs to the state and substantially affected local governments and utilities, related to the private transportation facility, are borne by the private entity owning the transportation facility.

Public-private partnerships are required to be qualified by DOT as part of the procurement process. The process must ensure that the private firm meets at least the minimum DOT standards for

qualification in DOT rules for professional engineering services and road and bridge contracting prior to submitting a proposal under the procurement.

Generally, the public-private partnership agreements are limited to a term not exceeding 50 years. However, upon making written findings by the secretary of DOT that an agreement requires a term in excess of 50 years, the secretary may authorize a term of up to 75 years. Agreements having a term in excess of 75 years must have specific legislative approval. DOT is required to identify each new project under this section with a term exceeding 75 years in the transmittal letter that accompanies the submittal of the tentative work program to the Governor and the Legislature in accordance.

DOT is required to ensure that no more than 15 percent of total federal and state funding in any given year for the State Transportation Trust Fund are obligated collectively for public private partnership projects.

Current Public-Private Partnership Projects¹ being considered by DOT are:

- I-595 Corridor Improvements (Broward County)
- Alligator Alley (Broward and Collier Counties)
- First Coast Outer Beltway (Clay, Duval, and St. Johns Counties)
- I-95 Express (Broward and Miami-Dade Counties)
- Port of Miami Tunnel (Miami-Dade County)
- I-75 Road Expansion Project (Collier and Lee Counties)
- Palmetto Expressway (Miami-Dade County)

Proposed Changes

The bill amends s. 334.30(1), F.S., to provide Legislative recognition that the private entity, or consortia thereof would perform a governmental or public purpose or function. The bill provides that the private entity, or consortia thereof, that enter into a public-private partnership agreement with DOT, will be treated, for the purposes of ad valorem tax purposes as a government entity. This treatment only applies will respect to the design, construction, operation, and maintenance of the transportation facility

This act shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 Amends s. 334.30, F.S., relating to public-private transportation facilities, providing legislative recognition of purpose or function, providing for the treatment of the private entity or consortia thereof as a government entity for ad valorem tax purposes under certain circumstances..

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

¹ Florida Department of Transportation Website

http://www.dot.state.fl.us/financialplanning/finance/private_transportation_facilities.shtm (March 5, 2009).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS below.

2. Expenditures:

See FISCAL COMMENTS below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providing that private entities or consortia thereof entering into public-private partnerships with DOT are considered government entities with respect to transportation facilities may make these partnerships more attractive to private entities wishing to enter into these partnerships.

D. FISCAL COMMENTS:

The fiscal impact of the bill to local governments is unquantifiable. This is because it is unknown what public-private partnership transactions will take place and what the terms of the transactions will be.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply. It appears that the transactions contemplated by the bill would for the most part, not be taxable under current law, given that the transaction would likely be classified as being for the governmental purpose and function of providing transportation facilities for the public's use and benefit. Under current law, all DOT owned transportation facilities are exempt from taxation.

2. Other:

In general, the Florida Constitution prohibits the creation of a property tax exemption by general law. Article VII, section 3 of the state constitution, provides the following exemptions from property tax;

- Government property
- Educational, literary, scientific, religious, or charitable purposes;
- Homesteads
- Renters
- Household goods and personal effects
- Widows and widowers, blind and disabled
- Community economic development
- Renewable energy sources
- Historic preservation
- Low-income seniors
- Conservation lands
- Tangible personal property.

Article VII, section 4 of the state constitution, provides "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxations." However, certain properties may be assessed based on the use of the property. These properties are:

- Agricultural properties

- High water recharge areas
- Land used exclusively for non-commercial recreational purposes
- Stock in trade (inventory) and livestock
- Historic properties
- Conservation lands
- Working waterfronts.

Chapter 196, F.S., provides for the statutory implementation of these constitutional exemptions. Section 196.001, F.S. provides:

Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

(1) All real and personal property in this state and all personal property belonging to persons residing in this state; and

(2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Section 196.199, F.S., provides the government property exemption, and in part exempts the following:

- All property of this state, which is used for governmental purposes, except as otherwise provided by law.
- Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(6). In all such cases, all other interests in the leased property shall also be exempt from ad valorem taxation.

Section 196.012(6), F.S, provides;

Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, special district, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. . .

The bill provides that these private entities or consortia thereof are treated as government entities for ad valorem tax purposes for the design, construction, operation, and maintenance of the transportation facility. Additionally, the bill provides legislative recognition that these partnerships perform a governmental or public purpose or function.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Roads, Bridge & Ports Policy Committee adopted one amendment. This amendment:

- Provides Legislative recognition that the private entities involved in these transportation facilities would perform a governmental or public purpose or function;
- Provides that the exemption from ad valorem taxation is only to the extent that the property is owned by the state or other government entity; and
- Provides that unemployment compensation taxes be excluded from the tax exemption.

The bill was reported favorably as a committee substitute.

On April 1, 2009, the Economic Development & Community Affairs Policy Council adopted one amendment. This amendment removed the existing language regarding the taxes the private entity or consortia thereof, would be exempt from and the taxes it would be required to pay. The amendment provides that the private entity or consortia thereof will be treated as a government entity for ad valorem tax purposes for the design, construction, operation, and maintenance of the transportation facility.

The bill was reported favorably as a council substitute.