

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1055 Taxation of Public-Private Transportation Facilities
SPONSOR(S): Finance & Tax Council; Economic Development & Community Affairs Policy Council; Roads, Bridges & Ports Policy Committee; Carroll and Ray
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	12 Y, 0 N, As CS	Shaw	Langston
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 when the private entity, or consortia, enter into a public-private partnership agreement with DOT to design, build, operate, own, or finance a transportation facility, the transportation facility will be treated, for ad valorem tax purposes as a government entity. The transportation facility will also be exempt from intangible tax and special assessments. The private entity or consortia will be exempt from documentary stamp tax on all documents or obligations to pay money that arise of the agreement with DOT. The bill provides that the private entity or consortia will have to pay corporate income tax, unemployment compensation taxes, and sales tax.

The Revenue Estimating Conference estimates the bill will have an indeterminate negative impact to state and local revenues.

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

Public Private Partnerships

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)

Ad Valorem Tax

The ad valorem tax is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. Florida's constitution prohibits the state government from levying an ad valorem tax except on intangible personal property. The taxable value of real and tangible personal property is the just value (i.e, the fair market value) of the property adjusted for any exclusions, differentials, or exemptions allowed by the constitution or the statutes.

Intangibles Tax

The tax on intangible personal property is the only property tax that the state may collect under the Florida Constitution, and the maximum rate allowed is 2 mills. Obligations secured by liens on Florida realty are taxed at 2 mills at the time they are recorded.

Documentary Stamp Tax

The documentary stamp tax is actually two taxes imposed on different bases at different tax rates. The tax on deeds and other documents related to real property is at the rate of 70 cents per \$100 of consideration. Certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements are taxed at 35 cents per \$100 of consideration.

Special Assessments

Under Florida's Constitution, local governments possess strong home rule powers. Given these powers, local governments may utilize a variety of revenue sources for funding services and improvements without express statutory authorization. Special assessments are an example of these home rule revenue sources.

¹ Florida Department of Transportation Website

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

A special assessment is a levy on real property to fund the cost of government improvements or services. Any property assessed by a special assessment must derive a special benefit from the improvement or service provided. Additionally, the special assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. Examples of improvements and services provided by special assessments include garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, stormwater management services, and water and sewer line extensions.

Corporate Income Tax

Certain corporations doing business in Florida must pay tax of 5.5% on income earned in Florida. Florida uses the federal income tax code as a starting point in its determination of taxable income. Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis. The first \$5,000 of net income is exempt. Also, subchapter S corporations, master limited partnerships, and most limited liability companies are exempt.

Unemployment Compensation Tax

Florida's Unemployment Compensation Program imposes a tax on wages paid by Florida employers to pay for unemployment benefits received by unemployed individuals. The tax is imposed on the first \$7,000 of compensation paid to each employee and the tax rate varies from 0.1% to 5.4% depending upon the benefit experience of the employer.

Sales Tax

Florida imposes a sales and use tax on sales of tangible personal property, admissions, commercial rentals, and a limited number of services. There are numerous exemptions and credits applicable to certain items or uses under specified circumstances. The rate is 6 percent.

Proposed Changes

The bill amends s. 334.30(1), F.S., to provide Legislative recognition that the private entities involved in public-private transportation projects perform a governmental or public purpose or function. The bill provides that when the private entity, or consortia, enter into a public-private partnership agreement with DOT to design, build, operate, own, or finance a transportation facility, the transportation facility will be exempt from ad valorem tax to the extent that the property is owned by the state or another governmental entity. The transportation facility will also be exempt from intangible tax and special assessments. The private entity or consortia will be exempt from documentary stamp tax on all documents or obligations to pay money that arise of the agreement with DOT.

The bill provides that the private entity or consortia will have to pay corporate income tax and unemployment compensation taxes. Additionally any applicable sales tax must be paid and sales tax must be collected on all direct sales of tangible personal property and on all leases, subleases, or sublicenses of real property.

The agreement between DOT and the private entity or consortia establishing the transportation facility will constitute documentation sufficient to claim any exemption created by the bill.

The bill shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 Amends s. 334.30, F.S., relating to public-private transportation facilities.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates the bill will have an indeterminate negative impact to state revenues.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates the bill will have an indeterminate negative impact to local revenues.

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 government expenditures is indeterminate since 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.

On April 15, 2009, the Finance & Tax Council adopted one amendment. The amendment added an exemption for intangible tax, documentary stamp tax, and special assessments. The amendment also clarified that private entity or consortia must pay corporate income tax, unemployment tax, and must pay and collect applicable sales tax.