

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: 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		Cater	Miller
2)	Economic Development & Community Affairs Policy Council			
3)	Finance & Tax Council			
4)	Full Appropriations Council on Education & Economic Development			
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 that transportation facilities operating together with any interest of, revenues received by and payments made to the state by any private entity or consortia thereof, entering into an agreement with DOT to build, operate, own, or finance transportation facilities pursuant to public-private partnerships together with any agreement are exempt from all taxes and special assessments of the state, city, town, county, special district, or political subdivision of the state, including without limitation:

- Ad valorem taxes;
- Documentary stamp taxes;
- Intangibles taxes; and
- Sales taxes.

However, the bill does not exempt the facility from corporate taxes. Additionally, the entity would still be required to pay any taxes due because of subleases, sublicenses, or retail sales agreements and any sales tax on the sale of tangible personal property.

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 that transportation facilities, along with any interest in them, revenues received by, and payments made to the state by any entity, entering into a public-private partnership with DOT together with any agreements associated with the public-private partnership are exempt from all taxes and special assessments of the state, city, town, county, special district, or political subdivision of the state, including without limitation:

- Ad valorem taxes;
- Documentary Stamp Taxes;
- Intangibles Taxes; and
- Sales Taxes.

However, the bill does not exempt the facility from corporate taxes. Additionally, the entity would still be required to pay any taxes due because of subleases, sublicenses, or retail sales agreements and any sales tax on the sale of tangible personal property.

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 to exempt certain public-private transportation facilities from certain taxes and special assessments.

Section 2 Provides an effective date.

¹ Florida Department of Transportation Website

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS below.

2. Expenditures:

See FISCAL COMMENTS below.

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:

Having clarification that transactions for public-private partnerships for transportation facilities exempt from certain taxes may make these transactions more attractive to private entities wishing to enter into these partnerships.

D. FISCAL COMMENTS:

The fiscal impact of the bill to state and 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. . .

Based on the above, when an entity enters into a public-private partnership with DOT for transportation related projects, any leases of the physical road are likely to be considered a public purpose in order to qualify for an exemption from ad valorem taxation.

However, if the private entity actually owns the transportation facility including the real property and the road improvements, the governmental purpose exemption may not apply. In that case, the bill cannot constitutionally exempt these projects from ad valorem taxation.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 73, the bill exempts “sale” tax; this should probably be changed to “sales” tax.

The Department of Revenue identified the following issues related to the implementation and administration of the bill:

- Which transactions are intended to be exempt;
- Who specifically qualifies for the exemption;
- What is the qualification process for claiming an exemption;
- Does the sales tax exemption include the purchase of tangible personal property;
- Does the bill expand the scope of an exemption or clarify the eligibility for a current tax exemption.

DOR also notes that the bill exempts these facilities from “all taxes,” and the provides that this exemption does not include corporate taxes, taxes due as the result of subleases, sublicenses or retail sales agreements, or any sales tax due from the sale of tangible personal property. DOR points out that it could be argued that the bill exempts entities in these partnerships from state unemployment tax that would otherwise be owed, causing its employees to lose coverage. Additionally, without the state tax credit, the entity would have to pay the full Federal unemployment tax rate. DOR recommends that the bill be amended to require the entities to pay unemployment tax.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES