HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7033 PCB EEIC 07-03 Model Transportation Systems
SPONSOR(S): Economic Expansion & Infrastructure Council and Rep. Cannon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Expansion & Infrastructure Council	8 Y, 5 N	Creamer	Tinker
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SUMMARY ANALYSIS

The Florida Department of Transportation (DOT) is responsible for managing a Five-Year Work Program totaling over $40 billion which includes highway, turnpike, aviation, seaport, and public transit projects, financed with state, federal and, in certain instances, advanced local funds.

Although the DOT's long-range plan calls for an investment of $117 billion in transportation improvements through fiscal year 2025, a shortfall of $53 billion remains on the Strategic Intermodal System (SIS) alone.

The relationship between transportation investments and the state's economic competitiveness has received increased attention recently. An analysis presented to the 2003 Legislature demonstrated investments in transportation improvements will create over 88,000 new permanent jobs over the next twenty-five years.

HB 7033 revises section 334.30, Florida Statutes, relating to Public-Private Partnerships, to strengthen the state's transportation system by providing the department with innovative financing techniques including, but not limited to, public-private partnerships, toll facility leases, and user fees. The bill also revises section 338.165, Florida Statutes, relating to Continuation of Tolls, to provide for necessary toll rate increases based on inflation factors associated with economic growth.

Succinctly, the bill provides Florida with additional options to assure stable financing of transportation systems into the future. With automobile manufacturers beginning to offer more fuel efficient vehicle options for motorists, including new higher efficiency hybrid gasoline-electric vehicles, there will be an impact on federal and state revenues from gasoline taxes in the future. These fuel tax revenues comprise the major source of transportation funding.

This bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Provide limited government- This legislation facilitates a reduction in government. Viewed from a larger context, the legislation promotes greater private sector spending on much needed public infrastructure to energize economic development.

B. EFFECT OF PROPOSED CHANGES:

Public-Private Partnerships

Current Situation

The purpose of s. 334.30, F.S., is to allow financial assistance from the private sector to advance projects programmed in the adopted 5-year work program using 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. In accomplishing this, the DOT may use state resources to participate in funding and financing the project as provided for under the Department's enabling legislation for projects on the State Highway System. The section requires the DOT to ensure all reasonable costs to the state related to transportation facilities that are not part of the State Highway System are to be borne by the private entity and all reasonable costs to the state, local governments, and utilities are to be borne by the public-private entity for transportation facilities that are owned by private entities.

Section 334.30, F.S.:

- Allows private entities that enter into Public-Private Partnership agreements with DOT to impose tolls or fares for the use of the facility. This section also requires that these fees be regulated by DOT to ensure no unreasonable costs to users.

- Allows DOT 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, for the building, operation, ownership, or financing of transportation facilities. These proposals require an application fee of $50,000 for each proposal submitted each year or for each revision to a proposal from prior years. The fee shall be provided to DOT from the applying organization(s) with each proposal. The fee shall be used to reimburse the department for the cost(s) to analyze and review the proposal and in the event the department engages the services of private consultants to assist in the evaluation of the proposal, to pay the costs of the private evaluation. Proposals received without the appropriate proposal fees shall be returned. If the cost of the department's analysis or the evaluation services exceeds the amount of the initial fee, an applying organization shall be required to pay the difference to the department, or its proposal shall be rejected and future applications from the organization shall be refused until an appropriate payment is made to DOT.

- Requires that any unsolicited proposal the department receives must be published in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for two weeks stating that DOT has received the proposal and will accept competing 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, DOT will rank the proposals in order of preference. When ranking the proposals, DOT may consider professional qualification, general business terms, innovative engineering or cost reduction terms, finance plans, and the need for state funds. DOT will negotiate with the top-ranked proposer, and if the department is not satisfied with the results of the negotiations, they may terminate negotiations with the top-ranked proposer and begin negotiations with the next lower ranked proposer using the same procedure. If there is only one proposer, DOT may negotiate in good faith, and terminate negotiations if not satisfied with the results of the negotiations. The section also provides that DOT, at its discretion, may reject all proposals at any point in the process up to completion of a contract with a proposer.

- Requires all transportation facilities constructed pursuant to this section comply with federal, state, and local laws; state, regional, and local comprehensive plans; and DOT rules, policies, procedures, and standards for transportation facilities.

- Authorizes DOT to exercise any power possessed by it, including eminent domain, with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to this section.

- Allows DOT to make Toll Facility Revolving Trust Fund loans to private entities that construct projects containing toll facilities on the State Highway System under this section.

- Provides that a fixed-guideway transportation system authorized by the department to be wholly or partially within the department's right-of-way pursuant to a lease granted under s. 337.251, F.S., may operate at any safe speed.

Proposed Changes

HB 7033 strengthens current legislative intent to emphasize the need for and the implementation of innovative financing techniques to address increased congestion, market demands, and the state's growing population. The bill revises numerous provisions of section 334.30, F.S., to clarify current law as well as provide specific regulations and limitations to ensure the state's practical application of Public-Private Partnership agreements.

The bill:

- Revises current application fees for proposals submitted under this section to be required only for unsolicited proposals.

- Clarifies that DOT may lease existing toll facilities or develop new toll facilities, with the exception of Florida's Turnpike. In addition the bill specifies:

  - Any Public-Private Partnership agreement that includes leasing an existing facility, but does not add capacity, must be approved by the Legislature;
  - Requirements for maintaining, operating and renewing these toll facilities in accordance with DOT standards;
  - Requirements for the regulation of tolls to be included in the Public-Private Partnership agreement;
  - Provisions for the use of excess revenues generated from tolls or fares over the life of the agreement to be returned to DOT; and
  - Requires that the tolls or fares included in these agreements be consistent with operating projections derived from elements to include:

    1. Ridership estimates;
    2. Additional revenue sources;
    3. Associated real estate development;
    4. Operating subsidies; and
    5. 30 year cash flow analysis.

- Extends the advertisement period from 60 days to 120 days for interested parties to submit a competitive bid in response to DOT's receipt of unsolicited proposals. The department and industry have indicated that 60 days is not a sufficient period of time for potential partners to prepare comprehensive proposals for contracts of this type.

- Exempts Public-Private Partnership agreements from traditional construction contracting requirements including:

    - Innovative Contracting Caps
    - Contractor Pre-Qualification and Contract Advertisements
    - Surety Bond Requirements
    - Payment of Construction or Maintenance Contracts
    - Retainage
    - Claims Settlement Process

  HB 7033 requires DOT to ensure that procurement documents address all sections of chapter 337, F.S., specified above.

- Requires that Public-Private Partnership agreements shall include provisions to ensure the private entity meets department standards for engineering services and road and bridge contracting.

- Requires DOT to balance the structure of the security package included in the agreement to ensure performance of the private entity and subcontractor payments.

- Requires DOT to perform two independent financial feasibility analyses, once prior to procurement and again before awarding the contract.

- Deletes a subsection relating to fixed-guideway transportation systems not applicable to Public-Private Partnerships.

- Authorizes DOT to use innovative financing techniques associated with Public-Private Patnerships, such as:

    - Federal Loans
    - Commercial Bank Loans
    - Hedges Against Inflation (provided by commercial banks or other private sources).

- Allows DOT to enter into Public-Private Partnerships that include availability payments. Using this method allows for a project to be developed using a Public-Private Partnership to design, build, finance, operate, and maintain a project where the "owner", meaning the government entity, pays the private entity only when the facility is open to traffic and meets contractual performance specifications for operations and maintenance.

- Provides prioritization processes for project selection as follows:

    - The project must be prioritized by DOT in coordination with the MPO for facilities on the Strategic Intermodal System (SIS) and included in the 10 year SIS and Long Range (25 years) Transportation Plan.

    - The project must be prioritized by the local MPO for facilities not on the SIS and included in the MPO cost feasible Transportation Improvement Plan and Long-Range (25 years) Transportation Plan.

    - Where there is no MPO, the project must be prioritized by DOT in coordination with the local governments for facilities not on the SIS and included in Long-Range (25 years) Transportation Plan.

- Provides Public-Private Partnership contracts are limited to a term no longer than 50 years. In addition, the bill allows that upon making written findings that an agreement is not financially feasible within these term limits, the Secretary of DOT may authorize a term up to 75 years. Agreements shall not exceed a term of greater than 75 years unless specifically approved by the Governor and Legislature per s. 339.135, F.S., (*Preparation, Adoption, Execution and Amendment of the DOT work program).*

- Provides a maximum annual obligation of state and federal funds to Public-Private Partnership contracts. No more than 25% of these funds shall be obligated collectively for these projects. In FY 2008, 25% is estimated at $1.5 billion.

- Establishes distribution of tolls collected. The provisions included in the agreement with the Public-Private Partnership shall ensure a portion of excess revenues from tolled projects are returned to the department over the life of the public-private partnership agreement. Revenue returned to the department will be distributed within the state as needed for the purpose of funding capacity projects as follows:

    - If the revenue-producing project is on the State Highway System, any remaining toll revenue shall be used for the construction, maintenance, improvement of any road or up to 50 percent of any capital transit project on the State Highway System, except as provided in s. 348.0004, F.S.- Expressway and Bridge Authorities, or

    - If the revenue-producing project is on the county road system, any remaining toll revenue shall be used for the construction, maintenance, or improvement of any other state, county road or capital transit project within the county or counties in which the revenue-producing project is located, except as provided in s. 348.0004, F.S.- Expressway and Bridge Authorities.

- Establishes provisions for increasing toll rates at least every five years. DOT shall index toll rates on new and existing toll facilities to the Consumer Price Index, or similar inflation factors. However the bill also allows toll rates to be increased beyond these limits as directed by bond documents, covenants, governing body authorization or pursuant to s. 338.231, F.S.-Turnpike Enterprise Law.

C. SECTION DIRECTORY:

Section 1- Amending s. 334.30, F.S. to:

- Provide specific legislative intent emphasizing the need for and the implementation for Public-Private Partnerships;

- Revise current application fees for proposals submitted under this section to be required only for unsolicited proposals;

- Authorize DOT to lease existing toll facilities;

- Require minimum standards for toll facilities included in Public-Private Partnerships;

- Provide for disposition of excess toll revenues;

- Require the Public-Private Partnership agreement to include DOT's toll regulations as determined by projections submitted by the private entity and verified by the department;

- Exempt Public-Private Partnerships from traditional contracting requirements;

- Extend the advertisement period from 60 days to 120 days for interested parties to submit a competitive bid in response to DOT's receipt of unsolicited proposals;

- Require the Public-Private Partnership agreement to include a balanced security package;

- Remove "fixed guideway transportation system" language not applicable to s. 334.30, F.S.;

- Allow DOT to use innovative financing techniques associated with Public-Private Partnership agreements;

- Provide project selection and prioritization processes for specific roadways associated with DOT's work program;

- Establish contract limits for Public-Private Partnership agreements; and

- Establish maximum annual obligation of state and federal funds to Public-Private Partnership contracts.

Section 2- Amending s. 338.165, F.S. to:

- Establish provisions for increasing toll rates at least every five years to the Consumer Price Index, or similar inflation factors.

Section 3- Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill's impact to state revenues is indeterminate, but anticipated to have a positive impact to the State Transportation Trust Fund (STTF). Toll systems leverage the overall system to improve existing facilities and build new facilities. HB 7033 allows the Department of Transportation to lease existing non-Turnpike toll facilities. The value of these existing toll facilities shown below are based on current revenue projections with a 2 percent growth in users and in toll fees increased annually for 50 years. Depending on the structure of the Public Private Partnership, these values are subject to change.

   - Alligator Alley valued at $3.0 billion
   - Bee-Line East Expressway valued at $1.3 billion
   - Pinellas Bayway valued at $6 million
   - Sunshine Skyway valued at $8.2 billion

   In addition, many of the existing DOT assisted toll facilities are supplemented by the department's State Transportation Trust Fund (STTF), Toll Facility Revolving Trust Fund (TFRTF), State Infrastructure Bank (SIB), and other loans. HB 7033 has the potential to alleviate some of the dependence on state funding and loans as tolls are increased according to inflation factors provided in the bill. The table below describes the outstanding balances due to STTF and other funds from the existing toll facilities.

DOT Assisted Toll Facilities As of June 30, 2006			
Toll Entity	**Outstanding Bonds**	**Due to STTF**	**Outstanding Loans (TFRTF, SIB, ROW)**
Sunshine Skyway	7,395,000	19,441,129	0
Pinellas Bayway	0	31,745,735	0
Alligator Alley	46,505,000	0	0
Beeline East	0	52,255,870	0
THCEA	406,585,000	109,574,872	69,465,745
Mid-Bay Bridge	111,654,177	16,445,847	1,509,787
Santa Rosa Bay Bridge	149,095,000	10,308,560	7,882,858
MDX	639,500,000	1,401,499	55,583,100
Lee County	151,190,000	0	11,178,119
OOCEA	1,745,539,000	191,527,614	16,687,164
St. Lucie Expressway	0	503,125	2,117,256
Emerald Coast Bridge	0	300,000	445,898
South FL Expressway	0	0	650,000
Totals	**3,257,463,177**	**433,504,251**	**165,519,927**

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Public-Private Partnerships represent a new project delivery tool for transportation infrastructure development in Florida. The primary ingredient for using this approach is a definable revenue stream that can be forecasted and linked to a project with an expected useful life substantial enough to take advantage of that revenue stream for the financing period. In addition, the private sector benefits from long-term rate of return on these investments.

D. FISCAL COMMENTS:

Public-Private Partnership projects are often undertaken to supplement conventional procurement practices by taking private revenue sources and mixing with a variety of public funding sources, thereby reducing demands on constrained public budgets. Since projects have not been identified at this time, the bill's impact to state revenues is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, technical and substantive amendments were adopted. The substantive amendments include:

- Making capital transit projects eligible for the use of excess toll revenues;
- Enhancing the contractual requirements related to financial assumption provided for the determination of the project costs, toll rates, and the private entity's internal rate of return; and
- Requiring that any Public-Private Partnership agreement that includes leasing an existing facility, but does not add capacity, must be approved by the Legislature.