

**STORAGE NAME:** h0435.tr.doc

**DATE:** December 7, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
TRANSPORTATION  
ANALYSIS**

**BILL #:** HB 435

**RELATING TO:** Transportation/Public-Private Transportation Facilities

**SPONSOR(S):** Representative(s) Kyle

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) TRANSPORTATION
- (2) FISCAL POLICY & RESOURCES
- (3) COUNCIL FOR READY INFRASTRUCTURE
- (4)
- (5)

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I. SUMMARY:

Section 334.30, F.S., provides for the development of private transportation facilities, such as toll roads or passenger rail service, that would offer less-congested routes for travelers willing to pay a fee to use them. The benefit to the state or local governments is that capacity on public roads or systems would be reduced. The private entity developing the new transportation facility would be able to charge tolls or fares for its use, under agreement with the state Department of Transportation (DOT), which could regulate the amount charged, if the proposed toll was determined to be unreasonable to users. Currently, no project costs are passed on to state or local taxpayers.

This statute has never been used, but in recent months a private toll-road developer has been meeting with DOT to draft amendments to s. 334.30, F.S., that recast the statute as a public-private partnership to offer transportation alternatives.

HB 435 is the result of those efforts. It provides for the development of toll roads and other transportation projects that combine public and private resources. Under this bill, State Transportation Trust Fund (STTF) monies could be used on these s. 334.30, F.S. projects which are already in DOT's 5-Year Work Program, or which DOT otherwise believes serves an overriding public interest. In such a case, no more than \$50 million in STTF monies could be spent annually by DOT. Legislative approval is necessary only if DOT and its private-sector partner want to build projects valued in excess of the \$50 million. DOT also could contribute operating and maintenance funds to these projects, without being reimbursed by its private-sector partner.

DOT retains the discretion to decide whether to participate in one of these public-private partnership projects. The agency also is given authority to adopt rules implementing HB 435.

The bill takes effect upon becoming a law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

HOT lanes

High-occupancy toll (HOT) lanes use electronic toll collection technology to collect tolls at highway speeds. HOT lanes attract motorists willing to pay a fee to use them, because less congestion means traffic flows quicker. Typically, motorists attach transponders – similar to Florida’s SunPass - to their vehicles that record their usage of the HOT lane, at what time and how many miles. The motorists are either billed or, more commonly, their pre-arranged accounts are debited.

Four communities in the United States have fully operating HOT lanes: in San Diego, Orange and Santa Cruz counties in California, and in Houston, Texas. According to the “Blueprint: Ideas for a New Century” website, HOT lane projects are under consideration or development in nine other states. California Route 91, opened in 1995 in Orange County, was the first fully automated HOT lane and the first “congestion-priced” toll road in the nation. “Congestion-pricing” means the toll paid by the motorist varies based on the time of day and level of congestion in the HOT lane. For example, the toll on the Interstate 15 HOT lane in San Diego ranges from 50 cents, when the lane opens at 6 p.m., to \$4 at peak rush hour; but these tolls fluctuate if traffic sensors detect unexpected traffic flow.

Time savings for using HOT lanes rather than the free lanes varies; in California, some commuters cut their rush-hour travel time by an hour.

HOT lanes have been dubbed “Lexus Lanes” because of the perception that primarily wealthy motorists use them. A 1998 study by the California Polytechnic Institute indicated that 58 percent of rush-hour commuters in the Route 91 HOT lanes earned annual incomes of at least \$60,000; A San Diego State University indicated that 76 percent of HOT lane users along Interstate 15 in San Diego earn at least \$80,000 annually. But other surveys indicate that less-affluent motorists use HOT lanes on occasions when they must arrive at a destination on time.

Supporters of HOT lanes say they are an effective tool for addressing highway congestion and an alternative to building additional lanes as a way to add capacity. They argue that motorists want the option to choose between what is more valuable to them: time or money. Opponents describe the HOT lanes as elitist, saying the savings in drive time may offset by the long lines on access roads to even get onto a HOT lane. They also contend that HOT lanes may exacerbate traffic problems by encouraging motorists who don’t want to pay the tolls, nor drive in the congested “free” lanes, to take short cuts through neighborhoods.

Florida's law on private transportation facilities

Section 334.30, F.S., was created in 1991 to allow for the development of private transportation facilities, such as toll roads or passenger rail service, that would serve to reduce burdens on public highway systems. The private entity developing the transportation facility would be able to charge tolls or fares for its use, under agreement with DOT, and DOT could regulate the amount charged, if the proposal was determined to be unreasonable to users. No state funds were to be expended on these projects, except those with an "overriding state interest," in which case DOT had the discretion to exercise eminent domain and other powers to assist in such projects, and any maintenance, law enforcement, or other services provided by DOT had to be fully reimbursed by the private entity.

According to DOT, this section of law has never been used in the 10 years since it was created. Some speculate that is because the entire financial burden typically would be on the private developer.

However, earlier this year DOT received a series of unsolicited trial 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. This could make anywhere from 11 to 13 lanes, rather than the current 10, available for motorists' use. 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.

**C. EFFECT OF PROPOSED CHANGES:**

HB 435 rewrites s. 334.30, F.S., throughout. The section is renamed "public-private transportation facilities," and allows DOT to use state "resources" (most likely public right-of-way) for a transportation facility that is either on the State Highway System or which provides increased mobility for the state system. State funds could be used to advance projects that are in the 5-year work program and which a private entity wants to help build. Or, up to \$50 million in DOT funds could be spent for partnership projects, statewide, that aren't in the work program. Partnership projects that seek more than the \$50 million for capital costs would have to be approved by the Legislature. Also, the transformation into a public-private transportation partnership that builds, operates and maintains public-purpose projects provides sovereign immunity for any liability that may occur.

The amended s. 334.30, F.S., also establishes noticing requirements; allows DOT to participate in funding operating and maintenance costs of partnership projects that are on the State Highway System allows DOT to participate in the creation of tax-exempt, public-purpose corporations (dubbed chapter 63-20 corporations by the IRS) and to lend toll revenues to these corporations for eligible projects.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends s. 334.30, F.S., throughout. Renames the program a "public-private partnership." Deletes existing requirement for legislative approval of each proposed project in an individual bill. Authorizes DOT to adopt rules to implement this section. Specifies that DOT may use state resources for one of these public-private partnership projects if it is on the State Highway System or if it provides for increased mobility on the state system. Deletes requirement that DOT ensure that all reasonable costs of such projects to the state and substantially affected local governments and utilities be paid for by the private entity. Limits use of STTF to 5-Year Work Program projects that are being advanced, or to a total of \$50 million annually for projects not in the Work Program. Specifies process for DOT to request proposals. Prohibits DOT from committing

funds in excess of the \$50 million limitation without legislative approval. Specifies that DOT may pay all or a part of the operating and maintenance costs for projects located on the State Highway System. For projects not on the State Highway System, DOT shall be reimbursed if it provides such services. Allows DOT to create, or assist in creation of, chapter 63-20 corporations as partners in these projects. Specifies that these corporations may receive grants or loans from DOT. Specifies that corporations must provide credit support or other supporting documents indicating they can repay the DOT loans.

**Section 2:** Specifies that this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

HB 435 does not require DOT to participate in these public-private partnerships to build user fee-based transportation systems. However, if it chose to participate, DOT could contribute funds as well as right-of-way. For projects not in the 5-Year Work Program and in excess of \$50 million, DOT would need legislative approval. DOT also could incur operating and maintenance costs, for projects that are built on the State Highway System.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None, although it is possible that, in the future, a local government could partner with DOT and the private entity involved in one of these projects, and contribute funds toward land acquisition or project construction.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The entity that builds, operates and maintains one of these s. 334.30, F.S., user fee-based transportation systems would have to collect at least enough toll or ticket revenues to offset the debt service. Other private-sector beneficiaries could be business owners and property owners along the route.

D. FISCAL COMMENTS:

HB 435'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 DOT grants – for which DOT would likely require reliable assurances that the toll revenues generated by the HOT-HOV lanes 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, just because 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.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of HB 435 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 435 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 435 does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 435 raises no clear-cut constitutional issues. (Please note "C. OTHER COMMENTS" below)

B. RULE-MAKING AUTHORITY:

Section 1 of HB 435 gives DOT specific rulemaking authority to adopt rules to implement the provisions of an amended s. 334.30, F.S.

C. OTHER COMMENTS:

DOT has expressed a number of concerns about HB 435, particularly the proposed deletion of existing statutory language requiring the private entity to bear "all reasonable costs to the state and substantially affect local governments and utilities related to the private transportation facility." DOT staff say, legally, state fuel tax revenues can only be spent on public transportation facilities, based on their interpretation of ss. 339.08 and 339.09, F.S., and Article VII, section 10, of the Florida Constitution. DOT has drafted several amendments, addressing its concerns that it plans to discuss with the bill sponsor.

Besides the DOT amendments, the Miami-Dade County Expressway Authority has proposed amending HB 435 to make it eligible to participate in these public-private partnerships to build transportation facilities.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VI. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

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Joyce Pugh

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