

Bill No. SB 954

Barcode 903446 Comm: RCS 03/20/2006 03:53 PM

596-1920-06

Proposed Committee Substitute by the Committee on
Transportation

1 A bill to be entitled

2 An act relating to transportation; amending s.

3 348.754, F.S.; authorizing the Orlando-Orange

4 County Expressway Authority to waive payment

5 and performance bonds on certain construction

6 contracts if the contract is awarded pursuant

7 to an economic development program for the

8 encouragement of local small businesses;

9 providing criteria for participation in the

10 program; providing criteria for the bond

11 waiver; providing for certain determinations by

12 the authority's executive director or a

13 designee as to the suitability of a project;

14 providing for certain payment obligations if a

15 payment and performance bond is waived;

16 requiring the authority to record notice of the

17 obligation; limiting eligibility to bid on the

18 projects; providing for the authority to

19 conduct bond-eligibility training for certain

20 businesses; requiring the authority to submit

21 biennial reports to the Orange County

22 legislative delegation; amending s. 348.0004,

23 F.S.; authorizing transportation authorities,

24 bridge authorities, or toll authorities to

25 enter agreements with private entities to

26 provide transportation facilities; amending s.

27 348.0012, F.S.; clarifying certain exemptions

28 from the Florida Expressway Authority Act;

29 providing an effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

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1 Section 1. Subsection (6) is added to section 348.754,
2 Florida Statutes, to read:

3 348.754 Purposes and powers.--

4 (6)(a) Notwithstanding s. 255.05, the Orlando-Orange
5 County Expressway Authority may waive payment and performance
6 bonds on construction contracts for the construction of a
7 public building, for the prosecution and completion of a
8 public work, or for repairs on a public building or public
9 work that has a cost of \$500,000 or less and when the project
10 is awarded pursuant to an economic development program for the
11 encouragement of local small businesses which has been adopted
12 by the governing body of the Orlando-Orange County Expressway
13 Authority pursuant to a resolution or policy.

14 (b) The authority's adopted criteria for participation
15 in the economic development program for local small businesses
16 requires that a participant:

17 1. Be an independent business.

18 2. Be principally domiciled in the Orange County
19 Standard Metropolitan Statistical Area.

20 3. Employ 25 or fewer full-time employees.

21 4. Have gross annual sales averaging \$3 million or
22 less over the immediately preceding 3 calendar years with
23 regard to any construction element of the program.

24 5. Be accepted as a participant in the Orlando-Orange
25 County Expressway Authority's microcontracts program or such
26 other small business program as may be hereinafter enacted by
27 the Orlando-Orange County Expressway Authority.

28 6. Participate in an educational curriculum or
29 technical assistance program for business development which
30 will assist the small business in becoming eligible for
31 bonding.

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1 (c) The authority's adopted procedures for waiving
2 payment and performance bonds on projects having values not
3 less than \$200,000 and not exceeding \$500,000 shall provide
4 that payment and performance bonds may be waived only on
5 projects that have been set aside to be competitively bid on
6 by participants in an economic development program for local
7 small businesses. The authority's executive director or his or
8 her designee shall determine whether specific construction
9 projects are suitable for:

10 1. Bidding under the authority's microcontracts
11 program by registered local small businesses; and

12 2. Waiver of the payment and performance bond.

13
14 The decision of the authority's executive director or deputy
15 executive director to waive the payment and performance bond
16 shall be based upon his or her investigation and conclusion
17 that there exists sufficient competition so that the authority
18 receives a fair price and does not undertake any unusual risk
19 with respect to such project.

20 (d) For any contract for which a payment and
21 performance bond has been waived pursuant to the authority set
22 forth in this section, the Orlando-Orange County Expressway
23 Authority shall pay all persons defined in s. 713.01 who
24 furnish labor, services, or materials for the prosecution of
25 the work provided for in the contract to the same extent and
26 upon the same conditions that a surety on the payment bond
27 under s. 255.05 would have been obligated to pay such persons
28 if the payment and performance bond had not been waived. The
29 authority shall record notice of this obligation in the manner
30 in which and at the location where surety bonds are recorded.
31 The notice must include the information describing the

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1 contract that s. 255.05(1) requires be stated on the front
 2 page of the bond. Notwithstanding that s. 255.05(9) generally
 3 applies when a performance and payment bond is required, s.
 4 255.05(9) shall apply under this subsection to any contract
 5 for which performance or payment bonds are waived, and any
 6 claim to payment under this subsection shall be treated as a
 7 contract claim pursuant to s. 255.05(9).

8 (e) A small business that has been the successful
 9 bidder on six projects for which the payment and performance
 10 bond was waived by the authority pursuant to paragraph (a)
 11 shall be ineligible to bid on additional projects for which
 12 the payment and performance bond is to be waived. The local
 13 small business may continue to participate in other elements
 14 of the economic development program for local small businesses
 15 as long as it is eligible to do so.

16 (f) The authority shall conduct bond-eligibility
 17 training for businesses qualifying for bond waiver under this
 18 subsection to encourage and promote bond eligibility for such
 19 businesses.

20 (g) The authority shall prepare a biennial report on
 21 the activities undertaken pursuant to this subsection to be
 22 submitted to the Orange County legislative delegation. The
 23 initial report shall be due December 31, 2008.

24 Section 2. Subsection (9) of section 348.0004, Florida
 25 Statutes, is amended to read:

26 348.0004 Purposes and powers.--

27 (9) The Legislature declares that there is a public
 28 need for rapid construction of safe and efficient
 29 transportation facilities for travel within the state and that
 30 it is in the public's interest to provide for public-private
 31 partnership agreements to effectuate the construction of

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1 additional safe, convenient, and economical transportation
 2 facilities.

3 (a) Notwithstanding any other provision of the Florida
 4 Expressway Authority Act, any expressway authority,
 5 transportation authority, bridge authority, or toll authority
 6 established under this part or any other statute may receive
 7 or solicit proposals and enter into agreements with private
 8 entities, or consortia thereof, for the building, operation,
 9 ownership, or financing of ~~expressway~~ authority transportation
 10 facilities or new transportation facilities within the
 11 jurisdiction of the ~~expressway~~ authority. An ~~expressway~~
 12 authority is authorized to adopt rules to implement this
 13 subsection and shall, by rule, establish an application fee
 14 for the submission of unsolicited proposals under this
 15 subsection. The fee must be sufficient to pay the costs of
 16 evaluating the proposals. An ~~expressway~~ authority may engage
 17 private consultants to assist in the evaluation. Before
 18 approval, an ~~expressway~~ authority must determine that a
 19 proposed project:

- 20 1. Is in the public's best interest.
- 21 2. Would not require state funds to be used unless the
 22 project is on or provides increased mobility on the State
 23 Highway System.
- 24 3. Would have adequate safeguards to ensure that no
 25 additional costs or service disruptions would be realized by
 26 the traveling public and residents ~~citizens~~ of the state in
 27 the event of default or the cancellation of the agreement by
 28 the ~~expressway~~ authority.

29 (b) An ~~expressway~~ authority shall ensure that all
 30 reasonable costs to the state which are, related to
 31 transportation facilities that are not part of the State

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1 Highway System, are borne by the private entity. An ~~expressway~~
2 authority shall also ensure that all reasonable costs to the
3 state and substantially affected local governments and
4 utilities related to the private transportation facility are
5 borne by the private entity for transportation facilities that
6 are owned by private entities. For projects on the State
7 Highway System, the department may use state resources to
8 participate in funding and financing the project as provided
9 for under the department's enabling legislation.

10 (c) The ~~expressway~~ authority may request proposals for
11 public-private transportation projects or, if it receives an
12 unsolicited proposal, it must publish a notice in the Florida
13 Administrative Weekly and a newspaper of general circulation
14 in the county in which it is located at least once a week for
15 2 weeks, stating that it has received the proposal and will
16 accept, for 60 days after the initial date of publication,
17 other proposals for the same project purpose. A copy of the
18 notice must be mailed to each local government in the affected
19 areas. After the public notification period has expired, the
20 ~~expressway~~ authority shall rank the proposals in order of
21 preference. In ranking the proposals, the ~~expressway~~ authority
22 shall consider professional qualifications, general business
23 terms, innovative engineering or cost-reduction terms, finance
24 plans, and the need for state funds to deliver the proposal.
25 If the ~~expressway~~ authority is not satisfied with the results
26 of the negotiations, it may, at its sole discretion, terminate
27 negotiations with the proposer. If these negotiations are
28 unsuccessful, the ~~expressway~~ authority may go to the second
29 and lower-ranked firms, in order, using the same procedure. If
30 only one proposal is received, the ~~expressway~~ authority may
31 negotiate in good faith, and if it is not satisfied with the

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1 results, it may, at its sole discretion, terminate
2 negotiations with the proposer. Notwithstanding this
3 paragraph, the ~~expressway~~ authority may, at its discretion,
4 reject all proposals at any point in the process up to
5 completion of a contract with the proposer.

6 (d) The department may lend funds from the Toll
7 Facilities Revolving Trust Fund, as outlined in s. 338.251, to
8 public-private partnerships. To be eligible a private entity
9 must comply with s. 338.251 and must provide an indication
10 from a nationally recognized rating agency that the senior
11 bonds for the project will be investment grade or must provide
12 credit support, such as a letter of credit or other means
13 acceptable to the department, to ensure that the loans will be
14 fully repaid.

15 (e) Agreements entered into pursuant to this
16 subsection may authorize the public-private entity to impose
17 tolls or fares for the use of the facility. However, the
18 amount and use of toll or fare revenues shall be regulated by
19 the ~~expressway~~ authority to avoid unreasonable costs to users
20 of the facility.

21 (f) Each public-private transportation facility
22 constructed pursuant to this subsection shall comply with all
23 requirements of federal, state, and local laws; state,
24 regional, and local comprehensive plans; the ~~expressway~~
25 authority's rules, policies, procedures, and standards for
26 transportation facilities; and any other conditions that the
27 ~~expressway~~ authority determines to be in the public's best
28 interest.

29 (g) An ~~expressway~~ authority may exercise any power
30 possessed by it, including eminent domain, to facilitate the
31 development and construction of transportation projects

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1 pursuant to this subsection. An ~~expressway~~ authority may pay
 2 all or part of the cost of operating and maintaining the
 3 facility or may provide services to the private entity for
 4 which it receives full or partial reimbursement for services
 5 rendered.

6 (h) Except as herein provided, this subsection is not
 7 intended to amend existing laws by granting additional powers
 8 to or further restricting the governmental entities from
 9 regulating and entering into cooperative arrangements with the
 10 private sector for the planning, construction, and operation
 11 of transportation facilities. Use of the powers granted in
 12 this subsection may not subject a statutorily created
 13 expressway authority, transportation authority, bridge
 14 authority, or toll authority, other than one statutorily
 15 created under this part, to any of the requirements of this
 16 part other than those contained in this subsection.

17 Section 3. Section 348.0012, Florida Statutes, is
 18 amended to read:

19 348.0012 Exemptions from applicability.--The Florida
 20 Expressway Authority Act does not apply:

21 (1) In a county in which an expressway authority has
 22 been created pursuant to parts II-IX of this chapter, except
 23 as expressly provided in this part; or

24 (2) To a transportation authority created pursuant to
 25 chapter 349.

26 Section 4. This act shall take effect July 1, 2006.

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