

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/CS/SB 2248

INTRODUCER: Finance and Tax Committee, Transportation Committee and Senator Hill

SUBJECT: Taxation/Public-private Transportation Facilities

DATE: April 20, 2009 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Meyer | Meyer | TR | Fav/CS |
| 2. | ODonnell | McKee | FT | Fav/CS |
| 3. | | | TA | |
| 4. | | | WPSC | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill amends s. 334.30, F.S., concerning public-private transportation facilities, to provide a legislative finding that certain private entities perform a governmental function when entering into agreements with the Department of Transportation and, as a consequence, certain transportation facilities will receive an exemption from the payment of ad valorem tax to the extent the property is owned by the state or other government entity, from intangible tax levied by chapter 199, F.S., and from special assessments levied by the state or any political subdivisions.

Further, the private entities, or consortia, are exempt from the tax imposed by Ch. 201 F.S., on all documents or obligations to pay money that arise out of the agreements to design, build, operate, own, or finance transportation facilities.

The private entities must pay applicable corporate income tax, unemployment compensation tax and sales and use tax and must register and collect applicable sales tax on all their direct taxable sales of tangible personal property and taxable leases, subleases or sublicenses of real property.

The Revenue Estimating Conference has not met to consider the bill.

This bill substantially amends s. 334.30, F.S.

II. Present Situation:

Legislatively Authorized Procurement Techniques used by the Department

The Legislature has given the department authorization to use many techniques to procure the construction, maintenance, and financing of transportation facilities. Some examples of these techniques include the following:

- emergency procurements under s. 337.11(6),
- bidding procurements under s. 337.11(3), F.S.,
- design/build procurements under s. 337.11(7), F.S.,
- innovative procurements under s. 337.025, F.S.,
- tolling of department-owned facilities under s. 338.165 and s. 338.222, F.S.,
- concession or license procurements under ss. 338.234 and 338.235, F.S.,
- short-term leasing procurements under s. 337.25, F.S.,
- long-term leasing procurements under s. 337.251, F.S.,
- lease/purchase procurements under chs. 343 and 348, F.S., and
- public/private partnership procurements under s. 334.30, F.S.

The department chooses the appropriate procurement technique based upon an analysis of the benefits, costs, and risks associated with the transportation project.

Public/Private Partnership Procurements under s. 334.30, F.S.

The Legislature has authorized the department to enter into public/private partnership procurements since 1991 when s. 334.30, F.S., was initially enacted. From the initial enactment of s. 334.30, F.S., through June 24, 2004, however, the department had not entered into any agreements under s. 334.30, F.S. During this period of time, the legislature would have to approve each public/private partnership agreement by enacting a separate bill.

The 2004 Legislature amended s. 334.30, F.S., to provide the department may receive or solicit proposals and, with legislative approval (via approval of the Work Program), enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities.

Currently, s. 334.30, F.S., authorizes the department to receive and solicit proposals and authorizes (with legislative approval as evidenced by approval of the project in the department's work program) the department to enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities. The department 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 using funds provided by public-private partnerships or private entities to be reimbursed from department funds for the project as programmed in the adopted work program.

Agreements using the public/private procurement technique under s. 334.30, F.S., must meet the following requirements as determined by the department:

- Be in the public's best interest;
- Not require state funds to be used unless the project is on the State Highway System;
- Provide adequate safeguards to ensure 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;
- Provide adequate safeguards to ensure the department or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and
- The transportation project would be owned by the department upon completion or termination of the agreement.

Any agreement under s. 334.30, F.S., is subject to the following provisions:

- With the exception of the Florida Turnpike System, the department may lease its existing toll facilities or develop new toll facilities to be operated and maintained by private entities in accordance with department standards.
- Toll revenues must be regulated by department and the regulations governing the future increase of toll or fare revenues must be included in the agreement.
- The private entity must provide a traffic and revenue study and finance plan.
- The department must provide an independent analysis demonstrating the cost-effectiveness and overall public benefit to the Legislative Budget Commission prior to awarding a contract on a lease of an existing toll facility.
- The department shall ensure a portion of the revenues from tolls or fares are returned to the department.
- Agreements may not exceed 50 years unless the department makes written findings stating the agreement requires a term in excess of 50 years; however, any term in excess of 75 years requires approval of the Legislature.

Ad Valorem Taxes

Article VII, Section 4 of the Constitution of the State of Florida requires by general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation with certain conditions.

Article VII, Section 10 of the Constitution of the State of Florida establishes that the state may not become a joint owner with, or stockholder of, or give lend or use its taxing power or credit to aid any corporation, association, partnership, or person with certain conditions.

Section 196.199(1)(b), F.S., establishes all property of this state which is used for governmental purposes shall be exempt from ad valorem taxation with certain conditions.

Section 196.199(2)(a), F.S., establishes property owned by the state, but used by nongovernmental lessees shall be exempt from ad valorem taxation when the lessee serves or performs a governmental or public purpose. Public/private partnerships under s. 334.30, F.S., may or may not meet the requirements of the exemption established in s. 196.199(2)(a), F.S.

III. Effect of Proposed Changes:

Section 1— This bill amends s. 334.30, F.S., concerning public-private transportation facilities, to provide a legislative finding that certain private entities perform a governmental function when entering into agreements with the Department of Transportation and, as a consequence, certain transportation facilities will receive an exemption from the payment of ad valorem tax to the extent the property is owned by the state or other government entity, from intangible tax levied by chapter 199, F.S., and from special assessments levied by the state or any political subdivisions.

Further, the private entities, or consortia, are exempt from the tax imposed by Ch. 201 F.S., on all documents or obligations to pay money that arise out of the agreements to design, build, operate, own, or finance transportation facilities.

The private entities must pay applicable corporate income tax, unemployment compensation tax and sales and use tax and must register and collect applicable sales tax on all their direct taxable sales of tangible personal property and taxable leases, subleases or sublicenses of real property.

Section 2—The bill becomes effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The validity of the tax exemption sought by this bill is subject to Article VII, Sections 4 and 10 of the Constitution of the State of Florida. The relief includes an exemption from ad valorem tax. The fiscal impact of the bill on local government has not been determined

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill has not been reviewed by the Revenue Estimating Conference to determine the fiscal impact of the tax exemption granted.

This bill exempts transportation facilities, together with any interest of, revenues received by, and payments made to the state by, any private entities entering into agreements with the Florida Department of Transportation (department) for the building, operation, ownership, or financing of transportation facilities under s. 334.30, F.S., shall be exempt from all taxes and special assessments of the state or any city, town, county, special

district, or political subdivision of the state. The exemption includes relief from ad valorem taxes, documentary stamp taxes, intangible taxes, and any sales taxes, but excludes corporate taxes, unemployment compensation taxes, taxes due as a result of subleases, sublicenses, or retail sales agreements, and any sales tax due on the sale of tangible personal property.

B. Private Sector Impact:

The bill will provide certain tax exemptions to private entities contracting with the department under s. 334.30, F.S.

C. Government Sector Impact:

The bill will increase the number of private entities willing to contract with the department under s. 334.30, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue raises an issue of clarity on who qualifies for the exemption and what is the qualification process. The Department of Revenue is willing to work with the sponsor of the bill in order to resolve these issues.

VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 20, 2009:

Amendment to the bill clarified that sales and use tax applies to the private entities.

CS by Transportation on March 25, 2009:

Committee Substitute for Senate Bill 2248 is different from Senate Bill 2248 in that it clarifies unemployment compensation taxes are excluded from the tax exemption.

B. Amendments:

None.