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Private toll road plan advances in Legislature

BY GARY FINEOUT

Saying that the state doesn't have enough money to build new roads in the next two decades, the Florida House voted Thursday to let private companies build roads and charge drivers tolls to recoup their investment.

The proposal also calls for automatic toll hikes at all existing toll roads, including Florida's Turnpike, the Sawgrass Expressway in Broward County and the five highways maintained by the Miami-Dade Expressway Authority.

But the 74-40 vote for the bill was split strictly along partisan lines, with Republicans voting for the measure and Democrats unified in opposition. Even Miami-Dade Republicans, who a day earlier said they were concerned about automatic toll hikes, voted for the bill.

Democrats, citing the poor record of private companies that run state services in Florida, warned the legislation would let private companies make a profit at the expense of motorists across the state.

"What we are doing is rushing into a very risky scheme of short-term financing," said Rep. Keith Fitzgerald, a Sarasota Democrat.

Republicans argued that the state will soon have more gridlock if lawmakers don't come up with additional ways to pay for new roads.

"We cannot turn a blind eye to our needs and the needs of the state," said Rep. Gary Aubuchon, a Cape Coral Republican and home builder.

The House measure requires the state to consider private proposals to build roads that are included on the state's 10- or 25-year work plans. The private firm would be allowed to charge tolls to pay off the construction. The state could use its eminent-domain power to get the land needed for the road.

The measure also requires raising rates on all toll roads at least once every five years. Future rate hikes would be based on inflation, though the bill says rates can be increased beyond inflation to pay off bonds used to build the road.

Democrats criticized their GOP colleagues, saying a vote for higher tolls was the same as one for a tax increase.

"If we vote yes to this today, we are voting to raise people's taxes," said Rep. Franklin Sands, a Weston Democrat.

While the Senate does not have a similar bill pending, Senate Republicans said they are open to passing legislation that would allow private companies help build toll roads. But Sen. Majority Leader Dan Webster, a Winter Garden Republican, said the provision requiring automatic toll increases may need to be removed to win approval from Gov. Charlie Crist.

Crist said on Thursday that he was willing to consider what he called an innovative way to build roads.

"It's good for the consumers to have choices, even the consumers who use our roads," the governor said.

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1 A bill to be entitled
2 An act relating to transportation; amending s. 334.30,
3 F.S.; revising legislative intent; authorizing the
4 Department of Transportation to advance certain projects
5 in the Strategic Intermodal System Plan using funds
6 provided by public-private partnerships or private
7 entities; authorizing the department to lease toll
8 facilities to private entities; providing criteria for
9 such leasing agreements; providing that procurements of
10 public-private partnerships are not subject to specified
11 provisions unless they are part of the procurement
12 agreement or the public-private agreement; extending the
13 unsolicited private proposal advertisement period;
14 providing criteria for qualification of public-private
15 partnerships as part of the procurement process; requiring
16 the department to perform cost-benefit, value-for-money
17 analyses of the proposed public-private partnership;
18 providing for certain innovative financing techniques for
19 public-private partnerships; authorizing the department to
20 enter into public-private partnership agreements that
21 include extended terms under certain conditions; requiring
22 certain projects to be prioritized for selection;
23 providing public-private partnership agreement term
24 limits; limiting the amount of certain funds that may be
25 obligated for public-private projects; providing for the
26 disposition of excess toll revenues; removing a provision
27 for the speed of a certain fixed-guideway transportation
28 system; amending s. 338.165, F.S.; providing for toll rate

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29 increases that are tied to certain inflation indicators;
30 providing for increases beyond inflation amounts;
31 providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 334.30, Florida Statutes, is amended to
36 read:

37 334.30 Public-private transportation facilities.--The
38 Legislature hereby finds and declares that there is a public
39 need for rapid construction of safe and efficient transportation
40 facilities for the purpose of travel within the state. It is the
41 intent of the Legislature to strengthen the state's
42 transportation system by providing the department with
43 innovative financing techniques, including, but not limited to,
44 public-private partnerships, toll facility leases, and user
45 fees. In response to increased congestion, population, and
46 market demands, and that it is in the public's interest to
47 provide for the construction of additional safe, convenient, and
48 economical transportation facilities.

49 (1) The department may receive or solicit proposals and,
50 with legislative approval as evidenced by approval of the
51 project in the department's work program, enter into agreements
52 with private entities, or consortia thereof, for the building,
53 operation, ownership, or financing of transportation facilities.
54 The department may advance projects programmed in the adopted 5-
55 year work program or projects greater than \$500 million in the
56 10-year Strategic Intermodal System Plan using funds provided by

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57 public-private partnerships or private entities to be reimbursed
58 from department funds for the project as programmed in the
59 adopted work program. The department shall by rule establish an
60 application fee for the submission of unsolicited proposals
61 under this section. The fee must be sufficient to pay the costs
62 of evaluating the proposals. The department may engage the
63 services of private consultants to assist in the evaluation.
64 Before approval, the department must determine that the proposed
65 project:

- 66 (a) Is in the public's best interest;
- 67 (b) Would not require state funds to be used unless the
68 project is on the State Highway System; and
- 69 (c) Would have adequate safeguards in place to ensure that
70 no additional costs or service disruptions would be realized by
71 the traveling public and citizens of the state in the event of
72 default or cancellation of the agreement by the department.

73

74 The department shall ensure that all reasonable costs to the
75 state, related to transportation facilities that are not part of
76 the State Highway System, are borne by the private entity. The
77 department shall also ensure that all reasonable costs to the
78 state and substantially affected local governments and
79 utilities, related to the private transportation facility, are
80 borne by the private entity for transportation facilities that
81 are owned by private entities. For projects on the State Highway
82 System, the department may use state resources to participate in
83 funding and financing the project as provided for under the
84 department's enabling legislation.

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85 (2) Agreements entered into pursuant to this section may
86 authorize the private entity to impose tolls or fares for the
87 use of the facility. The following provisions shall apply to
88 such agreements: ~~However, the amount and use of toll or fare~~
89 ~~revenues shall be regulated by the department to avoid~~
90 ~~unreasonable costs to users of the facility.~~

91 (a) With the exception of the Florida Turnpike System, the
92 department may lease existing toll facilities through public-
93 private partnerships. If the agreement for leasing an existing
94 toll facility does not include provisions for additional
95 capacity, the project and the provisions of the agreement must
96 be approved by the Legislature. The public-private partnership
97 agreement must ensure that the toll facility is properly
98 operated, maintained, and renewed in accordance with department
99 standards.

100 (b) The department may develop new toll facilities or
101 increase capacity on existing toll facilities through public-
102 private partnerships. The public-private partnership agreement
103 must ensure that the toll facility is properly operated,
104 maintained, and renewed in accordance with department standards.

105 (c) The amount of toll or fare revenues shall be regulated
106 by the department pursuant to s. 338.165(3). The regulations
107 governing the future increase of toll or fare revenues shall be
108 included in the public-private partnership agreement.

109 (d) The department shall include provisions in the public-
110 private partnership agreement that ensure a portion of excess
111 revenues from tolled projects are returned to the department
112 over the life of the public-private partnership agreement. In

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113 the case of a lease of an existing toll facility, the department
114 shall receive a portion of funds upon closing on the agreements
115 and shall also include provisions in the agreement to receive
116 payment of a portion of excess revenues over the life of the
117 public-private partnership.

118 (e) The private entity shall provide an investment grade
119 traffic and revenue study prepared by an internationally
120 recognized traffic and revenue expert that is accepted by the
121 national bond rating agencies. The private entity shall also
122 provide a finance plan that identifies the project cost,
123 revenues by source, financing, major assumptions, internal rate
124 of return on private investments, and whether any government
125 funds are assumed to deliver a cost feasible project, and a
126 total cash flow analysis beginning with implementation of the
127 project and extending for the term of the agreement. The amount
128 of the toll or fares included in the provisions of agreements
129 under this section shall be consistent with projections included
130 in the study, plan, and analysis provided under this paragraph.
131 Specific elements to be described shall include, but are not
132 limited to, the following:

133 1. The estimate of ridership and a forecast of annual toll
134 revenues. The method of producing the estimates shall be
135 described in sufficient detail to allow the projections to be
136 verified. Assumptions used in the process shall be clearly
137 indicated.

138 2. Forecasts shall be provided of any additional sources
139 of revenue anticipated from the proposed facility with clearly
140 stated assumptions and data and methods used to develop the

141 forecasts. Sources for revenue might include the receipts from
142 advertising, station concessions, royalties, and licenses.

143 3. The amount of associated real estate development and
144 supplemental revenue sources that will be used to supplement
145 operations.

146 4. If subsidies will be required in the early years of a
147 facility's operation, the source, amount, how they are to be
148 used, and the years in which they will be needed shall be
149 specified. Appropriate contact information and supporting
150 documentation must be provided for each type of fund source for
151 analysis and review by the department.

152 (3) Each private transportation facility constructed
153 pursuant to this section shall comply with all requirements of
154 federal, state, and local laws; state, regional, and local
155 comprehensive plans; department rules, policies, procedures, and
156 standards for transportation facilities; and any other
157 conditions which the department determines to be in the public's
158 best interest.

159 (4) The department may exercise any power possessed by it,
160 including eminent domain, with respect to the development and
161 construction of state transportation projects to facilitate the
162 development and construction of transportation projects pursuant
163 to this section. The department may provide services to the
164 private entity. Agreements for maintenance, law enforcement, and
165 other services entered into pursuant to this section shall
166 provide for full reimbursement for services rendered for
167 projects not on the State Highway System.

168 (5) Except as herein provided, the provisions of this

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169 section are not intended to amend existing laws by granting
170 additional powers to, or further restricting, local governmental
171 entities from regulating and entering into cooperative
172 arrangements with the private sector for the planning,
173 construction, and operation of transportation facilities.

174 (6) The procurement of public-private partnerships by the
175 department shall follow the provisions of this section. Sections
176 337.025, 337.11, 337.14, 337.141, 337.145, 337.175, 337.18,
177 337.185, 337.19, 337.221, and 337.251 shall not apply to
178 procurements under this section unless a provision is included
179 in the procurement documents. The department shall ensure that
180 generally accepted business practices for exemptions provided by
181 this subsection are part of the procurement process or are
182 included in the public-private partnership agreement.

183 (a) The department may request proposals from private
184 entities for public-private transportation projects or, if the
185 department receives an unsolicited proposal, the department
186 shall publish a notice in the Florida Administrative Weekly and
187 a newspaper of general circulation at least once a week for 2
188 weeks stating that the department has received the proposal and
189 will accept, for 120 ~~60~~ days after the initial date of
190 publication, other proposals for the same project purpose. A
191 copy of the notice must be mailed to each local government in
192 the affected area.

193 (b) Public-private partnerships shall be qualified by the
194 department as part of the procurement process as outlined in the
195 procurement documents, provided such process ensures that the
196 private firm meets at least the minimum department standards for

197 qualification in department rule for professional engineering
 198 services and road and bridge contracting prior to submitting a
 199 proposal under the procurement.

200 (c) The department shall ensure that procurement documents
 201 include provisions for performance of the private entity and
 202 payment of subcontractors, including, but not limited to, surety
 203 bonds, letters of credit, parent company guarantees, and lender
 204 and equity partner guarantees. The department shall balance the
 205 structure of the security package for the public-private
 206 partnership that ensures performance and payment of
 207 subcontractors with the cost of the security to ensure the most
 208 efficient pricing.

209 (d) After the public notification period has expired, the
 210 department shall rank the proposals in order of preference. In
 211 ranking the proposals, the department may consider factors that
 212 include, ~~including,~~ but are not limited to, professional
 213 qualifications, general business terms, innovative engineering
 214 or cost-reduction terms, finance plans, and the need for state
 215 funds to deliver the project. If the department is not satisfied
 216 with the results of the negotiations, the department may, at its
 217 sole discretion, terminate negotiations with the proposer. If
 218 these negotiations are unsuccessful, the department may go to
 219 the second-ranked and lower-ranked firms, in order, using this
 220 same procedure. If only one proposal is received, the department
 221 may negotiate in good faith and, if the department is not
 222 satisfied with the results of the negotiations, the department
 223 may, at its sole discretion, terminate negotiations with the
 224 proposer. Notwithstanding this subsection, the department may,

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225 at its discretion, reject all proposals at any point in the
226 process up to completion of a contract with the proposer.

227 (e) The department shall perform a cost-benefit, value-
228 for-money analysis of the proposed public-private partnership
229 that demonstrates the cost-effectiveness and overall public
230 benefit at the following times:

231 1. Prior to moving forward with the procurement; and

232 2. If the procurement moves forward, prior to awarding the
233 contract.

234 (7) The department may lend funds from the Toll Facilities
235 Revolving Trust Fund, as outlined in s. 338.251, to private
236 entities that construct projects on the State Highway System
237 containing toll facilities that are approved under this section.
238 To be eligible, a private entity must comply with s. 338.251 and
239 must provide an indication from a nationally recognized rating
240 agency that the senior bonds for the project will be investment
241 grade, or must provide credit support such as a letter of credit
242 or other means acceptable to the department, to ensure that the
243 loans will be fully repaid. The state's liability for the
244 funding of a facility is limited to the amount approved for that
245 specific facility in the department's 5-year work program
246 adopted pursuant to s. 339.135.

247 (8) The department may use innovative finance techniques
248 associated with a public-private partnership under this section,
249 including, but not limited to, federal loans as provided in
250 Title 23 and Title 49 of the Code of Federal Regulations,
251 commercial bank loans, and hedges against inflation from
252 commercial banks or other private sources.

253 (9) The department may enter into public-private
254 partnership agreements that include extended terms providing
255 annual payments for performance based on the availability of
256 service or the facility being open to traffic or based on the
257 level of traffic using the facility. In addition to other
258 provisions in this section, the following provisions shall
259 apply:

260 (a) The annual payments under such agreement shall be
261 included in the department's tentative work program developed
262 under s. 339.135 and the long-range transportation plan for the
263 applicable metropolitan planning organization developed under s.
264 339.175. The department shall ensure that annual payments on
265 multiyear public-private partnership agreements are prioritized
266 ahead of new capacity projects in the development and updating
267 of the tentative work program.

268 (b) The annual payments are subject to annual
269 appropriation by the Legislature as provided in the General
270 Appropriations Act in support of the first year of the tentative
271 work program.

272 (10) Prior to entering such agreement where funds are
273 committed from the State Transportation Trust Fund, the project
274 must be prioritized as follows:

275 (a) The department, in coordination with the local
276 metropolitan planning organization, shall prioritize projects
277 included in the Strategic Intermodal System 10-year and long-
278 range cost feasible plans.

279 (b) The department, in coordination with the local
280 metropolitan planning organization or local government where

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281 there is no metropolitan planning organization, shall prioritize
282 projects, for facilities not on the Strategic Intermodal System,
283 included in the metropolitan planning organization cost feasible
284 transportation improvement plan and long-range transportation
285 plan.

286 (11) Public-private partnership agreements under this
287 section shall be limited to a term not exceeding 50 years. Upon
288 making written findings that an agreement under this section
289 requires a term in excess of 50 years, the secretary of the
290 department may authorize a term of up to 75 years. Agreements
291 under this section shall not have a term in excess of 75 years
292 unless specifically approved by the Legislature. The department
293 shall identify each new project under this section with a term
294 exceeding 75 years in the transmittal letter that accompanies
295 the submittal of the tentative work program to the Governor and
296 the Legislature in accordance with s. 339.135.

297 (12) The department shall ensure that no more than 25
298 percent of total federal and state funding in any given year for
299 the State Transportation Trust Fund shall be obligated
300 collectively for all projects under this section.

301 (13) Notwithstanding s. 338.165, excess tolls from
302 projects under this section shall be used for capacity projects
303 as follows:

304 (a) If the revenue-producing project is on the State
305 Highway System, notwithstanding s. 339.135(4)(a), any excess
306 toll revenue shall be used for capacity improvements of the
307 State Highway System or up to 50 percent of the project cost on
308 public transit capital improvements authorized under Title 49 of

309 the United States Code and specified in s. 341.051.

310 (b) If the revenue-producing project is on the county road
 311 system, any excess toll revenue shall be used for capacity
 312 improvements of state or county roads or transit facilities
 313 within the county or counties in which the revenue-producing
 314 project is located.

315 ~~(8) A fixed guideway transportation system authorized by~~
 316 ~~the department to be wholly or partially within the department's~~
 317 ~~right of way pursuant to a lease granted under s. 337.251 may~~
 318 ~~operate at any safe speed.~~

319 Section 2. Section 338.165, Florida Statutes, is amended
 320 to read:

321 338.165 Continuation of tolls.--

322 (1) The department, any transportation or expressway
 323 authority or, in the absence of an authority, a county or
 324 counties may continue to collect the toll on a revenue-producing
 325 project after the discharge of any bond indebtedness related to
 326 such project and may increase such toll. All tolls so collected
 327 shall first be used to pay the annual cost of the operation,
 328 maintenance, and improvement of the toll project.

329 (2) If the revenue-producing project is on the State
 330 Highway System, any remaining toll revenue shall be used for the
 331 construction, maintenance, or improvement of any road on the
 332 State Highway System within the county or counties in which the
 333 revenue-producing project is located, except as provided in s.
 334 348.0004.

335 (3) Notwithstanding any other provision of law, the
 336 department or any transportation or expressway authority shall,

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337 at a minimum, index toll rates on existing toll facilities to
338 the annual Consumer Price Index or similar inflation indicators.
339 Toll rate adjustments for inflation under this subsection may be
340 made no more frequently than once a year and must be made no
341 less frequently than once every 5 years as necessary to
342 accommodate cash toll rate schedules. Toll rates may be
343 increased beyond these limits as directed by bond documents,
344 covenants, or governing body authorization or pursuant to
345 department administrative rule.

346 (4)~~(3)~~ Notwithstanding any other law to the contrary,
347 pursuant to s. 11, Art. VII of the State Constitution, and
348 subject to the requirements of subsection (2), the Department of
349 Transportation may request the Division of Bond Finance to issue
350 bonds secured by toll revenues collected on the Alligator Alley,
351 the Sunshine Skyway Bridge, the Beeline-East Expressway, the
352 Navarre Bridge, and the Pinellas Bayway to fund transportation
353 projects located within the county or counties in which the
354 project is located and contained in the adopted work program of
355 the department.

356 (5)~~(4)~~ If the revenue-producing project is on the county
357 road system, any remaining toll revenue shall be used for the
358 construction, maintenance, or improvement of any other state or
359 county road within the county or counties in which the revenue-
360 producing project is located, except as provided in s. 348.0004.

361 (6)~~(5)~~ Selection of projects on the State Highway System
362 for construction, maintenance, or improvement with toll revenues
363 shall be, with the concurrence of the department, consistent
364 with the Florida Transportation Plan.

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365 (7)~~(6)~~ Notwithstanding the provisions of subsection (1),
366 and not including high occupancy toll lanes or express lanes, no
367 tolls may be charged for use of an interstate highway where
368 tolls were not charged as of July 1, 1997.

369 (8)~~(7)~~ This section does not apply to the turnpike system
370 as defined under the Florida Turnpike Enterprise Law.

371 Section 3. This act shall take effect July 1, 2007.