

New Addition to the Public Private Partnership Law of Florida - Another Level of Politics or a Cure for Political Games?

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The Florida Legislature has just enacted a bill that adds a new Section 339.2825 which took effect July 1, 2012. That Section deals with both Florida Department of Transportation (FDOT)-generated projects and unsolicited proposals for transportation projects. The new law requires, *for FDOT-generated projects*, that prior to soliciting proposals for a public private partnership project that is part of FDOT's 5- or 10-year plans, FDOT must notify the Executive Office of the Governor, the chair of each legislative appropriations committee, the President of the Senate, and the Speaker of the House of Representatives by providing a summary of the proposed project, including a description of any anticipated commitment by the FDOT for the years outside the adopted work program, a description of the anticipated impacts on the FDOT's overall debt load, and sufficient information to demonstrate that the project will not cause the FDOT to exceed the overall debt limitation provided in § 339.139. *For unsolicited proposals*, prior to advertising the proposal, FDOT must notify the Executive Office of the Governor, the chair of each legislative appropriations committee, the President of the Senate, and the Speaker of the House of Representatives by providing a summary of the proposed project, including a description of any anticipated commitment by the FDOT for the years outside the adopted work program, a description of the anticipated impacts on the FDOT's overall debt load, and sufficient information to demonstrate that the project will not cause the FDOT to exceed the overall debt limitation provided in § 339.139. (Note that the statute as enacted refers to Section 339.14 but in fact, that Section does not exist. A glitch bill will need to remedy this citation.) The Governor's approval is required for an FDOT-generated project solicitation to proceed. The approval of the Executive Office of the Governor (the Governor or someone acting for the EOG) is required for an unsolicited proposal to go forward. If any of the appropriations committee chairs or the President of the Senate or the Speaker of the House of Representatives objects to either an FDOT-proposed project or an unsolicited project in writing within 14 days after each receives the notification from FDOT, the Governor (or the Executive Office of the Governor) cannot move forward

with the project. What does this mean to potential project sponsors? First, unless the Governor and legislative leadership have actually received the summary of the project, unless the summary contains all required information, and unless the Governor (or in the case of an unsolicited proposal, the Executive Office of the Governor) actually approves the project in writing, no project RFP may be produced by FDOT. Until an unsolicited proposal is actually approved in writing by the Executive Office of the Governor, the unsolicited proposal may not be accepted by FDOT and the process for advertising and pushing forward unsolicited proposals set forth in Florida law may not be followed by FDOT. To sum up, on the one hand, it is now obvious that effectively all public private partnership projects must pass political muster before they go forward. This new law leaves one to wonder if putting forward an unsolicited proposal is really feasible as a practical matter. On the other hand, this pre-solicitation approval—at least for FDOT-generated projects—would seem to be better than having all parties spend pursuit money and time only to have the project objected to later. While nothing in the new additions to the P3 legislation of Florida bars anyone from objecting to a project after it has been approved by the Governor or the Executive Office of the Governor, an objection on political grounds after the project has been approved to move forward would seem difficult to justify.

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