

FLORIDA DEPARTMENT OF TRANSPORTATION  
**INNOVATIVE FINANCE TOOL BOX**

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The Florida Department of Transportation (FDOT) utilizes variety of tools that can be applied at various points in the development lifecycle of a project. Each of these tools has a specific objective and a specific risk associated with its use. By carefully monitoring these projects and the application of the tools FDOT has had significant success in advancing project delivery and providing the public with improved transportation options. Summarized below are the various tools available to FDOT with a brief description of the tool, its intended application, and an example of use on a project:

The FHWA has encouraged innovations in the area of transportation financing. In 1994, Executive Order 12893, Principles for Federal Infrastructure Investment, established more cost-effective infrastructure investment as a priority for all Federal agencies. This Executive Order prompted more systematic analyses of the costs and benefits of proposed infrastructure investments, efficient management of infrastructure, greater private sector investment in infrastructure, and encouragement of more effective State and local programs. In response to that Executive Order, the U.S. Department of Transportation (U.S. DOT) and the FHWA undertook a major initiative in 1994 to promote and facilitate infrastructure investment.

This initiative was launched with the introduction of an experimental "Test and Evaluation" program, designated as TE-045, to solicit ideas from the States on a range of new financial strategies designed to stretch limited transportation dollars by creating new, more flexible ways to leverage Federal-aid highway funds. The TE-045 initiative has generated substantial benefits in terms of building more projects with fewer Federal dollars and accelerating project construction. Many of the innovations tested were subsequently approved for general use through administrative action or legislative changes made under the National Highway System Designation (NHS) Act of 1995, and the Transportation Equity Act for the 21st Century (TEA-21; June 9, 1998).

## **Loan Programs:**

***Toll Facilities Revolving Trust Fund (TFRTF) Loans*** – The TFRTF is a loan program created to develop and enhance the financial feasibility of revenue-producing road projects undertaken by local governmental entities and the Turnpike Enterprise. Loans can be awarded for project planning and design activities, and advanced right-of-way purchase activities.

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The TFRTF provides interest free loans as "seed money" to pay initial project development costs for toll facilities. Up to \$1.5 million may be awarded per year for each successfully applying entity.

Advantages of using the TFRTF include: allows local exposure, support, and priority setting for revenue-producing projects; provides financial alternatives to the State and local governmental entities; expedites projects otherwise delayed; increases transportation resources of the State; cost benefit to the State; and compliments the State Infrastructure Bank Loan Program.

This program has served 19 separate entities since its inception, with loans totaling \$167.1 million being awarded, and loans repayments of \$101.6 million having been made. In that this program works like a venture capital product, loans totaling \$3.7 million have been written off as uncollectible due to project feasibility issues preventing projects from moving forward into revenue production for loan repayment.

**State Infrastructure Bank (SIB) Loans** – The SIB is a revolving loan and credit enhancement program consisting of two separate accounts. The federally-funded SIB account is capitalized by federal money matched with state money as required by law; the state-funded SIB account is capitalized by state money only.

The SIB can provide loans and other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance. Loans from the SIB may bear interest at or below market interest rates, as determined by FDOT. The SIB can leverage funds through loans and credit enhancement assistance to improve project feasibility.

Highway and transit projects are eligible for SIB participation. SIB participation from the federally-funded SIB account is limited to projects which meet all federal requirements pursuant TEA-21, and the applicable federal guidelines. SIB participation from the state-funded SIB account is limited to a transportation facility project that is on the State Highway System or that provides for increased mobility on the state's transportation system in accordance with Section 339.55, F.S., or provides for Intermodal connectivity with airports, seaports, rail facilities, transportation terminals, and other Intermodal options for increased accessibility and movement of people, cargo, and freight.

Florida's SIB Program has issued 37 loans totaling \$515.6 million dollars which support approximately \$3.2 billion dollars of final product delivered to

the traveling public. This equates to a 6:1 ratio of final product to loan value for this program. The primary approach is to use the SIB as a gap funding tool to advance the project delivery to the public. Loans average 15.5 years in duration and \$13.9 million dollars.

### ***New Legislation to Increase Participation in SIB Program***

Congress passed legislation in September 1996 that enables the U.S. DOT to designate additional qualified states to participate in the State Infrastructure Bank (SIB) pilot program. Previously, the program was limited to ten states (see August and October 1996 issues of IF). Congress also approved an additional \$150 million to be distributed to the initial ten states and to any additional states designated for participation under the new legislation. This money will be used to capitalize the states' SIBs; however, the funds cannot be distributed for six months from the date the legislation was enacted, until additional states have been approved for participation. The funds will be available to both highway and transit accounts of a designated state's SIB.

A SIB can provide many types of financial assistance, ranging from loans to credit enhancements. Forms of assistance may include interest subsidies, letters of credit, capital reserves for bond financing, construction loans, and purchase and lease agreements for highway and transit projects. Missouri, for example, plans to hold funds in its SIB to cover debt service reserve requirements as part of a future bond issuance for Highway 179. These funds will only be used on an as needed basis.

Unlike traditional transportation funding, a SIB can provide financial assistance throughout all stages of transportation project development and to a multitude of project sponsors. Furthermore, SIB assistance can be set at any amount or percentage of the total project costs, rather than at the traditional fixed percent contributions. The initial use of Federal funds must come from separate accounts for eligible Title 23 and transit capital projects. As the funds are repaid, the SIB can provide financial assistance to a broader range of Title 23 transportation projects in accordance with state procedures.

Under the Pilot Program, SIBs are expected to evolve considerably as the states develop their cooperative agreements with the U.S. DOT, broaden the types of assistance that they can provide, establish SIB administration, and identify projects that will receive SIB assistance. The types of financial assistance that can be provided as well as the projects that will receive the assistance are determined by the enabling legislation each state has or expects to have in the near future. The lessons learned from applying

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diverse forms of assistance to a wide variety of projects will be invaluable as the SIB Pilot Program progresses and ISTEA reauthorization moves forward.

**State Transportation Trust Fund (STTF) Loans** – Section 339.08(2)(g), F.S., allows FDOT to lend or pay a portion of the operating, maintenance, and capital costs of a revenue-producing transportation project that is located on the State Highway System or that is demonstrated to relieve traffic congestion on the State Highway System from the STTF. Such advances are negotiated with local governmental entities/Turnpike based on need and to the extent funds are available from the STTF. This enables the local governmental entity/Turnpike to advance construction or right-of-way and reduces the need by the entity to issue bonds.

Currently, STTF advances have been provided to the Mid-Bay Bridge Authority, Tampa-Hillsborough County Expressway Authority and the Turnpike.

**Local Government Loan Program** – Local governments, as provided by Section 339.12, F.S., may loan funds to the FDOT to advance a project forward in the existing work program. The local government will be repaid by FDOT in the year the project was **originally** scheduled in the work program. Since 1988, 25 counties and 19 cities have participated in the program with loans that advanced \$230 million of total project costs.

**Transportation Infrastructure Finance and Innovation Act (TIFIA)** - TIFIA is a credit program, which will provide secondary and subordinate capital for up to one-third of project costs, and provide assistance such as direct loans, lines of credit or guarantees of private loans. The program is designed for large-scale projects (over \$100 million) of "National Significance." TIFIA funding is provided for up to \$10.6 billion in federal credit assistance between 1999-2003.

Florida submitted an application for TIFIA credit assistance in July 1999 for the Miami Intermodal Center (MIC) that requested Federal loans of \$433 million to advance funding for the MIC. State Comprehensive Enhanced Transportation System (SCETS) fuel tax distributed to FDOT District 6 for Miami-Dade County is the primary pledge to repay the \$269 million loan for the FDOT elements of the MIC. This loan was executed on June 9, 2000. Repayment for the \$164 million loan for the Rental Car Facility will come from rental car user fees imposed on those using the facility. The closing date for this loan is pending.

## **Bonding Programs:**

***State-funded SIB*** – The state-funded account of the State Infrastructure Bank is leveraged with bonds using the repayments of the loans in the account.

***Right of Way Acquisition/Bridge Bonds*** – In 1988, Florida voters approved an amendment to Section 17, Article VII of the State Constitution authorizing the issuance of bonds to acquire right of way for roads and to construct bridges. The Florida Legislature approved the use of these bonds for the advance acquisition of right of way land beginning in 1991 and bridge construction beginning in 1994.

Current law provides that a maximum of 7% of state transportation tax collections, not to exceed \$200 million, may be used for annual debt service. The Full Faith and Credit of the State of Florida additionally secure the bonds.

For fiscal years 1991 through 2008, FDOT has allocated \$3 billion in right of way and bridge construction projects to be financed with bonds. Through fiscal year 2002, \$1.7 billion of this has been committed. The remaining projects are planned for fiscal years 2003 through 2008. Three-fourths of the funds are being spent on right of way and one-fourth on bridge construction.

***Turnpike Bonding Program*** - Florida's Turnpike utilizes a combination of cash and revenue bonds to improve and expand the system. Conservative policies guide the Turnpike in managing its bond program. Bonds are sold for projects that have a useful life equal to the term of the bonds (30-year bonds for projects with a life of 30 years or more), level debt service, and a prohibition of bonding for operating costs.

As a result, since 1989, the Turnpike System has added over 100 miles to the system through the issuance of nearly \$1.9 billion in new bonds to fund Mainline improvements and Expansion Projects. Additionally, over \$700 million in refunding bonds, issued to take advantage of declining interest rates, has allowed the Turnpike System to grow and expand while maintaining revenue integrity and reasonable debt service coverage. As of December 31, 2002, the outstanding principal balance of bonds issued since 1989 stands at \$1.73 billion. The Turnpike System has defeased certain bonds by placing sufficient funds from the issuance of new bonds and a loan from the State Transportation Trust Fund into irrevocable trusts. The trust

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funds will provide for all future debt service payments on the defeased bonds. The principal balance of all defeased bonds outstanding at June 30, 2002 is \$93.5 million.

The Turnpike has nearly \$1.2 billion of bonds planned to be sold through fiscal year 2008 to fund its capital improvement program. The next series of bonds to be issued will fund mostly capacity and access projects on the Mainline and one new expansion project, the Western Beltway, Part C. The new 5-year capital improvement program includes construction or improvement of 8 interchanges, 9 widening projects that will provide an additional 55 lane-miles of capacity, bridge improvements, and SunPass lane capacity improvements. This bonding program will exhaust the Turnpike System's ability to bond future projects after fiscal year 2008.

**Fixed Guideway Bonds** - Section 215.615, F.S., authorizes the use of up to two (2) percent of the state's transportation revenues to issue bonds to finance the building, adding, or reconstructing of fixed guideway systems in urban areas. These state transportation revenues are a part of the fifteen (15) percent of state revenues that must be allocated for public transportation. Each bonded project must be approved by the legislature. This bond program can generate \$500-\$600 million in bonding capacity for fixed guideway systems. Currently, there are no projects proposed for legislative approval.

**Grant Anticipation Revenue Vehicles (GARVEE) Bonds** – GARVEE bonds provide the opportunity to leverage federal-aid highway funds to accommodate major projects that may preempt FDOT's capital program and advance phases of various statewide projects by composite issuance.

GARVEE bond advantages include: allows multi-year funding commitments with sources other than Federal grants while preserving access to the Federal-aid which would be applicable to the project over a period of years; maximizes scarce revenues to meet the cash flow needs of transportation infrastructure; allows for the acceleration of needed projects; and enhances a diversified and positive economic growth with improved highway and intermodal transportation facilities.

Section 215.616, F.S., authorizes pledging future Federal-aid reimbursements to pay debt service for GARVEE bonds, caps annual debt service at 10 percent of annual Federal highway apportionments, and limits bond terms to 12 years. This generates about \$1.1 billion of bond capacity.

## ***Private Activity Bonds***

### ***BACKGROUND:***

Transportation infrastructure needs are continuing to increase and resources continue to be limited. Public-Private Partnerships enhance the resources and the capability to address pressing public needs. The Private Sector brings the discipline of free enterprise competition while the Public Sector brings the Stewardship of the Public Good. However, the public sector can issue tax-exempt bonds which leads to an unbalanced relationship between the public and private sector due to the high costs of private borrowing. This status of tax-exempt borrowing needs to be extended to the private sector for transportation for an equitable return on investment with the use of **Private Activity Bonds**.

### ***CURRENT LAW: INTERNAL REVENUE CODE §§ 103(B), 141(E), 142, 149***

Private activity bonds are used either entirely or partially for private purposes and are given federal tax-exempt status. Section 141 of the Internal Revenue Code (IRC) qualifies a bond as tax-exempt if it meets the private business test and falls within one of the seven categories.

The IRC should be amended to include transportation projects as eligible for Private Activity Bonds and provide specific exception for taxable interest. Currently, the tax code allows airports, docks, wharves, and certain other public infrastructure facilities — even if they are developed and operated by private entities — to use tax-exempt bonds, but the same policy does not apply to highways and freight projects.

### ***SENATE: SAFETEA/EPW (S. 1072)***

Included language that would allow private companies to use up to \$15 billion in tax-exempt private-activity bonds that would be exempt from state volume caps in order to finance the construction of highway and intermodal freight projects.

### ***HOUSE: TEA LU (H.R. 3550)***

Not addressed. Previously addressed in 2004 by H.R. 3857.

### ***FDOT POSITION:***

Please note the use of these type bonds up to \$15 billion was originally proposed by President Bush when the Administration's SAFETEA proposal to

reauthorize TEA-21 was introduced. This is a major step forward since the US Treasury had previously been opposed to this effort. Florida DOT supports the Administration's proposal that is also included in the Senate bill.

Private Activity Bonds then may be used to finance projects that are run by a non-governmental entity but are for public good such as airport terminals, shipping ports, and public housing. All transportation should be included.

## **Innovative Finance Tools Help States Meet Federal-aid Matching Requirements**

Through the innovative finance provisions contained in the Intermodal Surface Transportation Efficiency Act (ISTEA), the Test and Evaluation (TE) 045 program, and the National Highway System (NHS) Designation Act, the Federal Highway Administration (FHWA) has been reshaping the Federal-aid program's matching share requirements. Traditional grant-based pay-as-you-go financing has given way to more innovative techniques aimed at enhancing transportation investment and accelerating project implementation.

Some of these innovative finance tools are now available to states as part of the regular Federal-aid program. Some are still experimental. Four of the available matching share tools are flexible match, soft match, tapered match, and shared resources.

***Flexible Match*** - The NHS Designation Act amended 23 U.S.C. 323 to allow states to apply the value of third party donated funds, material, or services toward their share of project costs. This flexible match provision increases a state's ability to fund its transportation programs by:

- 1) Accelerating certain projects that receive donated resources;
- 2) Allowing states to reallocate funds that otherwise would have been used to meet Federal-aid matching requirements; and
- 3) Promoting public-private partnerships by providing incentives to seek private donations.

Third parties as defined by the NHS Designation Act include private companies, organizations, and individuals; Federal, state, and local government agencies are excluded by this definition.

The Maryland Department of Transportation (DOT) is one agency currently using flexible match to help finance the reconstruction and widening of a one-mile segment of MD 355. The route serves a rapidly expanding area of Montgomery County in the Washington, DC metropolitan area. The project

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involves expansion of MD 355 by one lane in each direction. Maryland DOT is crediting \$8 million in private funds toward its matching share of project costs.

**Soft Match** – FDOT utilizes flexibility in Federal provisions to better use state funds. For example, “soft match” fund shifts use credits for certain non-federal expenditures in lieu of state funds for the non-federal share of projects, which raises the federal rate to 100 percent rather than 80 percent with a 20 percent state match. Since 1993, FDOT has earned \$2 billion in credits for toll revenues expended to build or improve highways and bridges. Under TEA-21, the value of right of way land acquired without using federal funds may be applied to the non-federal share of project costs which will further increase the amount of state funding available for purposes other than federal matching. This allows state funds, formerly used to match Federal projects, to be reprogrammed on more flexible 100 percent state funded projects.

Section 1044 of ISTEA permits states to earn credits on toll revenue expenditures. These toll credits can then be applied toward the non-Federal matching share of current Federal-aid projects. The soft match provision of ISTEA increases the flexibility of state transportation finance programs by allowing states to use toll revenues when other state highway funds are not available to meet non-Federal share matching requirements.

The soft match provision of ISTEA requires states receiving toll credits to pass a “maintenance of effort” (MOE) test. The MOE test established under ISTEA requires a state to demonstrate “a continuing commitment to non-Federal transportation investment” by showing that its previous year's expenditures on transportation improvements are equal to or exceed the average of its previous three years' expenditures. Under TE-045, the MOE test is relaxed to allow for a more prospective view.

The New Jersey DOT, for example, is using a soft match to help finance the construction of a southbound viaduct over the Waverly Yards in Newark. The recent reconstruction of the northbound viaduct has left the southbound viaduct demolished and the highway operating at 50 percent capacity. New Jersey DOT is expediting construction by applying \$15 million in toll credits toward its share of the project costs.

**Tapered Match** - Tapered match allows states to vary the required matching ratio over the life of a project. With this tool, states can delay the use of their own funds while using Federal funds to bring projects through the critical early phases of construction. Although tapered match has been

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tested under the TE-045 experimental program, it is not available through the regular Federal-aid program.

The Washington State DOT is using a tapered match to help finance the construction of high occupancy vehicle lanes on SR 520 located northeast of Seattle. The project is necessary to accommodate the region's rapidly expanding traffic volumes and to enhance safety on the Evergreen Point Bridge. Tapering the Federal share will allow Washington State DOT to begin construction on the project a year earlier, while achieving better cash flow management.

**Shared Resources** - Shared resources are private donations of communications technology (principally fiber optic communications) granted in exchange for access to public rights-of-way. The use of shared resources is an invaluable tool for states seeking to build a technological backbone for Intelligent Transportation Systems (ITS). In addition to obtaining increased access to telecommunications technology, states can credit the value of the private donations toward their matching share of project costs associated with the deployment of ITS projects utilizing the donated technologies.

The shared resources concept has been limited to selected experimental projects, and has not been recognized as part of the regular Federal-aid program. In some states, shared resource arrangements may be prohibited by state law.

As reported in the October 1996 issue of IF, the Missouri DOT has entered into an agreement with Digital Teleport, Inc., which will provide the DOT with access to a 210-mile, \$23 million fiber optic network to be located near St. Louis. In return, Digital Teleport has been granted exclusive access to the public rights-of-way necessary for completing the project. In addition, FHWA has recognized the value of the donation and is allowing Missouri DOT to receive credit toward its matching share on ITS deployment projects in the St. Louis area.

## **Other Innovative Financing Options:**

**Advanced Construction** – Advanced Construction (AC) is a technique which allows a state to initiate a project using non federal funds while preserving eligibility for future Federal-aid funds. The AC program is limited to a total of three years annual apportionment. The use of AC is also an

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excellent tool to ensure that no available Federal funds are lost in each Federal fiscal year.

***Toll Facility Lease Purchase Agreements*** – The Florida Expressway Authority Act authorizes FDOT to enter into Lease Purchase Agreements with expressway and bridge authorities. Such authorities may be established in Statute or by resolution adopted by the board of county commissioners of any county or two or more contiguous counties located in the same FDOT district.

FDOT may covenant in a Lease-Purchase Agreement that it will pay all or any part of the cost of the operation or maintenance of an expressway system, thereby enabling the authority to sell more revenue bonds through pledges of gross toll revenues.

FDOT also is authorized to covenant to complete authority projects under certain conditions. With the exception of Florida's Turnpike, the financing of nearly every major toll facility project constructed in Florida over the past 40 years has benefited from one or more of these Lease-Purchase Agreement covenants.

Lease-Purchase Agreements are currently in place for Pinellas Bayway, Navarre Bridge, Mid-Bay Bridge Authority, Santa Rosa Bay Bridge Authority, Tampa Hillsborough County Expressway Authority and for parts of the Orlando-Orange County Expressway system.

***Value Pricing and Express Lanes*** – Value pricing is a system of optional fees paid by drivers to gain access to alternative road facilities providing a superior level of service and offering time savings compared to the non-tolled facility. Peak demand pricing for toll facilities to encourage alternate travel usage for the facility. Federal grant dollars are available to supplement this program. Often Value Pricing is offered on Express Lanes with the benefits of: travel time savings, reduced traveler frustration, increased travel choices, more efficient modal choices, greater safety, increased reliability, superior predictability of travel times, and increased economic productivity. Lessons learned indicate that Value Pricing does reduce congestion, can be a new source of revenue, can be a fair and equitable part of a user charge program, and is expected to have positive energy and environmental impacts.

***Local Option Gas Taxes*** – Florida allows local governments to assess additional local option fuel taxes ranging from one to twelve cents per gallon. These revenues must be used for transportation purposes within the

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local government's jurisdiction. There are three separate fuel taxes which may be levied by local governments. The "First Six Cents" Local Option Fuel Tax may be levied either by voter referendum or a majority vote of the county's governing body. This tax is currently levied in 64 counties at 6 cents and in 3 counties at 5 cents. The "Second Five Cents" Local Option Fuel Tax may be levied either by voter referendum or a super-majority vote of the county's governing body. This tax is currently levied in 12 counties at 5 cents and in 2 counties at 3 cents, and in 1 county at 2 cents. The Ninth-Cent Fuel Tax, which may be levied either by voter referendum or a super-majority vote of the county's governing body, is levied in 42 of the 67 counties.

**Local Government Infrastructure Surtax** – Section 212.055(2), F.S., allows local governments to assess various discretionary sales surtaxes up to a combined cap of 1 percent. The Local Government Infrastructure Surtax may be levied at the rate of 0.5 or 1 percent by an ordinance enacted by the majority vote of the county's government body and approved in a countywide voter referendum. Generally, the proceeds must be expended to finance, plan, and construct infrastructure.

## **Transportation Incentive Programs**

**(STATE PROGRAMS AVAILABLE TO LOCAL GOVERNMENTS)**

**Program/Authority: Local Government Advance/Reimbursement  
Program/Section 339.12 Florida Statute**

Summary:

Program to advance a project in the Adopted Work Program with local funds and reimburse the local government. For application details and other information, see Section 3.3.3.1 of the Work Program Instructions. (Provided as an Adobe Acrobat PDF file - 253K\*)

Eligibility:

Governmental Entity.

**Program/Authority: Local Government Advance Program/Section  
339.12(4)(c) Florida Statute**

Summary:

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Program to advance a project not in the Adopted Work Program with local funds and reimburse the local government in the future. For application details and other information, see Section 3.3.3.2 of the Work Program Instructions. (Provided as an Adobe Acrobat PDF file - 253K\*)

Eligibility:  
Governmental Entity.

**Program/Authority: State Infrastructure Bank/Section 339.55 Florida Statute; Section 1511, 23 USC**

Summary:  
The State Infrastructure Bank is a revolving loan and credit enhancement program. For application details and other information, see Section 3.2.6 of the Work Program Instructions. (Provided as an Adobe Acrobat PDF file - 253K\*)

Eligibility:  
Government units and private entities.

**Program/Authority: Small County Road Assistance Program/Section 339.2816 Florida Statute**

Summary:  
Assist small county governments in resurfacing and reconstructing county roads. For application details and other information, see Section 6.6.5 of the Work Program Instructions. (Provided as an Adobe Acrobat PDF file - 256K\*)

Eligibility:  
Counties with a population of 75,000 or less

**Program/Authority: Toll Facility Revolving Trust Fund/Section 338.251 Florida Statute**

Summary:  
Provides interest free loans as "seed money" to pay initial project development costs for toll facilities. For application details and other information, see Section 3.2.5 of the Work Program Instructions.

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(Provided as an Adobe Acrobat PDF file - 253K\*)

Eligibility:

Expressway Authorities, counties and other local governmental entities that desire to undertake revenue-producing road projects.

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## Public-Private Partnerships

Florida Long History of Partnering With the Private Sector

- Partners with the Contracting, Engineering and Roadway/Bridge Maintenance Industries – where the Private Sector performs:
  - 100% of roadway/bridge construction
  - Over 80% of engineering work
  - Over 80% of roadway/bridge maintenance – essentially built this industry in the southeast

1984-1991 \$1.0728 B of Partnerships leveraged  
 \$2.5486 B of Total Project Costs

- Developing innovative contracting methods in partnership with the Private Sector
  - Design-Build
  - A+B
  - Incentives-Disincentive, No Excuse Bonus
  - CM at Risk
  - Warranties

<b>ADOPTED WORK PROGRAM (\$ Millions)</b>				
<b>DESCRIPTION</b>	<b>FISCAL YEAR ENDING</b>			
	<b>2002</b>	<b>2003</b>	<b>2004</b>	
DESIGN/BUILD-MINOR	\$ 38.0	\$ 58.0	\$ 68.0	
DESIGN/BUILD-MAJOR	613.0	108.0	147.0	
A+B(COST+TIME BIDDING)	645.0	553.0	1,200.0	
INCENTIVE/DISINCENTIVE	492.0	507.0	682.0	
NO EXCUSE BONUS	638.0	679.0	944.0	
CM@RISK	2.0	0.2	21.0	
WARRANTIES	1.9	1.1	0.1	
<b>TOTAL</b>	<b>\$ 2,430</b>	<b>\$ 1,906</b>	<b>\$ 3,062</b>	

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In regard to stability percentages, they are:

2004 Work Program Cycle  
(common four years 2005 - 2008): 95.13 %  
- **results without external influences**

2003 Cycle Program Cycle  
(common four years 2004-2007): 93.13%  
- **results without external influences**

- Created models to facilitate partnerships
  - Decentralized FDOT – working locally with the communities
    - Priority framework – Florida Transportation Plan
    - Identifying and prioritizing the needs locally and for statewide issues
    - In close contact with government, developers, and industry
    - Working closely with industries moving goods and providing services via transport
  - Turnpike Enterprise and Expressway Authorities
    - Very small internal staff with private sector support to develop and deliver projects
  - Flexible model in working with local government on major projects
  - Local models such as tax increment or special tax districts
- Focusing on methods to streamline the process for project development
  - Efficient Transportation Decision Making process
  - “Focused” attention to solve known issues in a win-win approach – Wekiva Parkway example
  - Developing and refining relationships with major land owners to assist with partnerships on land such as donation to further needed improvements
  - Pilot for “opportunity buys” on land acquisition
  - Work Program and Funding discipline – make a commitment, see it through to delivery –Financial Tools to help facilitate major projects and also fill the gap on other projects:
    - Willingness to use tolls
    - Use bonds and other leverage in a limited and well managed approach
      - Toll supported
      - Long-term like ROW and large bridges
      - Short-term for advance programs

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- TFRTF
- SIB
- Local Government Advance Program

These have generated successes and credibility in Florida. Some examples:

- Miami Intermodal Center
- Southern Connector portion of the GreeneWay
- Interchange on I-75 to Villages
- Western Beltway in Orlando
- Many others –

<b>Fiscal Year 2004 Toll Revenue</b>	
<b>Department Owned Facilities</b>	
Alligator Alley	\$14,118,084
Bee Line East	\$4,409,736
Navarre Bridge	\$615,669
Pinellas Bayway	\$3,768,740
Sunshine Skyway	\$17,229,773
<b>Total</b>	<b>\$40,142,002</b>
<b>Department Operated Facilities</b>	
Tampa-Hillsborough County Expressway Authority	\$25,815,120
Mid-Bay Bridge Authority	\$10,253,534
Santa Rosa Bay Bridge Authority	\$3,588,262
<b>Total</b>	<b>\$39,656,916</b>
<b>Other non-Department Facilities</b>	
MDX	\$49,410,538
OOCEA	\$168,720,000
Lee County	\$31,694,000
<b>Total</b>	<b>\$249,824,538</b>
<b>Turnpike Enterprise</b>	<b>\$ 521,223,205</b>
<b>Grand Total</b>	<b>\$850,846,661</b>

But let's focus on what we can do better to facilitate more Public-Private Partnerships?

- Good start by modernizing the Private Transportation Act in Section 334.30, Florida Statutes

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- Prior law was outdated and did not really facilitate public-private partnerships
- Revised law authorizes the FDOT to partner with the private sector for projects in the Adopted Work Program to advance these projects using private funds or to mix these funds with private funds on a project – for capital improvements
- Can request proposals or unsolicited proposals may be submitted and if deemed of interest – then solicit proposals on a competitive basis considering the original and further submitted proposals in the evaluation
- TFRTF and SIB open for applications by private interest developing projects
- Similar process for expressway authorities
- Continue to deal with known issues to major projects – like Wekiva Parkway – working in a partnership with public and private interest
- Further refine and improve the Strategic Intermodal System working closely with industry partners, including seaports, airports and rail companies
  - Continue efforts to deal with major bottlenecks, inadequate intermodal connections to major facilities
  - Continue efforts to facilitate the interregional movement of goods and people
- Continue to work closely with local government and developers on high growth areas to identify needs early, preserve the land needed for transportation improvements and partner on the future needs
- Continue to ensure there is true partnership in the “public-private” and projects or programs do not become one sided for either the private or public sector
- Most of all, continue to foster a climate that treats the private sector as a Partner with a capital “P”

The Legislature has found and declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.

The purpose of s. 334.30, Florida Statutes, as amended in 2004, is to allow financial assistance from the Private Sector to advance projects programmed in the adopted 5-year work program 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. In accomplishing this, the Department may use state resources to participate in funding and

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financing the project as provided for under the Department's enabling legislation for projects on the State Highway System.

Also, the department may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.

In addition, the Department may exercise any power possessed by it, including eminent domain, with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to s. 334.30, Florida Statutes. The Department may provide services to the private entity. Agreements for maintenance, law enforcement, and other services entered into pursuant to s. 334.30, Florida Statutes, shall provide for full reimbursement for services rendered for projects not on the State Highway System.

The Department may lend funds from the Toll Facilities Revolving Trust Fund in accordance with s. 338.251, Florida Statutes. These funds will be lent to private entities that construct projects on the State Highway System containing toll facilities that are approved under s. 334.30, Florida Statutes.

The discussion for financial assistance would possibly begin before the projects are in the five year work program. It may be that the Public-Private Partnership may be the mechanism to advance a project into the tentative and adopted work programs of the Department. There are numerous advantages for the Private Sector to partner with the Public Sector. Potentially the Public Sector can facilitate consensus between multiple partners.

All of the items in the FDOT Work Program carry an economic impact. The question is can the Private Sector propose partnerships on projects which will work to the advantage of both the Public and Private Sector? The Private Sector brings the discipline of free enterprise competition while the Public Sector brings the Stewardship of the Public Good.

Many case examples demonstrate how this is a Win-Win for all.

## **Project Review Methodology**

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The Department currently operates several programs that require project reviews similar to the Public/Private Transportation Facilities Program. The proposed project review methodology the Department is establishing for the Public/Private Transportation Facilities Program will include requirements for the solicitation, receipt, and evaluation of proposals from private entities or consortia, and the rendering of a public-private partnership agreement with the Department of Transportation to effectuate the construction and operation of safe, convenient, and economical transportation facilities. Key features of the proposed project review methodology are being developed from the existing programs and are designed to ensure efficiency, effectiveness and integrity in the awards process. These features will include review processes to determine:

- Projects having the most secure sources of funding to insure the success of the project
- Projects which have a higher level of financial feasibility
- Projects that have financial safeguards to include backup sources to complete the project should project funding fall short
- Proposals which would enable the project to proceed at the earliest possible date
- Projects that use new technologies, including intelligent transportation systems that enhance the efficiency of the project
- Projects that help maintain or protect the environment
- Projects that have secured local and/or private funding sources to leverage the project
- Projects that reduce congestion on the State Highway System
- Projects that include transportation benefits for improving safety
- Projects that require the lowest use of state resources

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The Department has established and implemented Rules and Guidelines in order to facilitate the successful operation of several other similarly operated Programs as outlined below:

1. Joint Public/Private Development of Right-of-Way
  - a. The Joint Public/Private Development of ROW was developed for the purpose of leasing Department-owned property, including airspace, on which major improvements are constructed by the lessee in order to further economic development in Florida while generating revenue for transportation.
  - b. Section 337.251, F.S.
  - c. Chapter 14-109, FAC
2. State Infrastructure Bank
  - a. The SIB is a revolving loan program that loans funds to qualified sponsors for projects that improve Florida's transportation system. In order to provide the required level of oversight mandated by the Federal Highway Administration and in order to ensure the success of this program as a viable transportation alternative funding source, the Department has documented and implemented various laws and guidelines:
    - b. Created in 1997
    - c. Section 339.55, F.S. (State SIB) and TEA-21 (Federal SIB)
    - d. SIB Guidelines
    - e. Further information available at <http://www.dot.state.fl.us/financialplanning/> .
3. Toll Facilities Revolving Trust Fund
  - a. The TFRTF is a revolving loan program that loans funds to local government entities and the Turnpike Enterprise for revenue producing transportation projects that improve Florida's transportation system. In order to ensure the success of this program as a viable transportation alternative funding source, the Department has documented and implemented various laws and rules:
    - b. Created in 1986
    - c. Section 338.251, F.S.
    - d. Chapter 14-88, FAC
    - e. TFRTF Procedures
    - f. Further information available at <http://www.dot.state.fl.us/financialplanning/> .

## **SPECIAL EXPERIMENTAL PROJECT No. 15**

### **INTRODUCTION**

On October 14, 2004, FHWA issued guidelines for the SEP-15 Application Process. Here are the basics of SEP-15:

The FHWA is establishing a new Special Experimental Project (SEP–15) to encourage tests and experimentation in the entire development process for transportation projects.

The objective of SEP–15 is to identify for trial evaluation and documentation public-private partnership approaches that advance the efficient delivery of transportation projects while protecting the environment and the taxpayers.

SEP–15 addresses four major components of project delivery—

- contracting,
- compliance with FHWA's National Environmental Policy Act (NEPA) process and other environmental requirements,
- right-of way acquisition, and
- project finance.

Elements of the transportation planning process may be involved as well.

A key element of SEP–15 will be to identify impediments in current laws, regulations, and practices to the greater use of public-private partnerships and private investment in transportation improvements and to develop procedures and approaches that address these impediments.

SEP–15 projects cannot be used to modify environmental and other requirements external to title 23 of the United States Code.

State applicants under SEP–15 should provide detail of the following:

- (1) The procurement methods it will use over the life of the project to encourage adequate competition.
- (2) Applicants should specify any title 23, U.S.C., and FHWA regulatory requirements that may have to be waived or modified in order to conduct a successful SEP–15 test.
- (3) Applicant should be prepared to describe how it will ensure an appropriate level of public oversight and control, while also encouraging innovation and flexible, efficient procedures throughout the life of the project.

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**BACKGROUND**

- For some time, FHWA has conducted tests in the area of contracting practices under Special Experimental Project No. 14 (SEP-14).
- The FHWA has also encouraged innovations in the area of transportation financing. This initiative was launched with the introduction of an experimental "Test and Evaluation" program, designated as TE-045, to solicit ideas from the States on a range of new financial strategies designed to stretch limited transportation dollars by creating new, more flexible ways to leverage Federal aid highway funds.
- More recently, an increasing number of States and private ventures have explored public-private partnerships. Because these projects involve elements of project planning, development, environmental analysis, construction, maintenance, operation, and financing, they extend well beyond innovative contracting practices contemplated by SEP-14 and the financing tools encompassed by TE-045.
- Some recent SEP-14 applications have sought to incorporate initiatives that go beyond innovative contracting, to include environmental compliance, right of way acquisition, and financing. These applications have been difficult to fit within the limits of SEP-14. Thus, rather than continue to manage these new proposals under the SEP-14 umbrella, FHWA is initiating a new Special Experimental Project No. 15 (SEP-15).

Private firms will have new opportunities to conduct planning and construction of major highway projects with fewer legal hurdles under a new federal initiative to advance "experimental" public-private highway projects.

In early October, the Federal Highway Administration launched Special Experimental Project-15 (SEP-15) to help state transportation agencies overcome obstacles to public-private partnerships in highway project development. In an Oct. 6 Federal Register notice, FHWA said it would provide "substantial flexibility" in meeting federal regulatory requirements for highway projects accepted under SEP-15, which is seen as a testing ground for innovative approaches to private sector involvement (69 Fed. Reg. 59,983).

The project is an outgrowth of Special Experimental Project 14 (SEP-14), which FHWA launched in 1990 to test innovative contracting practices. Many of those practices later became commonplace, including design/build and cost-plus-time-bidding.

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SEP-15 would go beyond contracting to facilitate private-sector involvement in transportation project planning, development, financing, construction, maintenance and operation. For projects approved under SEP-15, FHWA would provide flexibility in contracting, environmental compliance, right-of-way acquisition, and project finance.

According to FHWA, the initiative will "will encourage tests and experimentation in the entire project development process, specifically aimed at attracting private investment, leading to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams."

FHWA said the program allows the private sector to identify legal issues that act as roadblocks to public/private partnerships and private investment. "A key element of SEP-15 will be to identify impediments in current laws, regulations, and practices" and to develop procedures and approaches that address these impediments, the notice said.

#### **LARGE CORRIDOR PROJECTS**

According to Federal Highway Administrator Mary Peters, SEP-15 arose out of questions FHWA received from states interested in pursuing public-private partnerships for large corridor projects, in particular Interstate 81 in Virginia and Interstate 35 in Texas.

In both states, officials plan substantial private sector involvement to design, finance, build, and maintain massive highway projects.

The I-81 project would add lanes along the 325-mile length of Interstate 81 through Virginia to relieve congestion from increasing truck traffic. In Texas, I-35 is part of the huge Trans Texas Corridor initiative, a proposed network of roads, rail, and a dedicated utility zone. Construction would be funded over several decades through tolls, bonds and other innovative financing tools.

"These projects did not fit well under SEP-14," Peters said in Oct. 6 remarks to the National Council for Public-Private Partnerships in Orlando, Fla. "SEP-14 allows for innovations in contracting, but is not designed to provide flexibility in the environmental review process, project finance, or in areas such as right-of-way acquisition."

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The Virginia and Texas projects showed the need for "a special experimental project that would allow innovative project proponents to ask for flexibility on a project-wide basis."

**REGULATORY HURDLES UNDER NEPA**

Private developers face a range of legal and regulatory hurdles in the transportation project development process, which is typically dominated by the state and federal government. For example, the state may wish to contract with a private firm to conduct design and construction for a major project prior to completion of the National Environmental Policy Act review process. However, FHWA's design/build regulations prohibit states from issuing a request for proposals until all reasonable project alternatives have been considered and documented in a Record of Decision (ROD) under NEPA.

According to FHWA, this restriction "would not necessarily apply under SEP-15." But the agency cautioned that the state and the contractor would take a risk that "work may be lost if another alternative is chosen in the ROD." And, the agency added, "under no circumstances may construction begin prior to completion of the NEPA process."

Regarding the extent to which private contractors may actually conduct environmental analysis and prepare the NEPA documents, FHWA said that contractors may do the work, but the state DOT and FHWA must provide oversight.

"In all cases, the State DOT in cooperation with FHWA will be responsible for demonstrating that NEPA documents are objective by carefully reviewing the document with in-house experts or consultant advisors hired by the State DOT," the agency said. Furthermore, FHWA will retain its role as lead agency with responsibility for independent review and approval of NEPA documents.

FHWA said SEP-15 projects could propose a tiered environmental process. In addition, the agency encouraged "creative" approaches to address public involvement and interagency coordination and consultation in planning and project development.

**ENVIRONMENTAL ADVOCATES SEE RED FLAGS**

The highway agency's desire to apply this experimental flexibility on such large-scale projects has raised red flags among environmental advocacy groups.

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In a statement to BNA Oct. 21, Michael Replogle, transportation director for Environmental Defense, described major concerns with SEP-15.

"Applying SEP-15 to massive projects like the Trans Texas Corridor and I-81 raises significant concerns among many transportation stakeholder groups about the potential for flexibility to be abused," he said.

"SEP-15 might result in illegal approval of activities advancing controversial major actions without public involvement and oversight."

FHWA should notify the public and interested stakeholders about applications under SEP-15, he said. The public should be given an opportunity to comment on proposed changes in procedures for these major projects to "ensure clarity and transparency about actions taken following those alternative procedures."

"As written, SEP-15 could allow huge changes in rules and regulations without any public notification. If projects and alternative procedures are approved under this guidance, DOT should establish a diverse independent oversight group with public reporting regarding projects and activities undertaken under SEP-15 to ensure maximum transparency and opportunities for stakeholders to learn from the experience under this pilot." FHWA officials were unavailable for comment Oct. 22 regarding the extent to which the public will be informed about applications submitted and actions taken under SEP-15, the number of projects that may be considered, or other additional details of the initiative.

#### **APPLICATION PROCESS**

An internal FHWA memorandum dated Oct. 14 outlined the procedural aspects of approving SEP-15 applications. To qualify for consideration as a SEP-15 project, State DOTs must submit an application to the appropriate FHWA division office. The application must include:

- a description of the project and specific federal-aid program areas of experimentation;
- the innovative techniques proposed and the expected value of those techniques; and
- proposed performance measures to evaluate the success of the project.

A team including the FHWA Division Administrator and an FHWA staff member familiar with the policy issues of the project will be assigned to facilitate each project and recommend whether the project is appropriate for

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SEP-15. The final decision on acceptance of the project will be made by the Deputy Administrator.

At "significant milestones" in the project, the sponsors would be responsible for providing a report summarizing lessons learned from the SEP-15 process, including any recommended statutory or regulatory changes.

**No 'MAGIC WAND.'**

In describing the process, Administrator Peters cautioned that "SEP-15 is not a magic wand to make federal requirements disappear."

"FHWA will still be responsible for safeguarding our key stewardship responsibilities--protecting the environment and preventing the misuse of taxpayer dollars. But SEP-15 does allow us, on a case-by-case basis, to carry out those stewardship responsibilities in a more flexible manner."

"Highways are traditionally government planned, government funded, and government maintained. Not the typical American approach to industry," Peters said.

"In a time of funding shortages at all levels of government, it is particularly important that we allow--unleash--the private sector to participate in all elements of infrastructure improvements," she said.

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**DEPARTMENT OF TRANSPORTATION**  
**Federal Highway Administration**

New Special Experimental Project (SEP-15) To Explore Alternative and Innovative Approaches to the Overall Project Development Process; Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

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**SUMMARY:**

The FHWA is establishing a new Special Experimental Project (SEP-15) to encourage tests and experimentation in the entire development process for transportation projects. SEP-15 is aimed specifically at increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams. The FHWA plans to use the lessons learned from SEP-15 to develop more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations.

**DATES:**

This new experimental project is being initiated on October 6, 2004.  
FOR FURTHER INFORMATION CONTACT: Division Offices: A complete list of contact information for the FHWA Division Offices may be found at: <http://www.fhwa.dot.gov/keyfield/famc.htm>. Headquarters: Mr. Dwight Horne, Office of Program Administration (HIPA), (202) 366-0494 or Mr. L. Harold Aikens, Jr., Office of the Chief Counsel (HCC-30), (202) 366-0791, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.archives.gov/fedreg> and the Government Printing Office's Web page at <http://www.gpoaccess.gpo.gov/nara>.

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**BACKGROUND**

The Federal Highway Administration (FHWA) has long encouraged increased private sector participation in the project development, finance, design, construction, maintenance, and operations of highways and bridges. The private sector has expertise often not available to the public sector that can bring innovation, flexibility, and efficiencies to certain types of projects.

For some time, FHWA has conducted tests in the area of contracting practices under Special Experimental Project No. 14 (SEP-14)\1\. Many of these practices have facilitated greater private sector investment. Since its inception in 1990, SEP-14 has been successful in advancing over 300 projects, and due to SEP-14, a number of contracting practices previously considered experimental have become a regular part of the highway program, such as design-build, cost-plus-time bidding, lane rental, and the use warranties.

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\1\ SEP-14 was initiated on February 13, 1990, as a result of recommendations from a Transportation Research Board (TRB) task force formed to explore innovative contracting practices. The memorandum initiating the SEP-14 program can be found at the following URL: <http://www.fhwa.dot.gov/programadmin/contracts/021390.htm>

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The FHWA has also encouraged innovations in the area of transportation financing. In 1994, Executive Order 12893, Principles for Federal Infrastructure Investment, established more cost-effective infrastructure investment as a priority for all Federal agencies. This Executive Order prompted more systematic analyses of the costs and benefits of proposed infrastructure investments, efficient management of infrastructure, greater private sector investment in infrastructure, and encouragement of more effective State and local programs. In response to that Executive Order, the U.S. Department of Transportation (U.S. DOT) and the FHWA undertook a major initiative in 1994 to promote and facilitate infrastructure investment.

This initiative was launched with the introduction of an experimental "Test and Evaluation" program, designated as TE-045, to solicit ideas from the States on a range of new financial strategies designed to stretch limited transportation dollars by creating new, more flexible ways to leverage

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Federal-aid highway funds. The TE-045 initiative has generated substantial benefits in terms of building more projects with fewer Federal dollars and accelerating project construction. Many of the innovations tested were subsequently approved for general use through administrative action or legislative changes made under the National Highway System Designation (NHS) Act of 1995 (Pub. L. 104-59; 109 Stat. 568; Nov. 28, 1995), and the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178; 112 Stat. 107; June 9, 1998).

More recently, an increasing number of States and private ventures have explored public-private partnerships in which the private sector partner could assume a greater role in project planning, project development, financing, construction, maintenance, and operation. Because these projects involve elements of project planning, development, environmental analysis, construction, maintenance, operation, and financing, they extend well beyond innovative contracting practices contemplated by SEP-14 and the financing tools encompassed by TE-045.

State interest in public private partnerships is expected to increase. Private sector investment can make up some of the public funding shortfall, but it will require a fair return on investment. Tolls certainly will represent a major source of funds to support private sector investment, but other potential sources of income such as development fees and tax increment financing may also be needed. These features often add to the complexity of project development.

Several States and private entities have asked for FHWA's guidance in implementing innovative arrangements and have queried how these new arrangements will be treated under Federal laws affecting highway projects. Some recent SEP-14 applications have sought to incorporate initiatives that go beyond innovative contracting, to include environmental compliance, right of way acquisition, and financing. These applications have been difficult to fit within the limits of SEP-14. Thus, rather than continue to manage these new proposals under the SEP-14 umbrella, FHWA is initiating a new Special Experimental Project No. 15 (SEP-15) pursuant to the authority granted the Secretary by Congress in 23 U.S.C. 502(b). SEP-15 will not be limited to contracting initiatives. It will encourage tests and experimentation in the entire project development process, specifically aimed at attracting private investment, leading to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams.

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A key element of SEP-15 will be to identify impediments in current laws, regulations, and practices to the greater use of public-private partnerships and private investment in transportation improvements and to develop procedures and approaches that address these impediments. Of course, such procedures and approaches must continue to protect the public interest and any public investment in the project. Moreover, SEP-15 projects cannot be used to modify environmental and other requirements external to title 23 of the United States Code. Thus, SEP-15 will allow for innovations in project delivery while maintaining FHWA's stewardship responsibilities to protect taxpayers and the environment. The FHWA recognizes that SEP-15 proposals may include multi-modal components. The FHWA will coordinate the review of multi-modal SEP-15 proposals with the appropriate modal administration(s).

The lessons learned from SEP-15 will aid FHWA in developing more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations. Our goal is to establish comprehensive policies and to seek future legislation to authorize those public-private innovations that have proved most useful under SEP-15.  
SEP-15

As personal and freight transportation needs continue to increase, public resources will fall behind the demand for investment in transportation infrastructure. It is unrealistic to assume that sufficient funding to meet this demand can be realized by increasing taxes or otherwise using only public funds. Additional funds must be obtained from other sources, such as drawing from private sector financing and investment. SEP-15 will allow FHWA to test project development approaches that provide the flexibility and timely decision-making often required to attract private capital while still exercising essential FHWA stewardship responsibilities.

As a result, the FHWA is seeking to identify changes in current practices that could promote greater and more effective private sector involvement in the delivery of Federal-aid construction projects. Partnerships between private investors and public transportation agencies can bring not only greater funding to a project but also more intellectual capital and innovation. SEP-15 is designed to provide a mechanism by which States can facilitate public-private partnerships.

The objective of SEP-15 is to identify for trial evaluation and documentation public-private partnership approaches that advance the efficient delivery of transportation projects while protecting the environment and the taxpayers. SEP-15 addresses four major components of project delivery--contracting,

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compliance with FHWA's National Environmental Policy Act (NEPA) process and other environmental requirements, right-of-way acquisition, and project finance. Given the scope of some of the proposals that have surfaced, elements of the transportation planning process may be involved as well. In order to meet the objective of SEP-15, proposals should describe the specific Federal-aid program areas of experimentation and identify proposed performance measures to evaluate the success of the SEP-15 project.

**CONTRACTING**

SEP-15 incorporates SEP-14's approach to innovative contracting practices. However, SEP-15 projects are likely to solicit conditional Federal approval earlier in the project development process than is typical for SEP-14 projects. Projects under SEP-14 usually have passed the initial concept stage. Hence, competition can occur around proposals for which cost parameters can be identified. Recently, the FHWA encountered a number of proposals that seek to involve the private sector even earlier in the process. Under these proposals, only generalized needs or policy initiatives that the project would serve have been identified.

For this reason, State applicants under SEP-15 should provide detail of the following:

- (1) The procurement methods it will use over the life of the project to encourage adequate competition. Many of the proposals developed to date are an offshoot of the design-build concept. SEP-15 proposals need not be limited by these concepts. However, given the very long lead-time and the large scope that a SEP-15 project might involve, FHWA is concerned that adequate competition is maintained and that qualitative and quantitative (price) evaluation factors are considered at key stages of the project.
- (2) Applicants should specify any title 23, U.S.C., and FHWA regulatory requirements that may have to be waived or modified in order to conduct a successful SEP-15 test, together with a justification or explanation for the modification. Applicants should also describe how laws and other requirements that fall outside title 23, U.S.C., and thus cannot be waived under SEP-15, would be affected by proposed changes in standard procedure. This includes not only the environmental laws discussed in the following section, but other requirements external to title 23, U.S.C..
- (3) Many of the controls imposed by title 23, U.S.C., and implementing requirements provide for oversight and control to protect the public

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interest. It is clear from the proposals the FHWA has seen to date that some of these controls have created real and unnecessary impediments to innovation and greater private investment. Thus, an applicant should be prepared to describe how it will ensure an appropriate level of public oversight and control, while also encouraging innovation and flexible, efficient procedures throughout the life of the project. The FHWA has no preconceived measures in mind. We are concerned about meeting quality standards, monitoring compliance with government-wide policies, contracting process requirements, and other stewardship responsibilities.

(4) The FHWA is particularly interested in proposals that can successfully accomplish the goals mentioned above. The FHWA has considerable authority under SEP-15 to test new ideas and is prepared to grant considerable flexibility if it is clear that its stewardship responsibilities can be met.

Applicants will be allowed maximum flexibility in determining their own procurement methods consistent with their State law but need to specify State requirements that cannot be waived.

Compliance with Environmental and Planning Laws

SEP-15 applicants must still fully comply with all requirements of NEPA and other State and Federal environmental and planning laws and regulations. These requirements include all metropolitan and statewide planning provisions related to local consultation, public involvement, and project selection. Successful applicants, however, may be provided flexibility in the application of FHWA's project development and NEPA implementation requirements, so long as there is verifiable compliance of the statutory requirements and regulations promulgated by agencies other than FHWA. Examples of innovation in the environmental area might include the following.

(1) The FHWA's design-build regulations (23 CFR Part 636) prohibit States from issuing a request for proposal (RFP) for a project prior to approval of the Record of Decision (ROD). This restriction would not necessarily apply under SEP-15. However, applicants will be responsible for demonstrating that any changes to the traditional timing of actions within the NEPA project development process and contracting for professional services, design and/or construction, will not influence the NEPA analysis. SEP-15 is not a blanket waiver of basic NEPA process requirements found in the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508) or

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FHWA's Environmental Regulation (23 CFR Part 771). Applicants must also understand the risk of taking advantage of this flexibility. If more than preliminary design is performed for a specific alternative prior to the ROD or final NEPA document, that work may be lost if another specific alternative is chosen in the ROD. Under no circumstances may construction begin prior to completion of the NEPA process.

(2) Under current law, a successful applicant may allow a contractor to conduct environmental analysis and prepare NEPA documents. However, the State Department of Transportation (State DOT) in cooperation with FHWA must provide direction and oversight during the NEPA process and development of NEPA documents. In all cases, the State DOT in cooperation with FHWA will be responsible for demonstrating that NEPA documents are objective by carefully reviewing the document with in-house experts or consultant advisors hired by the State DOT. For SEP-15 projects, FHWA will maintain its role as the lead Federal agency and will independently review and evaluate the NEPA documents prior to taking an approval action.

(3) Proposals that are very large in scope or slated to be built over a long time period might benefit from a tiered environmental process. While such tiering has always been allowed, transportation agencies have not made extensive use of tiered environmental analyses.

(4) The scope and nature of some of the proposals present particular challenges for public involvement and interagency coordination and consultation. Applicants are encouraged to identify innovative ways to include the public and other agencies in various phases of planning and project development.

Improved coordination with resource agencies is a key element of the environmental streamlining provisions of TEA-21. These provisions also have been enhanced by Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews. \2\ Proposals that take advantage of these provisions in a creative manner could be particularly useful.

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 \2\ E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, issued on September 18, 2002, emphasizes the importance of expedited transportation project delivery while being good stewards of the environment.  
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### **RIGHT-OF-WAY ACQUISITION**

Early acquisition of right-of-way, in spite of some risk, is a particularly useful tool to preserve transportation corridors from conflicting land uses. Also, early acquisition could influence land uses adjoining the potential corridor in a manner that is consistent with the ultimate transportation project and may even be appropriate to preserve the possibility of identified joint development initiatives. Thus, FHWA anticipates that timely land acquisition, or other land use control methods, could well be a part of a SEP-15 proposal.

Existing law provides project sponsors with an array of options to acquire right-of-way using both Federal and non-Federal funds. SEP-15 adds to that flexibility. For example, FHWA regulations currently discourage the award of a construction contract prior to acquisition of all necessary rights-of-way (ROW) (23 CFR 635.309). Environmentally neutral proposals that assure that landowners and tenants are receiving fair compensation, relocation assistance, and benefits guaranteed by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601 et seq.) could be eligible for modification of the ROW certification requirements, similar to the ROW phasing procedures under current design-build regulations.

### **PROJECT FINANCE**

Project financing for SEP-15 projects will likely come from a mix of Federal, State, local, and/or private funds. Building on the TE-045 initiative, SEP-15 will focus on financing innovations specifically associated with public-private partnerships. Existing Federal law already has a number of provisions that encompass a considerable range of financial arrangements.

The Transportation Infrastructure Finance and Innovative Act (TIFIA) program, (<http://tifia.fhwa.dot.gov/>), which facilitates a range of financing approaches, will continue to be a key element in FHWA's efforts to encourage the formation of public-private partnerships. This program is designed specifically to encourage greater leveraging of public transportation funds and attract private investment to transportation projects by providing credit assistance in the form of direct loans, loan guarantees, and standby lines of credit.

Little use has been made of the loan authority provided by 23 U.S.C. 129(a)(7). The FHWA welcomes proposals to use this "129(a)(7)" authority, which allows highway apportionments to be used for low cost loans to projects with dedicated revenue sources, as part of a three-way financing partnership between the State, the private venture partner, and

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the FHWA. By coupling "129(a)(7) authority" with TIFIA, tax-exempt bond financing, and Federal-aid grant funding as an integrated financing package, FHWA believes that this kind of partnership will serve as a catalyst for moving public-private partnerships quickly from concept to construction. When the State makes a 129(a)(7) loan to an eligible public or private entity, the State receives reimbursement from FHWA and is repaid the loan amount plus applicable interest by the borrower, which the State may then use for any eligible title 23 U.S.C. purpose; thus, assisting the State to establish a revolving loan fund for future projects.

The FHWA will devote the internal resources necessary to evaluate the financing package, offer alternative financing solutions, and establish financial feasibility in order to move the project from concept to commitment of Federal funds (where applicable) and construction.

Joint Development Agreements

### **Joint Development Agreements**

In addition to the transportation project itself, significant benefit and revenue potential may be realized from joint use of the transportation facility. Thus, the ROW may be used both for transportation purposes and other uses that are compatible with the transportation use, such as airspace development. Even joint use of the airspace of Interstate and other limited access highways is favored, so long as the transportation purpose is not impaired. States are encouraged to enter into joint development agreements with private parties by current Federal law, 23 U.S.C. 156. Under this provision, if FHWA participates in the cost of acquiring real property needed for a proposed project, there are specific requirements that apply to the sale or lease of the real property acquired with Federal funds (such as air rights). These requirements may include such things as ensuring that the amount realized by sale or lease represents the fair market value of the interest at issue. The net realized must be dedicated to transportation purposes. Waivers of the requirement to charge the fair market value are available in limited circumstances.

### **Application Process**

A State DOT should submit SEP-15 proposals to the appropriate FHWA Division Office. Proposals may include localities and private transportation ventures as project sponsors. SEP-15 applications should provide a brief description of the project, including the innovative techniques proposed and the expected value of those techniques.

Upon the completion of major milestones, the public-private sponsors will be responsible for submitting an independently prepared report that

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summarizes lessons learned from the SEP-15 process. These reports shall include the experiment undertaken, the lessons learned, evaluate the success of the process and its impact on the project, and recommend statutory and regulatory changes with an explanation of how the changes will improve the delivery of the Federal-aid highway program.

**CONCLUSION**

The Secretary has identified public-private partnerships as being an important element of the Department's ability to reduce congestion and maintain the highway system. To this end, SEP-15 is designed to encourage a broad range of innovations in project planning, project development, finance, design, construction, maintenance, and operations. This notice outlines some areas in which States may experiment and innovate in order to help provide some framework for experimentation. Project proponents applying under SEP-15, however, are encouraged to propose innovations in all areas of title 23, U.S.C.

(Authority: 23 U.S.C. 315 and 502).

**ISSUED ON: SEPTEMBER 23, 2004.**

Mary E. Peters,

Federal Highway Administrator.

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## **List of Innovative Financing**

(not all used or available in Florida)

Innovative Finance defined: techniques and specially designed mechanisms to supplement traditional funding/financing sources and methods

New or non-traditional sources of revenue

New funding mechanisms designed to leverage resources

New funds management techniques

New institutional arrangements

Innovative finance mechanisms

State Infrastructure Banks -Florida

Loans

Guarantees (credit enhancement)

Interest rate buy-downs

Transportation Infrastructure Finance and Innovation Act (TIFIA)

Loans

Guarantees

Lines of credit

GARVEE bonds -FHT grant anticipation notes

Funds management

Matching flexibility

Tapered match

Toll credits

Advance construction with higher match

Section 129 loans

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TE-045 -Innovative Finance Test and Evaluation Program -to pilot innovative finance approaches

Railroad Rehabilitation and Improvement Financing (RRIF)

Alameda multi-modal corridor -rail and highway (railroad user fees)  
Local funding innovative funding mechanisms

Special assessment districts

Property tax increment financing

Local option sales tax

Local option transportation taxes

Branding revenues (highways, service plazas, bridges)

Before and after pricing of right-of-way parcels

Advertising

User charges -tolls, parking fees, HOT lane pricing

Variable pricing of highway user fees

Congestion pricing of highway user fees

Shadow tolling

Leasehold arrangements

Concessions -on highway property

Property development fees

Hybrid Bonds -characteristics of revenue and general obligation bonds

Shared resources -fiber optic networks, telecommunication corridors,  
utility corridors

Combinations of financing mechanisms and sources

Texas -SR 130.(TIFIA loan, toll revenue bonds)

Colorado -T -REX (FT A, local sales tax, use tax, GARVEE bonds, local funds, bonds supported by future sales tax revenues)

California -Alameda Corridor (bonds backed by railroad user fees)

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FTE Ideas and combinations

Toll revenue-backed bonds

HOT lanes/Super HOT lanes with BRT (1-4 widening project)

Value pricing of congested portions of system

Local match from developers; counties, cities, major developments  
Property

Money

Social assessment districts

Local option sales tax

Property tax increment financing

Tapered match

Multimodal corridor funding (railroad, transit) -joint use corridors

Third-party financing

Revolving loan program

TE-O45 -Innovative Finance Test and Evaluation Program -to pilot  
innovative finance approaches

Toll Facilities Revolving Trust Fund- Florida viii. Innovative Highway  
Projects Program e. Other non-toll revenue sources

Shared resources (fiber optic lines, telecommunications/utility  
corridor) ii. Naming rights -branding

Advertising -on transponders, toll tickets, facilities iv. Easement  
permits

Lease of real estate

Commercial development fees

Permits for special hauling (oversized loads)

Multi-use smart cards for toll collection (ETC) and other uses -parking,  
transit, concessions (fast food, service stations), off-property retail

Partnerships

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Public-Private Partnerships (PPP) s. 334.30, FS

Public-private partnerships and public-public partnerships (with MDX)

Third party donations Developer contributions

Developer contributions of right-of-way property

Combination with other major players in Florida (MDX, railroads, Ports)

## **FHWA Establishes Innovative Finance Home Page**

The FHWA's Federal-Aid Financial Management Division has established a home page for innovative finance. The new Innovative Finance home page contains information on various topics, such as SIB Updates and Information, SIB Questions and Answers, Innovative Finance NHS Guidance, and back issues of the IF newsletter. There is a hotlink to the Legislation and Regulation's home page on Innovative Finance NHS Guidance.

For access to the new FHWA Innovative Finance home page, follow the procedures below:

Enter the URL "<http://www.fhwa.dot.gov>" to access the FHWA web site. A graphic of a road meeting the horizon will appear over the menu of options on the FHWA home page. Choose Program Areas from the menu of options. Next click on Innovative Finance. The new home page is also available under What's New on the FHWA web site.

## **Additional Information:**

For additional information regarding these options, the following websites are provided for your use:

### **FDOT Financial Planning Office Website:**

<http://www.dot.state.fl.us/financialplanning/>

### **AASHTO Innovative Finance Website:**

<http://www.innovativefinance.org/>

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