

STORAGE NAME: h1515a.tr.doc
DATE: February 20, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
ANALYSIS**

BILL #: HB 1515
RELATING TO: High-speed rail transportation
SPONSOR(S): Representative(s) Ross, Dockery, Ritter, Greenstein and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 9 NAYS 3
 - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

Florida voters in November 2000 approved a constitutional amendment calling for the construction of a high-speed rail system. The 2001 Legislature took the first steps to implement the constitutional amendment by creating a 10-member Florida High-Speed Rail Authority and designating the system's eventual service areas. In January, the Authority submitted a report detailing its accomplishments so far, and recommending several statutory changes.

HB 1515 incorporates many of the Authority's statutory recommendations. The bill creates the "Florida High-Speed Rail Authority Act," ss. 341.8201-341.852, F.S., and specifically:

- Broadens the powers and responsibilities of the existing 10-member High-Speed Authority to include condemnation of real property, establish and collect fees, establish and enforce fines and penalties for violations of its rules, sell naming rights to rail stations and other facilities associated with the high-speed rail system, enter into leases, accept donations, and acquire land.
- Specifies that the Authority may incur debt only in accordance with the provisions of this act.
- Allows the Authority to select the exact alignment of the high-speed rail routes within the legislatively selected service areas.
- Directs the Authority to develop and implement a conflict-resolution process and to adopt rules.
- Directs the Authority to develop and execute processes to prequalify, qualify, and select the eventual contractor or contractors for the high-speed rail system, including a newly created "Design, Build, Operate, Maintain and Finance" process.
- Repeals the existing High-Speed Rail Transportation Siting Act.
- Appropriates \$4.5 million to the Authority for FY 2002-2003 from the Transportation Outreach Program (TOP). Or, if TOP funds are unavailable, the \$4.5 million will be appropriated from the Department of Transportation's (DOT's) public transportation budget.

The majority of HB 1515's provisions go into effect upon the bill becoming law. The appropriation section goes into effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

HB 1515 conflicts with the principle of "Less Government" by expanding the powers and responsibilities of the Florida High-Speed Rail Authority.

B. PRESENT SITUATION:

High-speed rail refers to trains – typically for passengers – that travel at speeds in excess of 90 mph. They can be powered by diesel fuels, electricity, or magnetic levitation. These so-called "bullet trains" have been used in Europe and Japan for more than two decades. Research into the history of these international rail systems indicates many of them either are owned by their governments, were publicly owned until privatized, or still receive public subsidies. In the United States, the only operating high-speed rail train is Amtrak's Acela, which has connected Washington, D.C., New York and Boston since November 2000. Acela can travel at speeds upwards of 150 mph.

Florida has twice been on the verge of approving a high-speed rail system, to be built and operated by the private sector. In both instances, the rail route would have connected Tampa, Orlando and Miami. Both projects were terminated primarily because of financial concerns by Florida governors --- in 1991 by former Governor Chiles, and in 1999 by Governor Bush.

But the proponents of a high-speed rail system for Florida did not give up. In 1999, a petition drive supporting a constitutional ballot initiative began, and wound up collecting the required number of signatures by the following year. The Florida Supreme Court approved the initiative for the ballot on October 3, 2000. The constitutional amendment proposal for a statewide high-speed monorail, fixed guideway or magnetic levitation system was placed on the November 7, 2000, General Election ballot. The vote was 2,900,253 in favor of the amendment (52.7percent), and 2,607,495 opposed (47.3 percent).

The amendment language, now section 19, Article X, Fla. Const., reads:

To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared to be in the public interest that a high speed ground transportation system of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 mph, be developed and operated in the state of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined by the Legislature and provide access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the state and/or by a private entity pursuant to state approval and

authorization, including the acquisition of right-of-way, the financing of design and construction of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.

During the 2001 session, the Legislature considered two bills designed to implement the constitutional amendment; one would have created a High-Speed Rail Study Commission, the other a High-Speed Rail Authority, with extensive powers, including bonding. The bill that passed, CS/HB 489, was a compromise, of sorts. A 10-member High-Speed Rail Authority was created to basically study various rail issues, and to come back with a report by January 2, 2002. The authority consists of nine voting members – three each appointed by the Governor, the Speaker of the House of Representatives, and the Senate President – and the DOT secretary as a non-voting, ex-officio member. Although the Authority was allowed to hire its own staff, to save money the Authority has been using DOT staff to help organize its meetings, perform legal research, and provide other administrative support.

The legislation also designated the initial segments of the high-speed rail system: between St. Petersburg, Tampa and Orlando, with future service to Miami.

The Authority timely submitted its report to the Legislature. The report described the Authority's activities over the interim, which included retaining a general consultant and a preliminary design and environmental consultant. Also included in the report were a number of findings and recommendations, based on its review of past studies and any new information developed to date.

Among the findings:

- ❑ Based on preliminary research, the first high-speed rail segment linking St. Petersburg, Tampa and Orlando can generate operating revenues that exceed operating costs.
- ❑ The segment linking Tampa to Orlando may be feasible to begin in November 2003, as mandated in the Florida Constitution. Construction on the St. Petersburg to Tampa segment may begin in 2005.
- ❑ Operation and maintenance of a high-speed rail system can be paid exclusively with private funds, but a mixture of private and public funding likely will be needed to finance the construction and on-going capital requirements.
- ❑ The Authority said it is in the best interests of the state not to choose or recommend a specific rail technology, but to allow that issue to be settled through competition of contractors.
- ❑ When high-speed rail crosses motor vehicle traffic, then those crossings should be vertically, or grade, separated.
- ❑ Intermodal connections at the high-speed rail stations are critical to the overall success of the system.

Among the recommendations:

- ❑ Legislation should be filed to provide the Authority with the ability to procure, seek funding, engage in rulemaking, and use state-owned right-of-way.
- ❑ State funding for the high-speed rail system should not negatively affect other projects in DOT's Five-year Work Program.
- ❑ Funding currently earmarked for the TOP program is a "viable source" of money for the high-speed rail system, because those funds historically were earmarked for a previous high-speed rail project.

The Authority, its staff and its consultants drafted legislation to implement these findings and recommendations. The draft adopted by the Authority included the ability to issue revenue bonds.

C. EFFECT OF PROPOSED CHANGES:

HB 1515 broadens the High-Speed Rail Authority's responsibilities and powers so that it can proceed with implementing the provisions of article 19, Section X, of the Florida Constitution.

The bill leaves unchanged the composition of the Authority, but deletes provisions related to its legislative report and an operating plan originally requested by the Legislature. The bill recreates the Authority as an "enterprise," a mostly independent entity that can incur debt, acquire and own land, and make policy decisions with statewide implications, but which lacks the ability to issue bonds.

Pursuant to HB 1515, the Authority may:

- Exercise eminent domain as detailed in chapters 73 and 74, F.S.;
- Establish and collect rates, fees and other charges;
- Establish and enforce fines and penalties for violations of its rules;
- Sell naming rights to rail stations and other facilities associated with the high-speed rail system;
- Enter into leases and other contracts;
- Acquire land, and to obtain title, free of charge, to DOT right-of-way for a high-speed rail system, as long as the rights of the bond holders are protected;
- Accept donations; and
- Incur debt, but only in accordance with the provisions of this act. The legislation does not give the Authority specific authority to issue bonds.

HB 1515 also allows the Authority to select the exact alignment of the high-speed rail routes within the legislatively selected urban service areas, and to prioritize the sequence of construction of each route, based on an evaluation of ridership potential, availability of local government and private-sector financing, and the availability of Authority funding.

Other key provisions of HB 1515 provide the nuts-and-bolts process that eventually leads to the selection of a contractor or contractors to design, build, finance, maintain, and operate the high-speed rail system. The Authority is directed to develop and execute the systems of Prequalification, Qualification, Request for Proposals, and awarding the contract or contracts. As part of these processes, HB 1515 creates two new types of contracts – the DBOM and DBOM & F – designed to provide maximum flexibility to the Authority when seeking potential contractors. A "DBOM contract" is one where an entity agrees to design, building, operate, and maintain the high-speed rail system. In a "DBOM & F contract," the entity agrees to do all of the above, plus finance the system.

One financing instrument mentioned in the bill is a "certificate of participation," or COP. This is an asset-backed investment, used in California and other states to fund transit projects, where investors are guaranteed a portion of a future stream of revenues over a 10- to 20-year period. DOT staff is not aware of any transit system in Florida financed by COPs.

The bill also allows the Authority to establish most of the requirements for each stage of the contract process, presumably through chapter 120, F.S., rulemaking. Also, the Authority is directed to develop and implement a conflict-resolution process, in conjunction with the Governor's Office, the Department of Community Affairs and the Department of Environmental Protection, that seeks to address potential growth-management or environmental issues raised by individuals or entities.

HB 1515 also defines 14 terms used in the new act, and repeals the existing High-Speed Rail Transportation Siting Act.

Finally, HB 1515 appropriates \$4.5 million to the Authority for FY 2002-2003 from the Transportation Outreach Program. As a contingency, if TOP funds are unavailable, the \$4.5 million will be appropriated from DOT's public transportation budget. These funds are to be mingled with expected federal funds and carryover from its FY 01-02 budget, and will be used primarily to complete current studies and commence an investment-grade ridership study.

The appropriations section of HB 1515 goes into effect July 1, 2002, and the rest of the bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 341.8201, F.S., citing ss.341.8201-341.852, F.S., as the "Florida High-Speed Rail Authority Act."

Section 2: Creates s. 341.8202, F.S. Expresses legislative intent to implement the purposes of s. 19, Art. X of the State Constitution. Expresses benefits of a high-speed rail transportation system to Florida. Expresses legislative findings.

Section 3: Creates s. 341.8203, F.S., defining 14 terms used in the "Florida High-Speed Rail Authority Act."

Section 4: Amends s. 341.821, F.S., to transform the existing Florida High Speed Rail Authority into an enterprise, given autonomy and flexibility to enable it to more easily pursue a cost-effective, timely, financially sound high-speed rail system that provides quality service to the public.

Section 5: Amends s. 341.822, F.S., to give the High-Speed Rail Authority the ability to locate, design, finance, construct, maintain, own, and operate a high-speed rail transportation system in Florida. Deletes prohibition against Authority incurring debt; instead, allows the Authority to incur debt in accordance only with the provisions of this act. Clarifies the Authority may obtain federal funds either directly or through the DOT. Expands powers of the Authority. Specifies Authority may exercise all powers necessary, appurtenant, convenient, or incidental to, carrying out its duties regarding a high-speed rail transportation system in Florida. Lists several powers, including adopting rules, engaging in lease-back and similar arrangements, using DBOM and DBOM-F contracts, and providing for the sale of certificates of participation (or COPs).

Section 6: Amends s. 341.823, F.S., "Criteria for Assessment and Recommendations," to delete provisions that are obsolete or which the current Authority considers too restrictive. Makes clarifying changes.

Section 7: Amends s. 341.824, F.S., to provide new direction to the Department of Community Affairs (DCA) and the Department of Environmental Protection (DEP), as it pertains to the high-speed rail transportation system. Specifies DCA shall, if requested, provide assistance to local governments in analyzing the land-use and comprehensive planning aspects of the high-speed rail system, shall assist the Authority in helping resolve conflicts between the high-speed rail system and adopted local comprehensive plans. Specifies DEP shall, if requested, assist local governments and other permitting agencies in analyzing the environmental aspects of the high-speed rail system, and shall assist the Authority and the system's contractor in expediting the approve of necessary environmental permits.

Section 8: Creates s. 341.825, F.S. Specifies that the adoption of s. 19, Art. X of the State Constitution, plus legislative implementing language, preempts any question, issue, or determination that a high-speed rail transportation system is needed, or whether it is in the public's

interest. Adds that the Legislature hereby mandates the need for a high-speed rail system in order to implement the constitutional provision.

Section 9: Creates s. 341.826, F.S. Specifies that the Authority shall have the exclusive power to establish high-speed rail systems in the state of Florida, and that no other high-speed rail system may be authorized, financed, constructed, or operated, except as provided by this act.

Section 10: Creates s. 341.827, F.S. Allows Authority to determine in which order the legislatively designated high-speed rail service areas will be served. Allows the Authority, in conjunction with affected local governments to designate rail stations. Specifies initial segments of the high-speed rail system shall be developed and operated between the St. Petersburg area, the Tampa area, the Lakeland/Winter Haven area, and the Orlando area, with future service to the Miami area. Specifies subsequent segments shall connect the metropolitan areas of Port Canaveral/Cocoa Beach, Fort Pierce, West Palm Beach, Fort Lauderdale, Daytona Beach, St. Augustine, Jacksonville, For Myers/Naples, Sarasota/Bradenton, Gainesville/Ocala, Tallahassee, and Pensacola. Gives Authority the responsibility for prioritizing future segments of the high-speed rail system, based on criteria including ridership demand, financial participation by local governments and by the private sector, and on the Authority's available financial resources.

Section 11: Creates s. 341.828, F.S. Allows the Authority to select the route alignment. Specifies that for the purposes of permitting, the Authority may use, but is not limited to: the MPO long-range transportation process pursuant to s. 339.175 (6) and (7), F.S.; the DOT's work program process pursuant to s. 339.135, F.S.; or any permitting process currently in use or which may be in effect in the future. Directs the Authority to work in cooperation with the MPOs in the areas where the high-speed rail system shall be located. Directs the MPOs to cooperate with the Authority and to include the high-speed rail system in their plans, for the purposes of informing the public, providing consistency among the various plans, and receiving state and federal funds. Gives the Authority discretion to use DOT's project development and environmental study process. Specifies the Authority has the sole responsibility to adopt the final alignment for the high-speed rail system.

Section 12: Creates s. 341.829, F.S., relating to conflict resolution. Directs the Authority to develop and implement, within 180 days after the effective date of this act, a process to prevent, mitigate, and resolve – to the maximum extent feasible – any conflicts or potential conflicts, related to growth-management requirements and environmental standards, that may arise because of the high-speed rail system. Directs the Authority to work with the Governor's Office, DCA and DEP to develop and implement the conflict resolution process.

Specifies that persons who disagree with the Authority's final alignment decision must file a complaint with the Authority within 20 days after the alignment is adopted. Directs the Authority to respond within 60 days to any timely filed complaint.

Section 13: Creates s. 341.830, F.S., giving the Authority the discretion to use procurement methods authorized under chapters 255, 287, and 337, F.S. Specifies the Authority may adopt its own rules related to procurement. Authorizes the Authority to procure commodities and the services of a qualified person or entity to design, build, finance, operate, maintain, and implement a high-speed rail system, including the use of a DBOM or DBOM-F method (as defined earlier in the act) using a Request for Proposal, a Request for Qualifications, or an Invitation to Negotiate.

Section 14: Creates s. 241.831, F.S., related to prequalification of contractors and other entities. Specifies the Authority may prequalify interested persons or entities prior to seeking proposals for the design, construction, operation, maintenance, and financing of the high-speed rail system. Gives Authority discretion to establish qualifying criteria that may include, but are not limited to, experience, financial resources, organization and personnel, equipment, past record or history of

projects, ability to finance or issue bonds, and ability to post a construction or performance bond. Specifies the Authority may establish the qualifying criteria in a Request for Qualification, without adopting the qualifying criteria as rules.

Section 15: Creates s. 241.832, F.S., related to Request for Qualifications. Directs Authority to develop and execute a Request for Qualifications process to seek a person or entity to design, construct, operate, maintain, and finance the high-speed rail system. Specifies the Authority may issue a Request for Qualification, without adopting a rule.

Section 16: Creates s. 341.833, F.S., related to Request for Proposals. Directs the Authority to develop and execute a Request for Proposals process to seek a person or entity to design, construct, operate, maintain, and finance the high-speed rail system. Specifies the Authority may issue multiple Requests for Proposals. Specifies the Authority shall develop criteria for selecting a person or entity and shall include this criteria in the Request for Proposals. Specifies that the Request for Proposals shall include the minimum period of time of the contract's duration. Allows the person or entity to request a longer duration, and to provide justification. Provides that if the Authority approves the longer duration, it has to offer it to everyone who asks.

Section 17: Creates s. 341.834, F.S., related to contract award. Specifies that the Authority's decision to award a contract to a person or entity for a high-speed rail system is the sole authority needed by that person or entity to begin the work. Specifies terms and conditions of the contract may include, but are not limited to, compliance with any applicable permitting requirements. Specifies the contract shall authorize the contractor to provide service between the rail stations. Directs contractor to coordinate its facilities and services with passenger rail providers, commuter rail authorities, and public transit providers, as a way to offer access to and from the high-speed rail system. Prohibits the contractor from conveying, leasing, or otherwise transferring any high-speed rail system property, any interest in such property, or any improvement upon such property, without the Authority's written approval.

Section 18: Creates s. 341.835, F.S., giving the Authority to power to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings, or other improvements, necessary for the high-speed rail system. Vests in the Authority extensive powers of eminent domain, to be exercised pursuant to chapter 73, F.S., and chapter 74, F.S. Allows the Authority to request DOT to exercise its power of eminent domain to obtain title to real property needed for the high-speed rail system.

Allows the Authority to manage as it sees fit any property to which it acquires title. Exempts the Authority from any liability, imposed under chapter 376, F.S., or chapter 403, F.S., from its property. Specifies that this does not affect the rights or liabilities of any past or future owners, nor does it affect the liability of any governmental entity for the results of its actions that create or exacerbate a pollution source. Allows the Authority and DEP to enter into interagency agreements to address these issues.

Allows the Authority to acquire property or property rights that may benefit the public, even though the property or property right may not be immediately need for the high-speed rail system. Allows the Authority to dispose of property as it sees fit. Gives the Authority and its agents the right to access even privately owned property, determined to be necessary for the high-speed rail system, for surveys and soil and environmental studies.

Directs DOT to grant easements, consistent with applicable federal and state laws, within state-owned transportation facility rights-of-way for use by the high-speed rail system. Specifies that such easements shall be transferred to the Authority without compensation, provided that DOT may impose terms and conditions on the use of the property in order to protect the financial interests of

the bond holders for any outstanding bonds that were issued for the right-of-way. Specifies that the term of the easement shall be at least the same as that of the contract to operate and maintain the high-speed rail system, or for the term of any bonds or other financing instruments issued to pay for the high-speed rail, whichever is longer.

Allows the Authority to accept donations of land from public or private entities for the high-speed rail system.

Section 19: Creates s. 341.836, F.S., allowing the Authority to participate in the development associated with high-speed rail stations. Specifies that this associated development have pedestrian ingress to and egress from the rail station; be consistent, to the maximum extent feasible, with local government comprehensive plans and local land development regulations; and otherwise be in compliance with the provisions of this act. Specifies that this provision doesn't prohibit the Authority or anyone else from obtaining approval, pursuant to any other law, for development that is "reasonably related" to the high-speed rail system.

Section 20: Creates s. 341.837, F.S., to specify that all expenses incurred by the Authority to carry out the provisions of this act shall be payable only from funds provided to the Authority by this act, or other legally available sources. Specifies that the Authority and its members shall not incur any liability or obligation to repay debt beyond the extent to which the funds have been provided.

Section 21: Creates s. 341.838, F.S., allowing the Authority to charge, revise, and collect fees, rents, rates and other charges for the use of the high-speed rail system. Directs the Authority to annually review these fees, rents, rates and other charges, and to adjust them, if necessary. Specifies that the revenues generated by these charges, in addition with any other available funds, shall be used to pay the Authority's administrative expenses and the cost of the system. Prohibits any agency or other state entity from supervising or regulating these charges.

Section 22: Creates s. 341.839, F.S., specifying that except where expressly provided in this act, none of the Authority's powers shall be subject to supervision or regulation by, or consent of, a municipality or county, or any local-government entity.

Section 23: Creates s. 341.840, F.S., to exempt the Authority, its agents, and the system owner from all state and local taxation, as it pertains to the high-speed rail system.

Section 24: Creates s. 341.841, F.S., directing the Authority to prepare an annual report of its actions, findings, and recommendations, and to submit the report no later than January 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Requires the Authority, not less than annually, to provide for an audit by a CPA of its books and accounts. Specifies the audit shall be paid for with Authority funds.

Section 25: Creates s. 341.842, F.S., to provide for liberal construction of this act.

Section 26: Creates s. 341.843 F.S., to provide that if any sections of this act conflict with general statutes or special act, then the provisions of this act supersede.

Sections 27-30: Amends ss. 288.109, 334.30, 337.251, and 341.501, F.S., to delete references to the High-Speed Rail Transportation Siting Act, ss. 341.3201-341.386, F.S.

Section 31: For FY 2002-2003, appropriates to the Authority the sum of \$4.5 million from funds allocated to the Transportation Outreach Program (TOP), created pursuant to s. 339.137, F.S. Provides that if TOP is repealed, the sum of \$4.5 million for FY 2002-2003 shall be appropriated instead from DOT's public transportation program.

Section 32: Repeals the High-Speed Rail Transportation Siting Act, ss. 341.3201-341.386, F.S.

Section 33: Specifies this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For FY 2002-2003, HB 1515 appropriates \$4.5 million to the Authority from TOP. If the Legislature repeals TOP and that source of funds is unavailable, as a contingency \$4.5 million will be appropriated from DOT's public transportation program to the Authority.

The Authority plans to use the funds primarily to pay for an investment-grade ridership study, and to complete other studies and consultant work.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Minimal, except to the extent that one or more private consultants or engineers will be contracted to perform studies for the Authority.

D. FISCAL COMMENTS:

HB 1515 does not specifically give the High-Speed Rail Authority power to issue bonds. However, Section 5 of the bill amends s. 341.822, F.S., to authorize the Authority to engage in DBOM & F contracts, where the high-speed rail system's private contractor also is responsible for financing the project, and may "provide for the sale of certificates of participation incident thereto."

In general terms, a "certificate of participate" (or COP) is a type of financing where an investor purchases a share of the revenues generated by a proposed new or expanded public project. The assets of the entity back the COP, in case the revenue stream is insufficient. COPs have been used in California, Oregon, and other states to finance expansion or construction of public transit systems, golf courses and other projects (some public-private partnerships) that generate revenue.

The investment proceeds are used to construct a facility that may be leased to a public entity, or the public entity (typically an authority) may own the facility outright. In either scenario, COPs can be

used to release the entity from restrictions on the amount of debt that it can incur. Some COPs are short-term, but others can range from a duration of 10 to 20 years. COPs can have ratings similar to BBB bonds, and carry an interest rate of .5 to 1 percentage point higher than top-rated bonds.

DOT staff said they are unaware of any transit projects in Florida financed, even in part with COPs, although some entities have expressed interest in using that form of investment.

COPs may have some applicability to financing at least the Orlando-Tampa segment of Florida's high-speed rail system, according to DOT staff, because an earlier study indicated that segment would generate more operating revenue than needed to meet annual operating and maintenance costs. The Authority's January 2002 report to the Legislature also indicated that all of the Orlando to Tampa segment scenarios -- and at least one Orlando-Tampa-St. Petersburg scenario --- would generate more operating revenues than necessary to pay operating and maintenance costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of HB 1515 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1515 does not reduce the revenue-raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 1515 does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 1515 raises no apparent constitutional issues

B. RULE-MAKING AUTHORITY:

Section 5 gives the Authority general rulemaking authority to perform its various responsibilities, and Section 13 gives the Authority permission to adopt rules related to procurement. The bill also grants two exemptions to rulemaking: the Authority is not required to establish its qualifying criteria for contractor prequalification as a rule, pursuant to Section 14, while Section 15 allows the Authority to issue a Request for Qualifications without first adopting a rule.

C. OTHER COMMENTS:

As drafted, HB 1515 appears to treat the Authority's decisions establishing route alignments (Section 11) and selecting the high-speed rail system's contractor (Section 17) as final agency actions, but does not specifically refer to those decisions as such, nor cross-reference the relevant ss. 120.569 and 120.57, F.S.

Also, Section 12 of the bill sketches out a requirement for a dispute-resolution process. However, the 20-day timeframe for any person who disagrees with the Authority's final alignment decision is inconsistent with chapter 120.56, F.S., which gives parties 21 days to challenge a rule. Also, "any

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person who disagrees” could conflict with existing statutes and case law on whether an individual or entity has standing to challenge final agency action.

Generally, if a piece of legislation does not specifically create an administrative-relief process, then chapter 120, F.S., applies. However, since there appear to be inconsistencies between HB 1515 and the accepted legislative standards, then some clarification may be needed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

Staff Director:

Joyce Pugh

Phillip B. Miller