

STORAGE NAME: h1515s1.frc.doc
DATE: March 11, 2002

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: CS/HB 1515
RELATING TO: High-speed rail transportation
SPONSOR(S): Fiscal Responsibility Council and 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 (W/D)
 - (3) FISCAL RESPONSIBILITY COUNCIL YEAS 23 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

In November 2000, Florida voters 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.

CS/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:

- 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 newly created Design, Build, Operate, and Maintain (DBOM) and Design, Build, Operate, Maintain and Finance (DBOM & F) processes.
- Repeals the existing High-Speed Rail Transportation Siting Act.

The provisions of CS/HB 1515 take effect upon the bill becoming law.

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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"/> |

CS/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 collected 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:

CS/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.

Pursuant to CS/HB 1515, the Authority may:

- ❑ Establish and collect rates, fees and other charges;
- ❑ Acquire land and enter into leases and other contracts;
- ❑ 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.

CS/HB 1515 also allows the Authority to select the 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 CS/HB 1515 establish the 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, CS/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 in which an entity agrees to design, build, 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.

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.

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

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 remove obsolete language.

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 that the Authority may obtain federal funds either directly or through the DOT.

Section 6: Amends s. 341.823, F.S., "Criteria for Assessment and Recommendations," to delete provisions that are obsolete. Requires the authority to develop a marketing plan, a detailed planning level ridership study and an annual operating and maintenance cost estimate.

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, and 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. 341.827, 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 9: Creates s. 341.828, F.S. 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.

Section 10: 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 11: 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 12: 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 13: 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 14: 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 15: Creates s. 341.834, F.S., related to contract award. 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 16: 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.

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 needed 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.

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

Section 17: 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 18: 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.

Section 19: 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 to 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 20: 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 21: 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 22: 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 annual financial audit.

Section 23: Creates s. 341.842, F.S., to provide for liberal construction of this act.

Sections 24-27: 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 28: Repeals the High-Speed Rail Transportation Siting Act, ss. 341.3201-341.386, F.S.

Section 29: 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:

The House General Appropriations Act as Amended (HB 1943) contains an appropriation of \$7 million (Specific Line Item 2102A) for the High Speed Rail Authority to implement the provisions in CS/HB 1515. This appropriation includes \$3 million that is contingent on the receipt of federal funds and \$4 million from state revenues in the State Transportation Trust Fund.

SB 2500 as Introduced contains a total of \$5.8 million (also Specific Line Item 2102A) which includes \$4.5 million in new funding for the High Speed Rail Authority. The additional \$1.3 million provided in SB 2500 represents FY 01-02 funding for the High Speed Rail Authority which reverted on February 1, 2001. The Senate Bill does not contain budget authority to spend federal funds.

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:

CS/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.

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 CS/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:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

CS/HB 1515 raises no apparent constitutional issues

B. RULE-MAKING AUTHORITY:

Section 11 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 12, while Section 13 allows the Authority to issue a Request for Qualifications without first adopting a rule.

C. OTHER COMMENTS:

As drafted, CS/HB 1515 appears to treat the Authority's decision of selecting the high-speed rail system's contractor (Section 15) 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 10 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 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 CS/HB 1515 and the accepted legislative standards, then some clarification may be needed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On Friday, March 8th a strike-all amendment was passed by the House Fiscal Responsibility Council and the bill was made a Committee Substitute. The strike-all to HB 1515 removed language which:

- Provided the High Speed Rail Authority with the power of eminent domain
- Redefined the Authority as an "enterprise" to give it more flexibility and autonomy
- Provided the Authority with the exclusive right to establish high speed rail in Florida
- Provided the Authority with the sole responsibility for determining final track alignment
- Preempted any question, issue, or determination that the high speed rail system is needed or is in the public interest with the passage of this act
- Required the Department of Transportation to grant easements and convey those easements to the Authority without compensation
- Established that this act be controlling to the extent that its provisions are inconsistent with the provisions of any general statute
- Provided an appropriation of \$4.5 million to implement the provisions of this act

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VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

Joyce Pugh

Staff Director:

Phillip B. Miller

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Eliza Hawkins

Staff Director:

David K. Coburn