

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2412

SPONSOR: Finance and Taxation Committee and Senator Sebesta

SUBJECT: High-Speed Rail Authority

DATE: March 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ATD</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Florida High-Speed Rail Authority Act gives broad tax exempt status to the High Speed Rail Authority and its agents. This bill clarifies the tax exempt status as it relates to agents of the authority. The bill narrows the tax exempt status by excluding associated development from the exemption and by clarifying that only component parts of the high-speed rail system and certain financial instruments are eligible for exemption. The bill provides a certification process to establish tax exemption status for contractors.

This bill substantially amends sections 341.8203 and 341.840 of the Florida Statutes.

II. Present Situation:

In November 2000, Florida voters approved a constitutional amendment requiring the state to begin construction of a high-speed rail system. The amendment states:

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 consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, 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 for 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, and the operation of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.

In 2001, the Florida Legislature enacted the Florida High Speed Rail Authority Act (Ch. 2001-153, L.O.F.). This Act created a nine member High Speed Rail Authority and charged the authority with planning, administering and managing the preliminary engineering and preliminary environmental assessment of the intrastate high-speed rail system. It also required the first segment of the system be developed and operated between St. Petersburg, Tampa and Orlando with future service to Miami. The Florida Legislature amended this Act in the 2002 session to give the authority implementation powers and to allow the authority to begin the procurement process for this project. The authority is required by law to report recommendations on a series of issues to the Governor and Legislature on January 1 of each year.

Florida appropriated a total of \$9.0 million in FY 2001/02 and FY 2002/03. Additionally, Congress earmarked \$3 million in FY 2001/02 and \$2.15 million in FY 2002/03 for this project. Both State and federal funds are being used by the Florida High Speed Rail Authority primarily to conduct engineering and environmental activities in accordance with the National Environmental Policy Act (NEPA). This process will result in obtaining the federal Record of Decision (ROD) or federal permit to begin construction on the Orlando-Tampa segment of the statewide high speed rail system.

On April 11, 2002, Governor Bush transmitted to the Secretary of State a letter identifying his concerns with certain powers of the High Speed Rail Authority specifically, the broad tax exemption (allowing private businesses to be tax exempt) to development associated with the high speed rail system. The Governor expressly called for this tax exemption to be removed from law, and pledged to veto every dollar of authority money in the next year's budget if that tax exemption was not removed. Although the authority did recommend removal of the tax exemption, and the Department of Transportation and the Governor's office raised the issue during the 2003 Regular Session, the law was not changed and the Governor vetoed the \$7,200,000 authority budget item.

The authority issued an RFP to design, build, operate, maintain, and finance a high speed ground transportation system in October 2002 and selected its preferred proposer (Fluor-Bombardier) and route on October 27, 2003. The authority has executed a contract (at no cost to the state) with Fluor-Bombardier to provide professional services in support of the completion of the Final Environmental Impact Statement.

The authority is also in negotiations with Fluor-Bombardier to review possible technology options, the addition of a second track from Tampa to the Disney area and to develop a draft contract for designing, building, operating, maintaining and financing of the project. These negotiations are expected to conclude by May 2004.

In its January 2004 report to the Legislature and Governor, the High Speed Rail Authority recommended new language that would narrow the existing tax exemption provisions, limiting the exemption to only the high speed rail transportation system, and excluding associated development.

Section 199.023(1)(d), F.S., provides that all leaseholds or other possessory interests in real property owned by the United States, the state, or any political subdivision of the state, and municipality of the state, or any agency, authority, and other public body corporate of the state, which are undeveloped or predominantly used for residential or commercial purposes and upon which rental payments are due are considered intangible personal property.

Section 196.199, F.S., provides that property owned by the following governmental units but used by nongovernmental lessees are only exempt from taxation under the following conditions:

- Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state are exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function. Further, all other interests in the leased property are also exempt from ad valorem taxation. However, a leasehold interest in property of the state may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility.
- Any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes is exempt from taxation under certain circumstances.

Section 212.031, F.S., establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real property.

Section 212.08(6), F.S., exempts from sales and use tax, sales made to the United States Government, a state, or any county, municipality, or political subdivision of a state when payment is made directly to the dealer by the governmental entity.

Section 341.8203, F.S., defines associated development as the property, equipment, buildings, or other ancillary facilities built, installed, or established to provide financing, funding, or revenues for the planning, building, managing, and operation of a high-speed rail system and which are associated with or part of the rail stations.

Section 341.840, F.S., provides exemption from any taxes or assessments upon the high speed rail system or any property acquired or used by the authority or its agents.

III. Effect of Proposed Changes:

Section 1 – Subsection (2) of section 341.8203, F.S., is amended to clarify that in order to be considered an agent of the authority for tax exemption purposes, a contractor must be certified as such by the authority. Subsection (6) of section 341.8203, F.S., is amended to exclude stations, platforms, and associated development from the definition of high-speed rail system and to

clarify that facilities or equipment must be used exclusively for the design, construction, operation, maintenance, or financing to be included in the system.

Section 2 - Section 341.840, F.S., is amended, creating paragraph (2)(a) to clarify that the term "authority" does not include agents of the authority other than contractors who qualify and are approved by the authority per the provisions of this section. Paragraph (2)(b) provides that property falling under the definition of "associated development" is not considered part of the system for purpose of the tax exemption.

Paragraph (3)(a) clarifies the following sales tax exemptions:

- Purchases or leases of tangible property or real property by the authority, excluding agents of the authority, are exempt from taxes imposed by chapter 212 as provided in s. 212.08(6);
- Purchases or leases of tangible personal property that are incorporated into the high-speed rail system as a component part, as determined by the authority, by agents of the authority or the owner of the high-speed rail system are exempt from sales or use taxes imposed by chapter 212; and
- Leases, rentals, or licenses to use real property granted to agents of the authority or the owner of the high-speed rail system are exempt from taxes imposed by s. 212.031 if the real property becomes part of the system.

The exemptions granted to purchases or leases of tangible personal property by agents of the authority or by the owner of the high-speed rail system apply only to property that becomes a component part of the system. They do not apply to items, including, but not limited to, cranes, bulldozers, forklifts, other machinery and equipment, tools and supplies, or other items of tangible personal property used in the construction, operation, or maintenance of the high-speed rail system.

The sales tax exemptions clarified in paragraph (3)(a) do not apply to sales, leases, or licenses by the authority, agents of the authority, or the owner of the high speed rail system.

Subsection (4) of s. 341.840, F.S., is amended to include all bonds, notes, mortgages, letters of credit, or other instruments that arise out of or are given to secure the repayment of bonds or other security issued by the authority, as free from taxation of every kind by the state, the counties, and the municipalities and other political subdivisions in the state. These types of instruments are exempt from the intangible tax and the documentary stamp tax. A clause stipulates the exemption granted by this subsection is not applicable to any tax imposed by Chapter 220 on interest income or profits on the sale of debt obligations owned by corporations.

Subsection (5) provides that if authority property is leased to another person, the ad valorem tax exemptions only apply if the use by the lessee qualifies the property for exemption under section 196.199, F.S., (relating to governmental ad valorem tax exemptions).

Subsection (6) provides that a leasehold interest held by the authority is not subject to tax as intangible personal property under chapter 199. However, if the leasehold interest held by the

authority is subleased to a nongovernmental lessee, such sub-leasehold interest shall be deemed to be an interest described in s. 199.023(1)(d), and subject to tax as intangible personal property.

Subsection (7) requires that agents must be certified by the authority to be eligible for exemption from sales tax. Provisions are included allowing for the renewal of an agent's certification and allowing the authority to adopt the appropriate forms for certification in consultation with the Department of Revenue. The authority is directed to evaluate applications for tax exemption and report the authority's actions taken on such applications to the Department of Revenue. Contractors are permitted to extend a copy of their exemption permit to its vendors in lieu of paying sales tax. Contractors are permitted to extend a copy of their exemption permit to real property subcontractors supplying and installing tangible personal property that is exempt. The Department of Revenue is empowered to collect taxes from contractors and subcontractors who inappropriately claimed exemption and provision is made for interest and penalties to be applied. Contractors that act as agents of the authority are required to maintain the necessary records to document the status of purchases and costs incurred. Contractors who fail to obtain prior approval for tax exemptions from the authority are permitted to apply for refunds, "after the fact". The authority and the Department of Revenue are empowered to adopt rules necessary to carry out the tax exemption provisions.

Section 3 – The bill shall take effect January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill specifies the types of transactions made by the authority or by agents of the authority that are tax exempt, thus narrowing the scope of the exemption. The bill identifies the parties and transactions that will enjoy the benefit of the tax exemption.

B. Private Sector Impact:

In the proposals received by the authority, each proposal indicated some level of reliance upon the tax exemption under existing laws. The impact of this bill upon the proposals received by the authority is indeterminate at this time.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
