

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 855 with CS Florida High-Speed Rail Authority
SPONSOR(S): Ross and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2140 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation	17 Y, 3 N w/CS	PUGH	MILLER
2) Finance & Tax			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

In the November 2000 General Election, a majority of Florida voters approved a proposed amendment to the state Constitution requiring construction of a high-speed ground transportation system, capable of achieving a minimum 120 mph, and linking the state's five largest urban areas. The measure specified construction was to begin on or before November 3, 2003. The Legislature in 2001 created a 10-member Florida High-Speed Rail Authority (the Authority) to start the work of planning and developing the system.

HB 855 with CS:

- o Earmarks \$75 million in transportation funds in fiscal year 2003-2004 and for the next 29 fiscal years. The first source of the funds is the Transportation Outreach Program, but if that source is less than \$75 million or is repealed, then the secondary source of funds is the public transportation program of the Florida Department of Transportation (FDOT).
- o Gives the Authority the ability to request the Division of Bond Financing to issue revenue bonds to build the high-speed rail system. These revenue bonds will not be general obligation bonds, and will not count against the state's debt cap.
- o Creates an alignment-review process, with ultimate approval by the Legislature.
- o Directs the Authority to a qualified bond finance consultant to review the Authority's Project Development and investment-grade ridership studies conducted for the Orlando-to-Tampa segment, and provide an assessment of whether fare box revenues will be sufficient to finance the operating and maintenance costs of that segment of the high-speed rail system. This assessment will be presented as a report to the authority, the Governor, and the Legislature.
- o Specifies that the general public shall have full and unrestricted access to all high-speed rail stations.
- o Designates the rail center at Orlando International Airport as the primary intermodal high-speed rail center in the Orlando-Orange County area.
- o Provides the Authority with flexibility in determining the amount and manner of performance and payment surety bond to be provided by the high-speed rail system contractor;
- o Amends s. 341.840, F.S., to prohibit the extension of sales-tax and other tax exemptions provided to the Authority or its agent to any associated development, such as hotels, gift shops, or restaurants.
- o Requires the Authority to use the procurement procedures in chapter 287, F.S., when hiring engineers and other professional services.
- o Creates two full-time staffing positions for the Authority: an executive director and an assistant to the executive director.

HB 855 with CS raises no apparent constitutional issues. It takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0855a.tr.doc
DATE: April 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

Reduce government

HB 855 with CS does not reduce government because it broadens the powers of the Florida High-Speed Rail Authority, specifically the ability to request that the Division of Bond Finance issue revenue bonds on its behalf, in order to fund construction of the Tampa to Orlando segment of the high-speed rail system.

B. EFFECT OF PROPOSED CHANGES:

Background

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.

In the mid-1980s the front-runner for building a bullet train was the Florida High-Speed Rail Corp., a consortium with European backing. Originally, the rail line was to have been funded largely by the private sector, via granting of development rights along the rail corridor and in adjacent communities. Later, a 2.5-cent state gas tax, \$2 surcharge on license tags and creation of special county tax districts were proposed to help fund the project. First estimated at \$3.5 billion, by 1990 the high-speed rail's projected total costs had risen to the extent that the project's backers sought legislation giving the project \$5.35 billion in public funds. Former Gov. Chiles rejected the high-speed rail proposal shortly after his inauguration in 1991, primarily because of financial concern.

However, a year later the concept of a high-speed rail system was resurrected. In 1992, a new High-Speed Rail Act became law, putting DOT in charge of the project, which was seen as a public-private partnership. Eventually, Florida Overland eXpress (or FOX) was selected to build and operate the system. FOX's financial contribution initially was \$58 million in private equity and \$291 million worth of rolling stock; the state's share was \$6.5 billion over 40 years. By the late 1990s, financial, ridership and technological questions were being raised about the project, and Gov. Jeb Bush terminated it shortly after his 1999 inauguration.

The state funding stream previously committed to the FOX project (\$70 million for 40 years, escalated at 4 percent annually) was subsequently diverted to other transportation programs, including funding for the Transportation Outreach Program (TOP), pursuant to s. 339.137, F.S. TOP was created in 2000 to fund transportation projects of significant local, economic importance but which are not included in FDOT's Five-Year Work Program.

Proponents of a high-speed rail system led a successful petition initiative drive in 1999 and 2000. 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 measure passed, carrying 31 of Florida's 67 counties. The actual vote was 2,900,253 in favor of the amendment (52.7 percent), and 2,607,495 opposed (47.3 percent).

The amendment language, in Article X, Section 19, of the Florida Constitution, 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.”

Legislation in the 2001 session created the 10-member Florida High-Speed Rail Authority (the Authority) and directed it to study a number of issues and report back to the Legislature by January 2002 on its findings and any recommendations. 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 Legislature in the 2002 session broadened the Authority's responsibilities so that it could develop a marketing plan, a detailed planning-level ridership study, and an estimate of the annual operating and maintenance costs of the high-speed rail system and other associated expenses. The Authority also was given the ability to: establish and collect rates, fees and other charges; acquire land and enter into leases and other contracts; and incur debt, but only in accordance with levels authorized by the Legislature. The legislation allowed 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.

In November, the Authority received its much-anticipated Investment-Grade Ridership Study, conducted by two different consultants evaluating the same data. The study estimated that, depending on the downtown Orlando route, the first segment of the high-speed rail would attract between 1.9 million to 4.1 million passengers by the year 2010, generating between \$32.9 million and \$56 million in fare box revenues annually.

The most recent action of the Authority was to issue “Requests for Proposals” (RFPs) for entities interested in designing, building, operating, maintaining and even financing the first segment of the high-speed rail project – linking Orlando and Tampa. Four companies or consortia responded to the RFPs in February 2003.

The projected total public costs, depending on the downtown Orlando route selected, ranged from \$404 million to \$2.73 billion. The projected total private costs range from \$944.6 million to \$2.07 billion. The Authority continues to review the RFPs, and is scheduled to announce its selection for the first round of negotiations in October 2003.

The Authority has decided that the November 1, 2003, "start of construction" specified in the state constitution can be defined as execution of a contract to complete the federally required environmental impact statement. It hopes to receive a "Record of Decision" from the federal government, granting a permit for the project, in mid-March 2004, and begin construction shortly thereafter.

Effect of HB 855 with CS

As amended, HB 855 with CS gives the Authority the ability to request the Division of Bond Financing to issue revenue bonds to build the high-speed rail system. These revenue bonds will not be general obligation bonds, and will not count against the state's debt cap.

The bill also earmarks \$75 million in transportation funds in fiscal year 2003-2004 and for the next 29 fiscal years. The first source of the funds is the Transportation Outreach Program (s. 339.137, F.S.), Under HB 855 with CS, if the TOP revenue stream is less than \$75 million, then the difference shall be made up by a portion of FDOT's public transportation funds. If TOP, which has been in limbo for a year, is repealed, then the entire \$75 million for the high-speed rail is appropriated from FDOT's public transportation budget.

HB 855 with CS also creates more legislative involvement in the route-selection process. It directs the Authority to select "preferred alignments" for the Orlando-to-Tampa segment and future proposed segments of the high-speed rail project. FDOT, the Department of Community Affairs, and the metropolitan planning organizations and county commissions within whose jurisdictions a high-speed rail segment is proposed to be located shall review these preferred alignments based on their particular areas of expertise or interest:

- FDOT shall review the authority's preferred alignment for consistency with the Florida Transportation Plan; for its impact on state-owned transportation facilities in the vicinity; and for consistency with engineering principles required by the department for its projects.
- The Department of Community Affairs shall review the preferred alignment to determine consistency with the approved local government comprehensive plans of the units of local government through which the preferred alignment runs.
- The metropolitan planning organizations (MPO's) within whose jurisdictions the preferred alignment is located shall review the preferred alignment for consistency with their individual Transportation Improvement Program plans, developed pursuant to s. 339.175.
- The county commissions of the counties in which the preferred alignment is located shall review the preferred alignment for consistency with their local transportation, economic development, and growth management initiatives or ordinances. In addition, the county commission of the county containing a primary intermodal center for the high speed rail system located at an international airport shall submit an adopted resolution recommending its preferred alignment for the system.

These entities shall submit reports of their findings to the Legislature, which shall use them in evaluating the Authority's preferred alignment. If the Legislature is satisfied that the preferred alignment is consistent with state transportation and growth-management policies, and is the most cost-feasible alternative, then it shall approve the preferred alignment as selected by the Authority. If the Legislature does not approve the preferred alignment, then it may consider alternative alignments that were presented to the Authority. In the event that the Legislature is not satisfied with any of the proposed alignments for the Orlando to Tampa high-speed rail segment, it may direct the authority to develop new alternatives.

HB 855 with CS specifies that the Authority shall not enter into contracts for construction and financing of a high-speed rail system, nor seek final permits for, or federal approval of, the system alignment until the this legislative review and approval process is complete.

The bill also:

- Directs the Authority to hire a qualified bond finance consultant to review the Authority's Project Development and investment-grade ridership studies conducted for the Orlando-to-Tampa

segment, and provide an assessment of whether fare box revenues will be sufficient to finance the operating and maintenance costs of that segment of the high-speed rail system. This assessment will be presented as a report to the authority, the Governor, and the Legislature.

- Specifies that the general public shall have full and unrestricted access to all high-speed rail stations. Each rail station must provide reasonable access to roads and other transportation modes. No direct charge or fee can be charged to access a high-speed rail station, other than “reasonable user fees” for parking or transportation to and from the station.
- Designates the rail center at the Orlando International Airport as the primary intermodal center for the high-speed rail system in the Orlando-Orange County area. According to information provided by FDOT, the airport has begun construction on a new south-side terminal, which is designed so that a high platform and ancillary facilities can be added – if and when and what type of rail service has been decided. The cost estimate for the rail platform and ancillary facilities is \$24 million.
- Amends s. 341.840, F.S., to prohibit various tax exemptions provided to the Authority or its agent, owner or lessee being extended to any associated development, such as hotels, gift shops, or restaurants. This provision is being recommended to eliminate the governor’s concerns about the 2002 high-speed rail legislation
- Creates s. 341.843, F.S., related to surety bonds required for the high-speed rail system. It requires the high-speed rail contractor to obtain a performance and payment bond in an amount determined by the Authority. It specifies that prior to commencing any construction on the high-speed rail project, the Authority shall require the contractor to provide a payment and performance bond that covers 100 percent of the project’s construction costs, or if such a level of surety is not commercially available, then in an amount as determined by the Authority, or that the surety bond be issued on a phased basis. The surety bond must be from a company authorized to do business in the State of Florida.
- Amends s. 341.830, F.S., to specify that notwithstanding the Authority’s statutory permission to adopt its own rules for procurement, the Authority must procure engineering, architectural, surveying, and other statutorily defined professional services pursuant to s.287.055, F.S.
- Creates two full-time staffing positions for the Authority: an executive director and an assistant to the executive director.

HB 855 with CS takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 341.8203, F.S., to add to the definition of “rail station,” “station,” and “high-speed rail station” the requirement that the general public have full and unrestricted access to such stations. Requires access by roads and other modes of transportation, and necessary parking facilities. Prohibits anyone from imposing direct fees or charges as a condition of access to the station. Allows certain reasonable user fees.

Section 2: Amends s. 341.822, F.S., to direct the Authority to hire a qualified bond finance consultant to review high-speed rail studies. Specifies report.

Section 3: Amends s. 341.827, F.S., to clarify that the Authority must select a preferred route for each service area. Specifies that notwithstanding any other law to the contrary, the Authority shall not enter into any contract authorizing the construction or financing of any segment of the high-speed rail system without specific legislative approval of the project’s alignment. Specifies the Authority may not seek final permits for, or federal approval of, any alignment until the Legislature has approved the alignment. Specifies the Orlando International Airport’s rail station shall be the site of the primary intermodal center for the high-speed rail system in the Orlando-Orange County area.

Section 4: Creates s. 341.8275, F.S., to specify a review process for the Authority’s preferred high-speed rail alignments. Specifies review by FDOT, the Department of Community Affairs, appropriate

MPO's and appropriate county commissions. Specifies due dates. Specifies legislative approval of alignment.

Section 5: Amends s. 341.840, F.S., to prohibit various tax exemptions enjoyed by the Authority or its agent, owner or lessee being extended to any associated development of the high-speed rail system, nor to the income, sales, or other taxable transactions related to any association development.

Section 6: Creates s. 341.843, F.S., related to surety bonds required for the high-speed rail system. Requires high-speed rail contractor to obtain a performance and payment bond in an amount determined by the Authority. Specifies conditions.

Section 7: Creates s. 341.844, F.S., to direct the state Division of Bond Finance to issue revenue bonds, at the Authority's request, to finance construction, reconstruction, and improvement of the high-speed rail system. Specifies these revenue bonds shall be repaid with the high-speed rail system revenues or other revenues of the Authority, including funds appropriated to the Authority.

Section 8: Amends s. 341.830, F.S., to specify that notwithstanding the Authority's statutory permission to adopt its own rules for procurement, the Authority must procure professional services pursuant to s. 287.055, F.S.

Section 9: Appropriates \$75 million in state transportation funds in FY 03-04 to the Authority to implement the construction of the high-speed rail system. Specifies that the source of the funding is the Transportation Outreach Program (TOP), pursuant to s. 339.137, F.S. Specifies that if sufficient TOP funds are unavailable, then funds earmarked for public transportation in FDOT's State Transportation Trust Fund shall be appropriated to the Authority to make up the difference. Provides that if the Legislature repeals TOP, then the full \$75 million will be appropriated from FDOT's public transportation funding.

Section 10: Creates s. 341.825, F.S., to provide for annual legislative appropriations of \$75 million, beginning in FY 2004-2005 and continuing through FY 2033-2034. Specifies that such funds shall come from FDOT's budget to help pay for high-speed rail system projects approved by the Authority. Specifies sources of these annual appropriations.

Section 11: Creates s. 341.826, F.S., providing that funds allocated to the Authority pursuant to this act may be used to pay principal or interest on revenue bonds, notes, or other forms of indebtedness issued on behalf of the Authority by the state Division of Bond Finance. Specifies such debt shall not be an general obligation of the State of Florida. Specifies bond covenants.

Section 12: Creates two full-time equivalent positions for the Authority: an executive director and an assistant.

Section 13: Provides this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

High-Speed Rail Authority

HB 855 with CS will appropriate \$75 million a year, for the next 30 fiscal years, to the Authority, to finance construction of the high-speed rail system. The funds can be used as debt service to repay bonds issued on behalf of the Authority by the state Division of Bond Finance. The first source of these annual appropriations is TOP, but if that program has less than \$75 million available each

year or is repealed, then the secondary source is the 15 percent of state transportation funds allocated for FDOT's public transportation programs.

Presumably, the Authority also will continue to receive legislative appropriations to pay its operating costs, as has occurred the last two fiscal years. HB 855 with CS does not address operating or administrative expenses.

FDOT

According to fiscal analysis prepared by FDOT staff, the passage of HB 855 with CS will create a minimum revenue loss of \$150 million to the agency over the next four fiscal years if it has to allocate the full \$75 million each of those years to the Authority. That is because the agency budgets on a cash-flow basis, so it hasn't segregated the TOP money into a separate account, waiting to be spent.

The revenue loss could be as high as \$375 million in the FY 03-05 Work Program if the \$75 million is taken from FDOT's public transportation program.

As the FDOT fiscal analysis explains:

"If the \$75 (million) comes from TOP funds and the \$75 (million) is assumed to be 100% pay-out each year, the negative impact to the current STTF work program would be \$150 (million) through FY07-08 because of the cash flow differences."

"This \$150 (million) impact assumes there is sufficient funding remaining in the TOP category to deduct the \$75 (million) annual appropriation and is based on the different cash-flow characteristics. TOP is currently lapsed and flowed over several years, and if the \$75 (million) for high-speed rail is to be paid 100% each year, there is currently not enough cash set aside annually.

"As written, however, any insufficiency comes from funding for public transportation projects. Assuming that TOP is eliminated and the entire annual \$75 (million) comes from STTF funds for public transportation projects, then there would be a cash impact of \$375 (million) over the work program period."

2. Expenditures:

Based on market conditions and upon the Authority's request, the Division of Bond Finance could issue revenue bonds in 2004 for the high-speed rail system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Authority will contract with one company or consortium to design, build, operate, maintain, and finance the first segment of the high-speed rail system. This primary contractor may subcontract with Florida companies for some of the work, so there may be a trickle-down effect. There may be related projects, such as rebuilding bridges or widening or repairing roads in the vicinity of the new train, that also will provide jobs for transportation contractors.

D. FISCAL COMMENTS:

At the request of legislative staff in August 2002, FDOT evaluated two bonding scenarios involving a TOP revenue stream of \$60 million annually and one of \$100 million annually. The 30-year revenue bonds at 5-percent interest and a \$60 million annual debt service would generate \$922 million in proceeds, and with a \$100 million annual debt service the bond proceeds totaled \$1.537 billion. These estimated bond proceeds are about half of the public cost of the Orlando-to-Tampa high-speed rail project estimated by two of the four entities that submitted proposals to the Authority in February 2003.

The Authority and project supporters believe federal funds also will be available to help pay the system's capital costs.

Section 11 of HB 855 with CS gives the Authority the flexibility to use its funds to pay the principal or interest on revenue bonds, notes, or other forms of indebtedness." One of the RFP respondents included a plan to help finance the project using federal tax-credit bonds, where bondholders receive an annual tax credit while the bonds are outstanding in lieu of tax-exempt interest. Under this scenario, the \$75 million a year would be placed in a sinking fund, accruing interest, for 30 years; the balance at the end of the 30 years is unknown. When the tax-credit bonds come to term in 30 years, the bondholders are repaid their initial investment from the sinking fund. A tax-credit bond program to finance high-speed rail projects is one of the key provisions of two congressional bills making their way through the committee process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. HB 855 with CS does not require cities or counties to expend funds or take actions to expend funds; reduce the revenue-raising authority of cities or counties, in the aggregate; or reduce the percentage of state tax revenues shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Authority has sufficient existing rule-making authority to implement the provisions of HB 855 with CS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Staff of the High-Speed Rail Authority has expressed concerns that the alignment review process in the bill may interfere with the National Environmental Policy Act (NEPA) permit requirement in 40 CFR section 1505.1 (e) and Federal Railroad Administration requirements.

In a written response, Authority staff explained:

"Pursuant to federal law only the U.S. Department of Transportation can approve the final alignment of a high speed rail system. The Federal Railroad Safety Act, 49 U.S.C. Section 20101, et seq. and the National Environmental Policy Act. 42 U.S.C. Section 4321, et seq. (NEPA) preempt the State of Florida from making the final alignment decision."

"In recognition of this, the Florida High Speed Rail Authority (Authority), entered into a Memorandum of Understanding with the Federal Railroad Administration and the Federal Highway Administration of the U.S. Department of Transportation (the key federal agencies

involved in the decision-making process) to develop a joint state/federal process-- whereby the Authority would make its decision on which Proposal to accept in parallel with the federal decisions on railroad safety and alignment. The Department would not enter into the DBOM contract until the federal agencies make a final decision on the alignment in accordance with the requirements of NEPA.”

“The legislative amendment would require, prior to the Authority entering into the contract, that the Legislature approve the alignment. However, in light of the federal preemption, the Legislature would not have the ability to approve an alignment different from the federally approved alignment. Also, If the Legislature were to approve an alignment prior to the federal decision, that approval could be voided if the federal alignment were different. However, if the legislative alignment is proposed early enough in the process, it would have to be considered by the federal government in its decision-making. But (it) would not be binding on the federal agencies.”

Legislative staff agree with the Authority’s explanation, but their review of NEPA also indicates a process exists for consideration of a preferred alignment among the alternatives. While the Legislature’s approval of an alignment would not be binding on federal agencies involved in reviewing the high-speed project alignment, federal law does recognize the authority of states to have a “preferred alternative” in the NEPA process. [See 40 CFR 1502.14(e).] This “preferred alternative” is defined as the alternative that the state believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. Legislative approval of a high-speed rail alignment as a “preferred alternative,” based on the comprehensive review by state and local entities, as required in the bill, would likely be given considerable weight in the federal NEPA process.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 26, 2003, meeting, the Transportation Committee adopted four amendments to the bill, and defeated one amendment. A brief discussion of the approved amendments follows:

- Amendment 1 removed the Authority’s authority to issue, through the Division of Bond Finance, road and bridge construction bonds.
- Amendment 3 requires a review of the project by a bond finance consultant, and a report on the project’s financial feasibility.
- Amendment 4 requires that all high-speed rail stations allow public access .
- Amendment 5 requires the Authority to select the preferred route and requires a review of the alignment by affected state and local entities. It also provides for legislative approval of the route before construction may begin or federal permits applied for. In addition, this amendment designated the Orlando International Airport’s rail station as the primary intermodal rail center for the high-speed rail system in Orlando-Orange County.

The committee then voted 17-3 in favor of the bill as amended.