

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDCA 09B-01 Act Relating to Transportation
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council	12 Y, 0 N	Johnson	Tinker
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SUMMARY ANALYSIS

The bill establishes a comprehensive framework for passenger rail in Florida. Specifically, the bill:

- Creates the Statewide Passenger Rail Commission to serve in an advisory capacity to the Department of Transportation (DOT) and the Legislature concerning passenger rail issues in Florida.
- Creates the Florida Rail Enterprise within the DOT to oversee the development and operation of state-owned passenger rail systems, including high speed rail. Many of the functions of the current High Speed Rail Authority are assigned to the Enterprise, and the High Speed Rail Authority is essentially replaced by the Enterprise.
- Establishes a dedicated source of funding for future state-owned passenger rail systems by allocating the first \$60 million of documentary stamp tax proceeds going to the Transportation Regional Incentive Program to the Florida Rail Enterprise. This reallocation will begin July 1, 2014 to avoid disruption to the current five year transportation work program.
- Provides an additional \$13 million to \$15 million annually from transportation revenues to the South Florida Regional Transit Authority to fund the operations of Tri-Rail.
- Authorizes the DOT to fund up to 100 percent of the operating costs of future state-owned passenger rail systems for a period not to exceed seven years.
- Establishes the framework for the allocation and assumption of risks associated with state-owned passenger rail corridors, and authorizes DOT to purchase insurance and establish a self-retention fund to insure against liability risks associated with state-owned passenger rail corridors.
- Authorizes DOT to complete an escrowed closing on the Central Florida Rail Corridor (SunRail) acquisition; however the drawdown of the escrowed closing cannot occur until the Federal Transit Administration’s full-funding grant agreement is in place.
- Requires DOT to work with affected local communities along an impacted freight rail corridor to identify and address the impacts associated with an increase in freight traffic due to implementation of state-owned passenger rail systems.

Further, beginning July 1, 2014, the bill increases the allocation of documentary stamp tax proceeds going to the Small County Outreach program from 5 to 10 percent. These funds may be used for any eligible transportation projects.

Fiscal impacts of the bill will be funded through the reallocation of existing transportation revenues and the increased revenues to the State Transportation Trust Fund projected by the November 2009 Transportation Revenue Estimating Conference. Projects within the existing five year work program will not be affected by this bill.

Except as otherwise provided, this act shall take effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Introduction and Background

Florida's future economic competitiveness and quality of life require meeting increasing demands for moving people and goods in a sustainable manner. Our highways are experiencing high levels of congestion, while our rail systems, airports, and seaports must attempt to keep pace with demand for mobility.

Florida's rail network is almost entirely owned and maintained by private interests. DOT's rail program includes safety inspections, acquisition of rail corridors, assistance in developing intercity passenger and commuter rail service, and intercity rail transportation. Recently, DOT has assisted the freight railroads with capacity increasing improvements through various state funding programs.

Florida's freight rail system is comprised of 2,796 miles of track routes owned by 15 line-haul railroads and terminal or switching companies, as well as 81 miles owned by the state.

Florida's rail system is an integral part of the Strategic Intermodal System (SIS). The SIS includes transportation facilities such as deepwater seaports; commercial airports; waterways; rail corridors; highways; and intercity bus, spaceport, passenger rail terminals, and freight rail terminals. Rail facilities designated on the SIS carry 100 percent of all interregional rail passengers and over 90 percent of the freight rail tonnage.

Intercity Passenger Rail

For passenger rail in Florida, Amtrak operates four distinct services, the Auto Train, Silver Meteor, Silver Star, and Sunset Limited, covering 24 stations over lines owned by CSX Transportation and the DOT's South Florida Rail Corridor.

Tri-Rail is operated by the South Florida Regional Transportation Authority (SFRTA) and covers a 72-mile-long corridor (142.2 directional route miles) between West Palm Beach and Miami. Tri-Rail has 18 stations along the south Florida coast including five stations in Miami-Dade County, seven in Broward County, and six in Palm Beach County.

Federal ARRA Project Applications

The Florida DOT submitted applications for rail projects under the United States Department of Transportation's High-Speed Intercity Passenger Rail (HSIPR) program as part of the American Recovery and Reinvestment Act (ARRA). DOT is requesting a total of \$3.2 billion to fund the implementation of four projects identified below. The awards are expected to be announced this winter.

- Commuter Rail Passenger Service in Central Florida - \$270 million to purchase the Central Florida corridor known as SunRail.
- High Speed Rail Preliminary Design and Engineering from Orlando to Miami - \$30 million for the preliminary study necessary for the Orlando to Miami segment of high speed rail.
- Florida East Coast Amtrak Service - \$268 million to restore and enhance intercity passenger rail service along 350 miles of Florida's east coast between Jacksonville and Miami via the existing Florida East Coast Railway.
- Tampa-Orlando-Miami High Speed Rail Express - \$2.6 billion to construct the Orlando to Tampa segment of high speed rail. The total length of this route is 85 miles; the final environmental impact statement (FEIS) has been completed.

The projects submitted for funding by FDOT **are all independent of each other** and have met eligibility requirements as **stand-alone projects**.

Other ARRA Project Issues

All of these projects, if built, will likely require an operations subsidy from the state and/or local governments. This is based on the past history of fare-box recovery ratios of existing passenger rail systems. Due to the uncertainty of ridership forecasts for these proposed projects the amount of any operations subsidy cannot accurately be estimated. For example, in its application for SunRail, DOT estimated the state's operating subsidy for the first seven years of operation to total \$64 million in 2009 dollars.

Except for SunRail, there are no future state funds committed for the construction, operations, or maintenance of these facilities. The capital costs may come from HSIPR grants, however operations and maintenance costs will be covered by fares, local governments, and potentially private funding from businesses along the corridor. DOT may also enter into public-private partnership arrangements to build and operate these rail systems.

SunRail

DOT has an agreement with CSX to purchase 61.5 miles of track in Central Florida. This track goes from Deland in Volusia County to Poinciana in Osceola County. DOT plans to use these existing freight tracks to provide commuter rail service, with CSX still operating freight trains on the corridor. This project is known as SunRail.

The agreement between DOT and CSX provides the following project commitments:

- Land acquisition

- \$432 million to purchase track
- CSX is responsible for making \$282 million in improvements to A-Line and S-Line infrastructure around the state
- Capital Costs: \$615 million
 - 50 percent federal -\$307.5 million
 - 25 percent state-\$153.75 million
 - 25 percent local-\$153.75 million
- Operations and Maintenance
 - State pays operations and maintenance cost for first seven years estimated by DOT to total \$64 million in 2009 dollars.
 - Local Rail Commission assumes 100 percent funding responsibility in year eight at an annual cost of approximately \$8 million.

DOT has set aside sufficient funds for SunRail in the transportation work program, with the exception of \$270 million which is the subject of one of the federal ARRA grant applications discussed above.

In order for DOT to implement the agreement with CSX, the legislature must establish the liability framework necessary for state owned passenger rail and privately owned freight rail to operate on the same corridor.

Tri-Rail

Tri-Rail is a regional rail system lining Palm Beach, Broward, and Miami-Dade counties. It runs approximately 72 miles and is operated by the South Florida Regional Transportation Authority (SFRTA).

The Tri-County Commuter Rail Authority was created in 1986 to assist commuters in Miami-Dade, Broward and Palm Beach counties while I-95 was under construction and to introduce regional transit to the public. DOT's investment into the project was centered on providing alternative transportation within the corridor during the widening of the interstate. In 1989, DOT purchased the track from CSX. Funding for the operations of Tri Rail is shared 50 percent by the three counties and 50 percent by DOT. CSX has continued to provide dispatch services within the corridor, through a funding agreement with DOT.

In 2003, the Legislature transformed the Tri-County Commuter Rail Authority into the South Florida Regional Transportation Authority and established in law a minimum annual commitment per county of \$1.565 million to support SFRTA operating costs and a commitment of \$2.67 million per year to help secure matching federal funds for future capital projects.

In order to provide additional capacity within the corridor, SFRTA requested and received a Full Funding Grant Agreement (FFGA) with the Federal Transit Administration (FTA) to double-track most of the rail corridor. The FTA provided \$256 million to the project and the three counties in total provided \$76 million. With the completion of the double tracking of the corridor in 2006, SFRTA increased service to 48 trains per day, which was a requirement of the FTA agreement. This resulted in increased operating costs. Each county contributed in excess of the statutory minimum in 2007 and 2008. In 2008, the counties contributed \$4.37 million each; DOT matched the county contributions.¹

Earlier this year the three counties said they could not support the increased operating costs, and would have to reduce their operating contributions to the statutory minimum of \$1.565 million per year.

¹ Background information on Tri-Rail is from a fact sheet provided by DOT and on file with council staff. Additional information on Tri-Rail is available at www.tri-rail.com.

SFRTA made up the operating shortfall through budget reductions and other efficiencies and by transferring the \$2.67 million contribution for matching federal funding (capital) to support operations.

For the FY 2009-2010 budget, these measures are sufficient to continue the required service level and satisfy the federal funding agreement. However, SFRTA is uncertain that it will be able to sustain this level of funding in the future.

In a letter to SFRTA, dated September 17, 2009, FTA raised concerns regarding the SFRTA's ability to maintain the agreed upon service levels, suggesting that "any significant reduction in these service levels and associated reductions in your operating and maintenance funding will call into question your continued compliance with the terms and conditions of the FFGA and may result in a default of the FFGA". In the event of a default, the federal government may demand all federal funds that have been provided to support the project be returned. This could affect future federal funding to the State of Florida for transportation projects statewide.

DOT annually contributes \$18.9 million to support SFRTA operations and this is reflected as an ongoing commitment in the DOT work program. Additionally, DOT annually provides almost \$10 million to CSX for dispatch and maintenance in the South Florida Corridor. Assuming these amounts continue, and the local governments maintain their minimum statutory contributions, the annual operating deficit for the SFRTA is between \$13 million and \$15 million.

High-Speed Rail

In November 2000, the Florida voters approved a constitutional amendment² mandating the construction of a high speed transportation system for the state. The amendment required the use of train technologies that operate at speeds in excess of 120 miles per hour. The high speed rail system was to link the five largest urban areas in Florida, and construction was mandated to begin by November 1, 2003. To implement the constitutional amendment, the Florida Legislature enacted the Florida High Speed Rail Authority Act³ and created the Florida High Speed Rail Authority in 2001.

In November 2004, the 2000 constitutional amendment was repealed. Although the amendment has been repealed, the Florida High Speed Rail Authority Act is still in effect.

Prior to repeal of the constitutional amendment, the Florida High Speed Rail Authority developed a strategic plan for high speed rail in Florida, undertook the project development and environmental study process for the initial Tampa to Orlando segment, and conducted a planning study for the Orlando to Miami segment.

The Authority operated with funds derived from appropriations by the state and specific Congressional earmarks. Since fiscal year 2004-2005, no state funds have been appropriated, and the Authority operated on surplus funds from previous years. The authority is currently not active and the terms of its members have expired.⁴

Proposed Changes

State Rail Transit

In order to implement a comprehensive rail transit policy in Florida, the bill creates two new state entities within the Department of Transportation.

² Section 19, Article X of the State Constitution

³ Sections 341.8201 through 341.842, F.S.

⁴ Information on the Florida High-Speed Rail Authority is available at <http://www.floridahighspeedrail.org/>.

Florida Statewide Passenger Rail Commission

The bill creates the Florida Statewide Passenger Rail Commission. The primary functions of the commission will be to:

1. Monitor the efficiency, productivity, and management of all publicly-funded passenger rail systems in the state.⁵ The commission is required to advise the authorities operating passenger rail systems of its findings and recommendations. The commission is also required to conduct a periodic review of the authorities' passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General to conduct these reviews. The commission must also report to the Legislature findings from these reviews. This does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.
2. Advise DOT on policies and strategies used in the planning, designing, building, operating, financing, and maintaining a coordinated statewide system for passenger rail service.
3. Evaluate passenger rail policies and provide advice and recommendations on passenger rail operations in the state.

The commission will have nine voting members appointed as follows:

Governor-Three members, one with an environmental background, one with a legislative background, and one with a general business background. The terms of these initial appointments is four years.

President of the Senate-Three members, one with a civil engineering background, one with a transportation construction background, and one with a general business background. The terms of these initial appointments is three years.

Speaker of the House of Representatives-Three members, one with a legal background, one with a finance background, and one with a general business background. The terms of these initial appointments is two years.

Following the initial appointments, the succeeding terms of commissioners are for four years. Vacancies on the commission are filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. The vacancy shall be filled within 60 days.

The commission elects one member as chair who holds office at the will of the commission. Five members of the commission constitute a quorum, and the vote of five members is necessary for the commission to take any action. The commission may meet when there is a quorum. Vacancies on the commission do not impair the right of a quorum to exercise all rights and perform all duties.⁶

The board's members are not entitled to compensation, but are entitled to travel and other necessary expenses as provided in s. 112.061, F.S.

The commission or its members may not enter into the day to day operations of DOT or a monitored authority and are prohibited in taking part in:

⁵ This includes authorities created under chs. 343, 349, or 163, F.S. Part V of ch. 163, F.S. allows for two or more contiguous counties, municipalities, or political subdivisions to develop a charter for a regional transportation authority.

⁶ The membership and appointment process of the rail commission is identical to the current High-Speed Rail Authority except that the Secretary of DOT is an ex officio member of the High-Speed Rail Authority.

1. Awarding of contracts
2. The selection of a consultant or contractor. However the commission may recommend standards and policies governing the selection or prequalification of consultants or contractors.
3. Selection of a route for a specific project
4. Specific location of a transportation facility
5. Acquisition of right-of-way
6. Employment issues
7. Licensing issues⁷

The commission is assigned to the Office of the Secretary of the Department of Transportation for the purposes of administrative and fiscal accountability. However, it is to otherwise function independently. Reasonable expenses of the commission are subject to the approval of the Secretary of Transportation. DOT is required to provide administrative support to the commission.

The bill eliminates the Florida Transportation Commission's oversight of any regional transportation authority operating under the oversight of the newly created Florida Statewide Passenger Rail Commission.

Florida Rail Enterprise

Creation of the Florida Rail Enterprise

The bill creates the Florida Rail Enterprise within DOT, modeled after the Florida Turnpike Enterprise. The Rail Enterprise is headed by an Executive Director, appointed by the Secretary of DOT. The executive director must meet the same qualifications as a DOT district secretary or the turnpike executive director.⁸ The headquarters of the rail enterprise must be in Leon County.

The Enterprise is given the responsibility for developing and operating the state owned passenger rail systems in Florida including high speed rail, funding passenger rail systems, and coordinating publicly-funded passenger rail operations, including interoperability issues with freight rail.

DOT is required to facilitate the most efficient and effective management of the rail enterprise, including the use of best business practices. Except as provided in s. 287.055, F.S.,⁹ the enterprise is exempt from DOT policies, procedures, and standards, subject to the secretary having the authority to apply any policies, procedures, and standards, to the rail enterprise from time to time as deemed appropriate.

The bill provides that the Florida Rail Enterprise will be a single budget entity within the Department of Transportation. The bill establishes that unexpended funds appropriated to the Enterprise are carried forward from year to year.

Legal Liability for State Owned Passenger Rail Systems

The bill expands the overall framework for state-owned passenger rail. As such, DOT through the Enterprise would have the authority necessary for concluding the acquisition, ownership, construction, operation, maintenance and management of the rail corridors by authorizing the purchase of insurance

⁷ These restrictions are similar to provisions in the current Florida Transportation Commission statute.

⁸ The district secretaries and the executive director of the turnpike enterprise are required to be registered professional engineers, or in lieu of being a professional engineer, may hold an advanced degree in an appropriated related discipline, such as a Masters of Business Administration.

⁹ This section relates the procurement of certain professional services.

and establishment of a self-retention fund to insure against liability risks for DOT or other users of the rail corridors. The bill specifically:

- Defines rail corridor and the classes of people DOT intends to allow in the rail corridor. Those classes include passengers, people with the passengers, and people visiting or working in other developments within the corridor (i.e., food stands or kiosks at the station);
- Provides DOT with the authority to enter contracts with a freight operator from whom DOT has acquired a property interest in a rail corridor and provides the parameters DOT must stay within while negotiating terms of the contract;
- Provides that DOT may be solely responsible for any loss, injury or damage to commuter rail passengers, rail corridor invitees or trespassers, regardless of circumstance or cause. DOT may agree to pay for 100 percent of injuries to its passengers, its invitees, and trespassers if an accident occurs, subject to certain parameters:
 - In the event of a limited covered accident, DOT's authority to protect, defend, and indemnify the freight operator for all liability, cost and expense in excess of the deductible or self-insurance retention fund established and in force at the time of the limited coverage accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend and indemnify DOT for the amount of the deductible or self insurance retention fund.

The bill defines "limited covered accident" as "a collision directly between trains, locomotives, rail cars, or rail equipment of the department and the freight rail operator only, where the collision is caused by or arising from the willful misconduct of the freight rail operator or its subsidiaries, its agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of the freight rail operator or its subsidiaries, its agents, licensees, employees, officers, or agents."

- Provides that if only one train is involved in an incident, DOT may be solely responsible for any loss, injury or damage, if the train is a DOT train, or a train other than a DOT or freight rail operator's train. However, if in an instance when only a freight rail operator's train is involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers, and rail corridor invitees.
- Provides that if any train involved in an accident that is not a DOT train or freight operator train (other train), that train may be treated as if it is a DOT train when determining the allocation of liability between DOT and the freight operator;
- Provides that when more than one train is involved in an incident:
 - If a DOT train (or other train treated as a DOT train), and a freight operator train are involved in an incident, DOT may be responsible for its property and all of its people, all commuter rail passengers, rail corridor invitees, but only if the freight rail operator is responsible for its property, all of its people, and DOT and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.
 - If a DOT train, a freight operator train and any other train are all involved in an incident, the freight operator and DOT would still pay 100 percent of the damages to its property and people on their respective trains and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and the

freight operator would be equally responsible for damages to people and property outside the corridor. Any payment by the non-DOT/non-freight operator to those injured or damaged outside of the rail corridor does not reduce the equal sharing responsibility of the freight operator to below one-third of the total third party loss.

- Provides that no contractual duty extends DOT's liability in scope and in effect beyond the contractual liability insurance and the self-insurance retention fund.
- Provides that the freight-rail operator's compensation to DOT for use of the rail corridor includes a monetary contribution to the cost of liability coverage for the sole benefit of the freight rail operator.
- Authorizes DOT to purchase \$200 million in liability insurance and establish the self-insurance retention fund for payment of the deductible limits of insurance, for several types of users of the rail corridor, and includes a provision that any of the parties covered under the insurance shall contribute to the cost of the insurance.
- Authorizes DOT to establish a self-insurance retention fund of up to \$10 million.
- Provides that neither the assumption by contract to protect, defend, indemnify, and hold harmless, the purchase of insurance, nor the establishment of a self-insurance retention fund is a waiver of sovereign immunity or deemed to increase the limits of DOT's or a governmental entity's liability for torts under current law.

Impacts of Additional Freight on Local Communities

The bill addresses rail planning and impacts to local communities of additional freight traffic due to implementation of passenger rail. Specifically, the bill:

- Provides that the rail system plan may contain detailed regional components, consistent with the regional transportation plans, as needed to ensure connectivity within the state's regions, and include regional needs in the plan.
- Revises the updating requirement for the rail system plan from at least every two years to at least every five years, beginning with an update by January 1, 2011. The rail system plan must be accompanied by a status report to the Legislature.
- Recognizes DOT's role in the enhancement of the state's rail system to improve freight and passenger mobility, and requires DOT to:
 - Work closely with all affected communities along an impacted freight rail corridor to identify and address anticipated impacts of increased freight rail traffic due to the implementation of passenger rail.
 - Work with the impacted local governments and CSX Transportation Company to finalize all viable alternatives from DOT's Rail Traffic Evaluation Study to identify and develop an alternative route for through-freight rail traffic moving through Central Florida, including Polk and Hillsborough counties that would address, to the extent practicable, the effects of commuter rail.
 - Requires DOT to provide technical assistance to a coalition of local governments in Central Florida, to develop a regional rail system plan that addresses passenger and freight opportunities in the region. This plan is to be consistent with the Florida Rail System Plan and the Long Range Transportation Plans of the impacted counties, incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the

SunRail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation. The coalition includes Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia counties and the municipalities within those counties. The regional rail system plan may include the design and implementation of a multi-use corridor.

High Speed Rail

The bill authorizes the Florida Rail Enterprise to develop a high speed rail system in Florida. Portions of existing law relating to the, Florida High-Speed Rail Authority Act¹⁰ are reassigned to the Enterprise and all references to the “authority” are amended to reference the “enterprise.” Unnecessary provisions of the Florida High-Speed Rail Authority Act are repealed.

Section 341.8203, F.S., provides definitions, and amends the definition of “high speed rail system” to remove the reference to the speed of 120 miles per hour and change it to reasonably expected to reach 110 miles per hour, in order to conform with the federal definition, and to include associated intermodal connectors.

Section 341.822, F.S., is significantly rewritten to provide the powers and duties of the Enterprise relating to high speed rail.

- The enterprise will have the power to locate, plan, design, finance, construct, maintain, own, operate, administer, and manage the state’s high-speed rail system. These powers include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system and to coordinate the development and operation of a publicly-funded passenger rail system in the state.¹¹
- Is the intention of the Florida Rail Enterprise Act that the enterprise be authorized to plan, develop, own, purchase, lease, or otherwise, acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system; to expend funds to publicize, advertise, and promote the advantages of using the high-speed rail system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private.
- Authorizes the enterprise to employ procurement methods available under chs. 255, 287, 334, and 337, F.S.,¹² or otherwise allowed by law. The enterprise may also solicit proposals and, with legislative approval as evidenced by approval of the project in DOT’s work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of the high-speed rail system.
- Requires the executive director of the enterprise to appoint a staff, who will be exempt from the career service system.¹³
- Provides that the powers conferred upon the enterprise under this act are in addition to and supplemental to the existing powers of DOT and the rail enterprise, and these powers are not to

¹⁰ SS. 341.8201 through 341.842, F.S.

¹¹ These powers and duties are based on those given to Florida’s Turnpike Enterprise.

¹² Chapter 255, F.S., related to public property and publically owned building; Chapter 287, F.S., relates to procurement of personal property and services; Chapter 334, F.S., relates to transportation administration; and Chapter 337, F.S. relates to contracting, acquisition, disposal, and use of property by DOT

¹³ Part II of Ch. 110, F.S.

be construed as repealing any other law, but supersede other laws that are inconsistent with this act and provide a complete method for the exercise of such powers.

- Requires any rail enterprise project or improvement to be developed in accordance with the Florida Transportation Plan and be included in DOT's work program.

The bill creates s. 341.8225, F.S., providing that DOT is the only governmental entity that may acquire, construct, maintain, or operate the high-speed rail system, except upon specific authorization from the Legislature. The bill also provides that local governmental entities¹⁴ may negotiate with DOT for the design, right-of-way acquisition, and construction of any component of the high-speed rail system within areas of their respective jurisdictions or within counties with which they have interlocal agreements.

The bill amends s. 341.836, F.S., related to associated development to remove the requirement that the associated development have pedestrian ingress and egress from the rail station.

The bill amends s. 341.838, F.S., which authorized the authority to set various rents, fees, and charges. The bill authorizes the enterprise to establish fares, rates, rents, fees, and other charges. The bill removes the ability to pay administrative expenses of the enterprise from these revenues. It also clarifies that revenues received are not subject to the supervision or regulation of another department.

Repeal of Current Law Relating to the High Speed Rail Authority Act

The bill **repeals** the following sections, which are obsolete under the new framework.

1. Section 341.8202, F.S., relating to legislative intent. This contains the legislative intent for the Florida High-Speed Rail Authority.
2. Section 341.821, F.S., creating the high-speed rail authority. This section provides for the membership of the authority, terms of office, and assigned the authority to DOT for administrative purposes.
3. Section 341.823, F.S., providing criteria for assessment and recommendations for the high-speed rail system.
4. Section 341.824, F.S., relating to technical, scientific, or other assistance.
5. Section 341.827, F.S., relating to service areas and segment designations.
6. Section. 341.828, F.S., relating to permitting.
7. Section 341.829, F.S., relating to conflict prevention, mitigation, and resolution
8. Section 341.830, F.S., relating to procurement.
9. Section 341.831, F.S., relating to prequalification.
10. Section 341.832, F.S., relating to request for qualifications
11. Section 341.823, F.S., relating to request for proposals.
12. Section 341.834, F.S., relating to award of contract.
13. Section 341.835, F.S., relating to the acquisition of property, rights-of-way, and the disposal of land.
14. Section 341.837, F.S., relating the payment of expenses by the authority.
15. Section 341.841, F.S., relating to a report and financial audit by the authority.

Rail Funding

Dedicated Funding for State Owned Passenger Rail Systems

¹⁴ The bill provides that it is local government entities as defined in s. 334.03(14). This defines "local government entities" as "a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit."

The bill establishes a dedicated funding source for state owned passenger rail systems by reallocating a portion of the documentary stamp tax proceeds currently distributed to the State Transportation Trust fund. The bill also establishes the uses of these funds for rail projects. Finally, the bill provides additional funding to the SFRTA for operations.

Documentary Stamp Taxes

The documentary stamp tax is actually two taxes imposed on different bases at different tax rates. The tax on deeds and other documents related to real property is at the rate of 70 cents per \$100. Certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements are taxed at 35 cents per \$100.

The revenues from the documentary stamp tax are distributed to a variety of funds within the state. Eight percent of total collections are deducted as General Revenue service charge. Distributions are then made as follows:

- 63.31 percent as follows:
 - Debt service for Preservation 2000, Florida Forever, and Everglades Restoration.
 - Of the remainder:
 - **Lesser of 38.2 percent or \$541.75 million in each fiscal year, to the State Transportation Trust Fund**
The remaining 61.8 percent of the funds following the initial allocation to Florida Forever and Everglades Restoration is allocated to other various trust funds and General Revenue.

The allocation to the State Transportation Trust Fund (STTF) is allocated as follows:

- 10 percent for capital funding for the New Starts Transit Program
- 75 percent of the remaining funds after the New Starts and Small County allocations for the Strategic Intermodal System
- **5 percent for the Small County Outreach Program (SCOP).**
- **25 percent remaining funds after the New Starts and Small County allocations to the Transportation Regional Incentive Program (TRIP).**

The bill amends provisions of s. 201.15(1)(c), F.S., relating to the distribution of documentary stamp taxes allocated to the State Transportation Trust Fund (STTF). Specifically, the bill redistributes the allocation of SCOP and TRIP funds beginning in fiscal year 2014-2015 as described below:

Small County Outreach Program

Section 339.2818, F.S., creates Small County Outreach Program (SCOP) within DOT to assist small county governments in resurfacing or reconstructing county roads, or in capacity or safety improvements to county roads. Counties with a population of 150,000 or less are eligible to compete for funds designated for this program. For projects on county roads funded by the SCOP program, DOT funds 75 percent of the cost and the county funds the remaining 25 percent. In order to receive funds, the project must be on a county road, and the county must attempt to keep county roads in satisfactory condition.

Effective July 1, 2014, the bill increases the documentary stamp tax revenues allocated to SCOP from 5 percent to 10 percent of the revenues allocated to the STTF.

Transportation Regional Incentive Program

The Transportation Regional Incentive Program (TRIP) was created in 2005 as part of major growth management legislation. The purpose of the program is to encourage regional planning by providing state matching funds for improvements to regionally significant transportation facilities identified and prioritized by regional partners. TRIP funds are to be used to match local or regional funds on a 50 percent/50 percent basis or to match up to 50 percent of the total project costs for public transportation projects. TRIP funds are distributed to DOT's districts based on a statutory formula of equal parts population and fuel tax collections.

Effective on July 1, 2014, the bill provides that the first \$60 million of documentary stamp tax revenues allocated to the Transportation Regional Incentive Program is allocated to the Florida Rail Enterprise for certain rail funding.

Use of State Funds for Rail Projects

Section 341.303(4)(a), F.S., authorizes DOT to fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project that is local in scope, not to exceed the local match.

The bill substantially revises this section to authorize DOT to fund up to 100 percent of the net operating costs¹⁵ for any intercity or commuter rail system, for up to seven years, beginning when the system is open to service. The bill authorizes DOT through the Florida Rail Enterprise to use the allocation of documentary stamp revenues dedicated to rail through the TRIP program, up to \$60 million per year, to fund the following:

- Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system.
- The high-speed rail system.
- Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of state owned passenger rail.

Funding for South Florida Regional Transportation Authority

Current law requires each of the three counties in Tri-Rail's service area to contribute \$2.67 million every year to fund Tri-Rail,¹⁶ plus an additional \$1.565 million for operating expenses.

The bill continues to require these local revenues, and clarifies that the \$2.67 million annually provided by the counties may be used for capital, operations, and maintenance.

In its negotiations with CSX for SunRail, DOT renegotiated the terms of the South Florida Operating & Maintenance Agreement (SFOMA) to establish full operations control of the South Florida Rail Corridor by SFRTA. This agreement increases the charges assessed to CSX for freight use within the corridor, while giving control of all the operations and maintenance of the corridor to SFRTA.¹⁷

The bill amends s. 343.58, F.S., to require DOT, effective July 1, 2010, to transfer from the STTF, the following amounts annually to SFRTA.

¹⁵ The statutory meaning of "net operating costs" is "all operating costs of the project less any federal funds, fares, or other sources of income for the project."

¹⁶ While this has historically been used for capital expenses, the statute is silent as to what it may be used for.

¹⁷ Under the original agreement for Tri-Rail, CSX retained maintenance and dispatch control of the corridor.

- If SFRTA becomes responsible for maintaining and dispatching the rail corridor, \$15 million for operations, maintenance, and dispatch and an amount no less than DOT's work program commitments of \$27 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance, corridor track maintenance, and contract maintenance.
- If SFRTA does not become responsible for maintaining and dispatching the rail corridor, \$13.3 million for operations, maintenance, and dispatch and an amount no less than DOT's commitments of \$17.3 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance.¹⁸

The bill amends s. 339.135, F.S., relating to DOT's work program to provide that up to \$15 million of the first proceeds of the increased revenues to be deposited into the State Transportation Trust Fund estimated by the November 2009 Transportation Revenue Estimating Conference are allocated annually for the transfer of funds to SFRTA not included in DOT's work program as of July 1, 2009.. Specifically, the bill provides that this allocation is notwithstanding the following statutory distributions to ensure that the transfer of such funds does not negatively impact projects included in the fiscal years 2009-2010 through 2013-2014 transportation work program:

- Minimum 15 percent to Public Transportation Projects (s. 206.46(3), F.S.)
- Minimum 1.5 percent for Highway Beautification Projects (s. 334.044(26), F.S.)
- District Statutory Formula based on 50 percent population and 50 percent fuel tax collections (s. 339.135(4)(a)1., F.S.)
- Minimum 50 percent for the Strategic Intermodal System (s. 339.135(4)(a)2., F.S.)

Further, the bill provides that these dedicated funds to the SFRTA may not be provided from the documentary stamp tax distribution to the Florida Rail Enterprise for rail programs.

Purchase of the Central Florida Rail Corridor (SunRail)

The bill allows DOT to complete an escrowed closing on the pending Central Florida Rail Corridor acquisition. However, the drawing of the escrowed closing shall not occur unless and until Federal Transit Administration full-funding grant agreement approval is obtained for the proposed Central Florida Commuter Rail Transit Project Initial Operating Segment.

Effective Date

Except as otherwise provided, this act shall take effect upon becoming law.

B. SECTION DIRECTORY:

- | | |
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| Section 1 | Amends s. 20.23, F.S., relating to the Department of Transportation. |
| Section 2 | Amends s. 201.15, F.S., relating to the distribution of documentary stamp taxes collected. |
| Section 3 | Amends. s. 339.153, F.S., relating to DOT's work program. |
| Section 4 | Amends s. 343.58, F.S., relating to county funding for SFRTA. |
| Section 5 | Amends. s. 341.301, F.S., providing definitions for rail. |
| Section 6 | Amends s. 341.302, F.S., relating to the rail program. |

¹⁸ The difference in amount of the work program commitments under these two scenarios is what DOT pays to CSX for maintenance and dispatch on the South Florida Rail Corridor.

- Section 7 Provides conditions on an escrowed closing for SunRail.
- Section 8 Amends s. 341.303, F.S., relating to funding authorizations and appropriations.
- Section 9 Amends s. 341.8201, F.S., providing a short title.
- Section 10 Repeals s. 341.8202, F.S., relating to the Florida High Speed Rail Authority.
- Section 11 Amends s. 341.8203, F.S., providing definitions.
- Section 12 Repeals s. 341.821, F.S., relating to the Florida High-Speed Rail Authority.
- Section 13 Amends s. 384.822, F.S., relating to the powers and duties of the enterprise.
- Section 14 Creates s. 341.8225, F.S., relating to DOT's authority to acquire, construct, or operate a high-speed rail system.
- Section 15 Repeals ss. 341.823, 341.824, 341.827, 341.828, 341.829, 341.830, 341.831, 341.832, 341.833, 341.834, and 341.835, F.S., relating to the Florida High-Speed Rail Authority.
- Section 16 Amends s. 341.836, F.S. relating to associated development.
- Section 17 Repeals s. 341.837, F.S., relating to the Florida High-Speed Rail Authority.
- Section 18 Amends s. 341.838, F.S., relating to fares, rates, rents, fees, and charges.
- Section 19 Amends s. 341.839, F.S., relating to alternative means.
- Section 20 Repeals s. 341.841, F.S., relating to the Florida High-Speed Rail Authority.
- Section 21 Amends s. 110.205, F.S., relating to career service exemptions, to conform.
- Section 22 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will generate an indeterminate amount of revenues for DOT related to passenger and freight user fees in rail corridors owned by DOT. However, DOT will not receive any passenger fees until commuter rail begins operation.

2. Expenditures:

The bill authorizes DOT to purchase \$200 million in liability insurance related to a commuter rail corridor the department owns. The annual premium is expected to be approximately \$2 million, which is currently included in DOT's five-year work program. However, if the insurance coverage includes entities such as freight rail operators and ancillary development, any party covered by the policy is required to provide a reasonable monetary contribution for the insurance. These additional insureds may offset part of DOT's cost for liability insurance coverage.

The bill allocates a portion of the additional revenues estimated by the November 2009 Transportation Revenue Estimating Conference in the STTF to SFRTA as a dedicated funding source for Tri-Rail. The estimated additional revenues are:

Fiscal Year Increase November 2009
Transportation REC Revenues (In Millions)

2009-2010	\$56.9
2010-2011	\$78.1
2011-2012	\$80.0
2012-2013	\$72.1
2012-2014	\$59.2

If SFRTA assumes responsibility for maintenance and dispatch of the South Florida Rail Corridor, DOT transfers to SFRTA, the first \$15 million of the increased revenues. If SFRTA does not assume responsibility for maintenance and dispatch of the corridor, DOT will transfer the first \$13.3 million of the increased revenues to the authority.

Beginning on July 1, 2014, proceeds of documentary stamp taxes going to the STTF are reallocated. The effect of the reallocation for fiscal year 2014-2015 is as follows:

(Dollars in Millions)

PROGRAM	CURRENT ALLOCATION	AMENDED ALLOCATION	DIFFERENCE
New Starts	\$40.1	\$40.1	\$0
SCOP	\$20.0	\$40.0	\$20.0
Florida Rail Enterprise	\$0.0	\$60.0	\$60.0
TRIP	\$85.1	\$20.0	(\$65.0)
Strategic Intermodal System	\$255.3	\$240.3	(\$15.0)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If SFRTA assumes responsibility for maintenance and dispatch of the South Florida Rail Corridor, DOT transfers to SFRTA, the first \$15 million of the increased revenues estimated by the November 2009 Transportation Revenue Estimating Conference. If SFRTA does not assume responsibility for maintenance and dispatch of the corridor, DOT will transfer the first \$13.3 million of the increased revenues to the authority.

Due to the revised allocation of documentary stamp tax proceeds to the State Transportation Trust Fund, the state's small county outreach program is estimated to receive an additional \$20 million in FY 2014-2015.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The construction of SunRail or another rail system will potentially create jobs along the rail corridor.

D. FISCAL COMMENTS:

According to DOT, if the SunRail commuter rail project is implemented, sufficient funds will be available from a combination of sources to fund the project. These sources include:

- 1) Federal and local sources,
- 2) State funds included in the 5-year work program, and
- 3) Passenger and freight user fee revenues.

If the SunRail project is implemented there would be direct economic benefits to Central Florida related to the construction of the SunRail system and ongoing operations and maintenance of the system. These benefits include job creation, materials purchase, and incremental business activity. Once SunRail is operational, users of the system will receive the benefit of an alternative form of transportation in Central Florida.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On December 3, 2009, the Economic Development & Community Affairs Policy Council adopted one amendment to do the following:

- Clarify that a maximum of \$15 million in increased revenues estimated by the November 2009 Transportation Revenue Estimating Conference may be transferred to SFRTA annually. It also specifies the amounts transferred to SFRTA from the STTF to ensure the necessary funding is transferred to SFRTA as a dedicated funding source.