

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 215 w/CS Florida High-Speed Rail Authority Act  
**SPONSOR(S):** Ross  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 302 (s), SB 2412(c)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation</u>	<u>20 Y, 0 N</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Finance &amp; Tax</u>	<u>20 Y, 0 N w/CS</u>	<u>Overton</u>	<u>Diez-Arguelles</u>
3) <u>Transportation &amp; Econ. Dev. Approps. (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Florida voters in November 2000 approved a proposed constitutional amendment mandating the development of a high-speed rail system eventually linking the five largest urban areas of the State. Over the last three years, the legislatively created Florida High-Speed Rail Authority (FHSRA) has hired consultants and commissioned studies necessary to lay the groundwork for obtaining federal permits; has selected its preferred route linking Orlando, Lakeland, and Tampa; and has identified its preferred proposer, Fluor-Bombardier, to design, build, operate, maintain, and help finance the system. Currently, the FHSRA is in contract negotiations with Fluor-Bombardier. No state or federal funds have yet been dedicated to finance the estimated \$2.38 billion cost to build the Orlando-to-Tampa segment.

Legislation passed in 2002 included a provision granting to the FHSRA, its agent(s), and the high-speed rail owner exemptions from having to pay any state or local taxes on property or income associated with the rail system. "Associated development" was generally defined as property or facilities located near the rail system that could provide revenues for the system or protect the area from blight.

Although the Governor signed the legislation, he expressed reservations about the tax exemption's broadness, saying that the provision could be construed to also benefit the owners of privately owned associated development spurred by the rail system. The Governor asked the Legislature to clarify the tax exemption issue at its next opportunity. Legislation that would have removed the tax exemption for associated development was filed in the 2003 regular session and in one of the 2003 special sessions, but did not pass. The Governor vetoed the FHSRA's \$7.2 million line-item appropriation in the FY 03-04 General Appropriations Act, citing concerns about the associated development tax exemption.

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.

The bill raises no apparent constitutional or other legal issues, and has no fiscal impact to the state.

HB 215 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:** h0215b.ft.doc  
**DATE:** April 1, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background on high-speed rail project**

Florida voters in November 2000 approved a proposed constitutional amendment mandating the development of a high-speed rail system eventually linking all of the state’s urbanized areas. The measure carried 31 of Florida’s 67 counties, and the 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.”*

In the three years since the amendment’s passage, the following key events have occurred:

- The Legislature in 2001 created the Florida High-Speed Rail Authority (FHSRA) with basic powers necessary to conduct studies and lay other groundwork to begin the high-speed rail project.
- That same year, the Legislature designated the initial segments of the high-speed rail system: between St. Petersburg, Tampa and Orlando, with future service to Miami.
- In 2002, the Legislature broadened the FHSRA’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 FHSRA 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 bill allowed the FHSRA 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 funding.

- In November 2002, the FHSRA received the results of its 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.
- In February 2003, the FHSRA received responses from four companies or consortia to its "Requests for Proposals" (RFPs). The entities laid out their proposals on how to design, build, operate, maintain and help finance the first segment of the high-speed rail project, linking Orlando and Tampa. Based on the four proposals, 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 ranged from \$944.6 million to \$2.07 billion.
- For the 2003 regular legislative session, bills with opposite approaches to high-speed rail were filed. Two bills sought to send the issue of a high-speed rail system back to the voters, who would be asked whether they supported repealing the amendment adopted in 2000. Two other bills would have further broadened the FHSRA's powers and dedicated a funding source for the initial segment. None of the bills passed the Legislature.
- The Governor vetoed the FHSRA's state appropriation for \$7.2 million in operating funds for FY 03-04, citing concerns about that the statutory provision allowing associated development around the future high-speed rail system to be eligible for tax exemptions. The FHSRA continued to operate using carry-over state funds and federal funds, and reduced some of its expenses.
- In April 2003, the FHSRA rejected two of the proposals as being non-responsive and incomplete. Left were Fluor-Bombardier and the Global Rail Consortium.
- In October 2003, the FHSRA selected Fluor-Bombardier as its preferred proposer, and began negotiations, which are continuing. Fluor-Bombardier's firm-fixed price is \$2.056 billion, according to the FHSRA's "2004 Report to the Legislature." The FHSRA staff has estimated the actual base cost may be \$2.38 billion, when right-of-way acquisition, environmental mitigation, and other contingencies are added. These cost figures are subject to negotiation.
- The FHSRA recommended in its January, 2004 report that the Legislature approve an annual appropriation of \$75 million a year for 36 years to finance the construction of the Orlando-to-Tampa phase of the high-speed rail system. The FHSRA recommends that the sources of this dedicated funding be the Transportation Outreach Program, which is programmed to have about \$100 million a year through FY 2011-2012, and the State Transportation Trust Fund's annual allocation to public transportation programs.

The FHSRA earlier had 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. FHSRA met that deadline, and still hopes to receive a "Record of Decision" from the federal government, granting a permit for the project, by mid-March 2004.

Meanwhile, construction of the first segment cannot begin until state and/or federal funding is available. Federal legislation that includes mechanisms for funding high-speed rail construction has been filed and discussed, but has stalled. No state legislation filed so far for 2004 includes provisions for dedicated funding for high-speed rail construction.

### **Specifics on "associated development" issue**

The s. 341.0803(1) defines "associated development" as:

"...property, equipment, buildings, or other ancillary facilities which are 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. The term includes property, including air rights, necessary for joint development, such as parking facilities, retail establishments, restaurants, hotels, offices, or other commercial, civic, residential, or support facilities, and may also include property necessary to protect or preserve

the rail station area by reducing urban blight or traffic congestion or property necessary to accomplish any of the purposes set forth in this subsection which are reasonably anticipated or necessary.”

Section 341.836, F.S., states:

“(1) The authority, alone or as part of a joint development, may undertake development of associated developments to be a source of revenue for the establishment, construction, operation, or maintenance of the high-speed rail system. Such associated developments must be associated with a rail station and have pedestrian ingress to and egress from the rail station; be consistent, to the extent feasible, with applicable local government comprehensive plans and local land development regulations; and otherwise be in compliance with the provisions of this act.

(2) This act does not prohibit the authority, the selected person or entity, or a party to a joint venture with the authority or its selected person or entity from obtaining approval, pursuant to any other law, for any associated development that is reasonably related to the high-speed rail system.”

The tax exemption language in s. 341.840, F.S. states:

“The exercise of the powers granted by this act will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their health and living conditions, and as the design, building, operation, maintenance, and financing of a system by the authority or its agent or the owner or lessee thereof, as herein authorized, constitutes the performance of an essential public function, neither the authority, its agent, nor the owner of such system shall be required to pay any taxes or assessments upon or in respect to the system or any property acquired or used by the authority, its agent, or such owner under the provisions of this act or upon the income therefrom, any security therefor, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state, the counties, and the municipalities and other political subdivisions in the state.”

In an April 11, 2002, letter transmitted to the Secretary of State along with the signed HB 261, the Governor expressed concerns about the broad tax-exemption language in Chapter 341. He wrote:

“ Even more troublesome, however, is that the bill provides tax-exempt status not only to the high-speed rail infrastructure itself, but also to any “associated development,” which is defined to include such things as “parking facilities, retail establishments, restaurants, hotels, offices, or other commercial, civic, residential, or support facilities, and may also include property necessary to protect or preserve the rail station area by reducing urban blight or traffic congestion or property necessary to accomplish any of the purposes set forth in this subsection which are reasonably anticipated or necessary.

“Such a broad tax exemption appears to sweep literally anything connected to high-speed rail, no matter how remote, within its reach. This would place even greater financial burdens on the backs of the state’s residents and businesses.

“Given the pace of high-speed rail, however, there is ample time to fix this provision. But rest assured that this provision must be fixed. I am sufficiently troubled by it that, should the voters of Florida decide to keep me in office this fall, I pledge to veto every dollar of high-speed rail money in next year’s budget unless this ominous tax exemption is removed next regular session.”

As mentioned earlier, the Legislature in 2003 did not pass any high-speed rail legislation, and the Governor vetoed the FHSRA's state appropriation for \$7.2 million in operating funds for FY 03-04. In his June 23, 2003, veto message, the Governor wrote:

"However, I am vetoing (FHSR appropriation), primarily because I have promised to do so. On April 11, 2002, I transmitted to the Secretary of State, with my signature, Council Substitute for House Bill 261 along with a letter stating the reasons for signing that bill. The letter identified concerns with certain provisions of that bill expanding the powers of the High Speed Rail Authority and providing a broad tax exemption (allowing private businesses to be tax exempt) to development associated with the high speed rail system. I expressly called for this tax exemption to be removed from law, and pledged to veto every dollar of High Speed Rail Authority money in this year's budget if that tax exemption was not removed. Although the High Speed Rail Authority did recommend removal of the tax exemption, and the Department of Transportation and my office raised the issue several times during the 2003 Regular Session, the Legislature failed to act."

### **Effect of HB 215**

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 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.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 341.8203, F.S., 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.

**Section 2:** Amends s. 341.840, F.S. to clarify the tax exemption.

**Section 3:** Provides an effective date of January 1, 2005.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. (See "D. FISCAL COMMENTS" below.)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. (See "D. FISCAL COMMENTS" below.)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. (See "D. FISCAL COMMENTS" below.)

D. FISCAL COMMENTS:

HB 215 addresses an issue in existing statute that has the potential to create revenue loss for state and local government. However, much else has to occur before the issue of tax benefits to the rail system's associated development creates fiscal impacts to government. To the extent that associated development (such as hotels, restaurants, parking lots, and attractions) occurs around the proposed high-speed rail system, the current law could be interpreted to exempt such development from paying state and local sales taxes, local property taxes and assessments, corporate income taxes, and motor fuel taxes, and any other state and local taxes, fees, and assessments.

Theoretically, tax exemptions for all the associated developments could result in a large, but indeterminate, loss of revenue for state and local governments. However, both the potential for successful associated development and the amount of potential tax revenue the state and local governments could lose is speculative at this time.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 215 because the bill does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The FHSRA does not need additional rule-making authority to implement the provisions of HB 215.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 30, 2004, the Committee on Finance & Tax adopted a strike everything amendment that clarifies the tax exempt status as it relates to agents of the authority. The amendment 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 amendment provides a certification process to establish tax exemption status for contractors.