

To: All Senators  
From: President Jeff Atwater  
Date: November 30, 2009  
Subject: Special Session Update

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I would like to provide you with an update on Special Session and the conversation I believe Florida should have regarding the role of rail as a part of a forward-looking transportation system.

Creating opportunities to bring employers and employees closer, to move goods and services more efficiently, and to capitalize upon existing transit corridors, is a fundamental component of a robust state economy. The time has come to recognize that we must complement our existing road systems with rail alternatives, as we seek to renew our urban industrial centers and build a stronger future for Florida.

For some time now, we have been working on legislation that would create a comprehensive rail transit policy for Florida. Such a transportation system is vital in order for Florida to remain competitive in a global economy. It is equally important that we act now. The people of Florida are hurting; many are experiencing the pain of unemployment. A statewide rail transit policy not only invests in Florida's future and lays the foundation for long-term economic development, it will also bring much-needed jobs at a time when almost a million Floridians are unemployed and looking for ways to meet their financial obligations. Delaying this decision further does a disservice to those most in need.

Attached is a brief summary of the proposed rail legislation. I want to highlight a few specific elements that I believe will address many of the issues Senators have raised in the past.

This is not simply a rewrite of last year's legislation. As previously noted, this bill is designed to establish a comprehensive, statewide rail transit policy for Florida. Given the scope of this vision, protecting the safety of our citizens and the security of our investments are paramount. Thus appropriate indemnity and liability provisions become critical to any comprehensive rail transit system. I listened to the legitimate concerns that were raised during last year's Session. I am pleased to report that over the last several weeks FDOT has been negotiating an improved liability contract. Under the proposed legislation, the freight rail operator will pay anytime their acts cause damages to people or property under certain circumstances, this includes those accidents that most commonly occur on the nation's rails today. Additionally, if a freight train and commuter train collide, and punitive damages are awarded, the private rail operator will be responsible for the willful and wanton acts by its employees.

Secondly, with respect to a dedicated funding source for the South Florida Regional Transportation Authority (SFRTA) commuter rail system, the legislation addresses this issue by using existing revenues that are dedicated solely to transportation projects. We are able to do this without affecting road construction projects within the current FDOT work program. This is

a departure from previous legislative proposals that have included a \$2 rental car surcharge by voter referendum.

Finally, the legislation establishes the Florida Rail Enterprise, modeled after the nationally recognized and highly successful Florida Turnpike Enterprise. In an effort to meet Florida's growing transportation needs and enhance commerce, during the 1950s the legislature had the opportunity to invest in Florida's future through the construction and management of the Florida Turnpike. Today, the Florida Turnpike Enterprise manages over 600 miles of roadway and protects the public interest by utilizing best practices within the public and private sector. The Florida Rail Enterprise will not be a new layer of bureaucracy; no new positions have been created nor will any additional funds be diverted to support the Enterprise. Positions and duties that currently exist throughout FDOT will be streamlined into one office, which will be responsible for establishing a framework to guide and manage future development of rail in Florida.

Please take a moment to review the attached summary. We have carefully listened to concerns and addressed them to the best of our ability. Evolving our business models to meet the needs of a new century and new global realities is a challenge, but it is one we must face. Looking exclusively to the past, without acknowledging the demands of the future, is not an option for a state that should be leading the nation in innovation and business creation.

We are seeking nothing less than an investment in Florida's future by creating the foundation from which rail transit can become a viable transportation alternative for Florida's citizens, tourists, and businesses. I believe the proposed legislation accomplishes all of these goals and am especially pleased that it has been done without increasing the State's liability exposure or extracting a single additional dollar from Floridians.

I want to extend my gratitude to the Florida House and the Governor's office for their partnership in these efforts. We share the same goals of investing today to ensure a stronger future for Florida. We are working on a formal Special Session call and will send another email with the call once it is finalized. In the meantime, please make travel arrangements for a 9 AM Session on Thursday, December 3, 2009.

Once again, thank you for your patience and commitment to Florida. I look forward to seeing you all very soon.

## **Summary of Proposed Statewide Rail Transit Legislation**

### **FLORIDA RAIL ENTERPRISE**

Creates Florida Rail Enterprise within DOT, modeled after the existing Florida Turnpike Enterprise, that will be responsible for passenger rail systems, including high speed rail

- Sets the stage for a statewide policy on passenger rail transportation. Establishes policy for the overall framework for the future development of commuter rail in Florida.
- Until now, commuter rail has been a local issue.
- By raising the issue to a turnpike-like enterprise, the state can approach the issue in a statewide manner, both in terms of policy and funding.
- Provides statewide governance for passenger rail.
- Elevates passenger rail as a statewide transportation priority.
- The enterprise takes on responsibility for passenger rail; reports to DOT Secretary.

This issue was not included in SB 1212 during Regular Session.

### **PASSENGER RAIL COMMISSION**

The Passenger Rail Commission is created to advise FDOT in designing, building, operating, financing, and maintaining passenger rail systems. It will also monitor the efficiency, productivity, and management of SFRTA and future rail systems such as Sun Rail, TBARTA, and High Speed rail.

- Currently, the High Speed Rail Authority has a role in the development of high speed rail. The creation of the Passenger Rail Commission will create a role for such commission in the development and coordination of a comprehensive passenger rail system in the state.
- More comprehensive vision / mission than only high speed rail.
- Consistent with the vision of a comprehensive rail system for Florida.

This issue was not included in SB 1212 during Regular Session.

### **LIABILITY/INDEMNIFICATION**

The Indemnity and liability provisions in this proposed legislation will apply to all commuter rails systems developed through the acquisition of existing freight rail corridors. It establishes

the state liability obligations when acquiring rail corridors from freight operators. This is in keeping with a statewide rail vision and lays the groundwork for future commuter rail systems.

Under the proposed legislation:

- The freight operator is liable for incidents where a freight train hits a trespasser on the track or a car at a crossing
- In the case of a collision between two trains, freight operator would be responsible for paying the insurance deductible (up to \$10m) when punitive damages are awarded due to a willful or wanton act of its employees.

This is a departure from the provisions with SB 1212 during the 2009 Session which were criticized for placing the state on the hook for all accidents, even those caused by a freight operator.

### **Purchase of Rail Corridor**

This provision makes the purchase of the Central Florida commuter rail corridor contingent upon federal Full Funding Agreement (note, this not stimulus funds, the agreement is existing federal grant funds)

- Allows the department to begin the process for purchasing the central Florida commuter rail corridor.
- Closing funds would be escrowed; the purchase could not be finalized without receipt of the federal Full Funding Agreement.

This was included in SB 1212 during Regular Session

### **IMPACTS OF INCREASED FREIGHT MOVEMENT**

This provision requires DOT to identify and address impacts of freight traffic.

- Directs DOT to work with communities impacted by increased freight traffic due to central Florida commuter rail and future passenger rail systems.
- Allows DOT to access doc stamp funding for projects via the work program that would address freight rail impacts.

Similar to provisions within SB 1212 during Regular Session

### **DEDICATED FUNDING TO PASSENGER RAIL – TRI-RAIL OPERATIONS**

This provision provides the South Florida Regional Transportation Authority with the necessary funding to operate their Tri-Rail System.

- This is accomplished by maintaining current funding level combined with \$13m - \$15m recurring of new revenue (amount depends on whether SFTRA takes on operations, maintenance, and dispatch).
- Continues to require local contributions
- Earmarks a small portion of additional future transportation dollars to support the state priority of passenger rail.

This issue was not included in SB 1212 during Regular Session.

### **DEDICATED FUNDING TO PASSENGER RAIL – DOCUMENTARY STAMP PROCEEDS**

Consistent with a statewide rail vision, this provision creates a dependable, sustainable funding source for future rail projects.

- Provides the foundation for growing passenger rail and a source for future systems to tap into for development and construction of those new systems.
- First \$60 million of TRIP funds dedicated to passenger rail to be administered by the Florida Rail Enterprise

This issue was not included in SB 1212 during Regular Session.