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Rail special session gave DOT unprecedented clout

By Dara Kam

The state Department of Transportation acquired sweeping new power, including the ability to borrow money, in the rail bill that Gov. Charlie Crist signed into law last week.

“It was definitely a power grab,” said Sen. Paula Dockery, R-Lakeland, who says the new law diminishes legislative oversight of the department, which has about an \$8 billion annual budget.

But the state's deputy secretary of transportation, Kevin Thibault, said the law simply consolidates decisions about passenger rail in a newly created division of the department, called Florida Rail Enterprise. The reason for that in part, he said, is to give Florida a better shot at some of the \$8 billion in stimulus money that federal officials are scheduled to hand out early next year.

“What the Legislature is trying to do is make the Rail Enterprise the ‘go to’ route related to passenger rail,” Thibault said. “So that the U.S. Department of Transportation can clearly see who in Florida is responsible for doing this. . . . They (legislators) are saying to anybody looking from the outside, this is the message: that the Florida Department of Transportation is the one responsible for implementing the high-speed rail.”

Lawmakers talked little of the rail enterprise when they overwhelmingly approved the measure during a special session on rail this month.

But the law did away with the Florida High Speed Rail Authority — a statewide panel comprised of members appointed by the governor, the Senate President and the House Speaker — and replaced it with a weaker Florida Rail Commission. The commission's members will be appointed by the same three political leaders, but they will have the power to do little more than make recommendations and ask for audits of the enterprise.

Meanwhile, the law also created the rail enterprise, which will be headed by an executive director appointed by the transportation secretary, now Stephanie Kopelousos, who is appointed by the governor.

The law puts the enterprise in charge of all rail decisions and funding and gives its executive director the power to contract with private companies to build, operate, maintain and finance all high-speed rail projects and any “connectors” to those projects, including commuter rail lines, buses and terminals.

Under the new law, the enterprise can create high-speed rail projects wherever it wants, whether local communities want them or not; it can take private property by eminent domain as the transportation department can now do for roads; and it does not have to comply with local comprehensive plans in developing these projects and their associated developments.

Although the law gives the enterprise the power to decide how to spend the \$60 million a year in documentary taxes that passenger rail will start receiving in 2014, it also removes a previous state requirement that any high-speed rail system or connector to the system had be publicly funded.

And it gives the enterprise the ability to borrow money without legislative approval. That means the transportation department can seek money from private companies to help start high-speed rail operations, then repay them using proceeds from rider fares, Thibault said.

He said the department needed the ability to seek outside funding to supplement federal money for high-speed rail.

“If I don't get as much money from the feds as we ask, I have to figure out where we go from here,” he said. “That's all still up in the air yet. This is trying to set up the framework so it gives us the flexibility so we can implement it.”

The enterprise is modeled after the Florida Turnpike Enterprise, which manages toll roads in the state but does not have the power to borrow money. However, giving it the power to get private companies to finance the construction, operation and maintenance of rail projects is similar to the state's recent, but so far unsuccessful, efforts to privatize the turnpike and Alligator Alley.

Dockery, who is running for governor in the GOP primary against Attorney General Bill McCollum, successfully opposed the transportation department's efforts to create a SunRail commuter line in Central Florida for years. But she finally lost that fight during this special session; the new law authorizes the department to pay CSX Transportation at least \$432 million for 61 miles of its track for SunRail.

She fought the rail bill during the session and still questions giving more power to an agency that she says secretly manipulated the crafting of the bill to the advantage of CSX.

Dockery sought transportation department e-mails about the rail bill before the session, but wasn't given the bulk of 8,000 such e-mails until after the bill was passed.

Those e-mails show that DOT officials relied on CSX to write some provisions that appear in the new law, including one that allows transportation officials to enter into contracts that severely

limit the liability of freight operators, like CSX, or other private rail carriers for damages resulting from accidents on the track even when they are at fault.

For example, on Nov. 19, William Byrne, who represents CSX, sent DOT general counsel Alexis Yarbrough a message with an attachment.

“I am attaching a PDF reflecting CSXT's changes,” part of Byrne's message said.

The legislature had concerns when the transportation department tried to include similar liability provisions in previous SunRail proposals, but transportation officials will no longer need lawmakers' approval before they enter into such agreements with rail providers.

Crist ordered an inspector general's investigation of the e-mails last week after The Palm Beach Post first reported that Kopelousos and Thibault used breakfast-related terms including “pancakes” and “French Toast” as the subject lines for three of the rail-related messages.

Kopelousos has denied any intent to thwart the state's public records laws, saying that the headers were only a way for Thibault to draw attention to his messages among the hundreds of e-mails she receives each day.

But Dockery said she wonders, “If you already have your faith shaken in the department, now how do you feel that they have more power and authority to make these kinds of decisions without any oversight by the Legislature?”