

1                   A bill to be entitled  
2           An act relating to railroads; amending s. 335.141, F.S.;  
3           requiring public railroad-highway grade crossings opened  
4           after a certain date to be maintained by the railroad  
5           company at its own expense; providing that certain  
6           responsibilities of a railroad company to maintain and  
7           inspect public railroad-highway grade signal crossings  
8           shall not be abrogated, transferred, or nullified by  
9           contract or administrative rule; directing the Department  
10          of Transportation to amend specified rules to delete the  
11          provision for department participation in the cost of  
12          maintaining grade crossing traffic control devices located  
13          on the State Highway System; creating s. 351.31, F.S.;  
14          providing authorization for governmental entities to  
15          access railroad real property adjoining public property as  
16          necessary to plan, facilitate, and complete road or  
17          highway construction, improvement, or repair projects,  
18          subject to specified procedures; prohibiting a railroad  
19          company from refusing such access; providing that entry  
20          pursuant to such authorization is not trespass; requiring  
21          the governmental entity or its agent to comply with laws  
22          and rules; limiting liability of the railroad company for  
23          conduct of the agent; providing procedures to be followed  
24          by the governmental entity prior to entry onto the  
25          railroad property; requiring notification; providing  
26          procedures for the railroad company to object; providing  
27          for filing of the objection in court; providing  
28          specifications for court review and findings; providing

29 | for compensation if the court finds that granting access  
 30 | would result in a taking; authorizing the court to order  
 31 | such conditions on granting access and certain limitations  
 32 | on activities as it deems necessary; providing that the  
 33 | railroad company may not condition access on the use of  
 34 | services provided by railroad company employees by  
 35 | contract, agreement, or otherwise; providing for  
 36 | applicability; providing an effective date.

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38 | Be It Enacted by the Legislature of the State of Florida:

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40 | Section 1. Subsection (2) of section 335.141, Florida  
 41 | Statutes, is amended to read:

42 | 335.141 Regulation of public railroad-highway grade  
 43 | crossings; reduction of hazards.--

44 | (2) (a) The department, in cooperation with the several  
 45 | railroad companies operating in the state, shall develop and  
 46 | adopt a program for the expenditure of funds available for the  
 47 | construction of projects for the reduction of the hazards at  
 48 | public railroad-highway grade crossings. The department and the  
 49 | railroad companies are not liable for any action or omission in  
 50 | the development of such program or for the priority given to any  
 51 | crossing improvement.

52 | (b) Every railroad company maintaining a public railroad-  
 53 | highway grade crossing shall, upon reasonable notice from the  
 54 | department, install, maintain, and operate at such grade  
 55 | crossing traffic control devices to provide motorists with  
 56 | warning of the approach of trains. The department shall base its

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57 notice on its adopted program for the reduction of hazards at  
58 such crossings and on construction efficiency considerations  
59 relating to the geographical proximity of crossings included in  
60 such program. The design of the grade crossing traffic control  
61 devices must be approved by the department, and the cost of  
62 their purchase and installation must be paid from the funds  
63 described in paragraph (a).

64 (c) Any public railroad-highway grade crossing opened on  
65 or after July 1, 1972, shall be maintained by the railroad  
66 company at its own expense. Any public railroad-highway grade  
67 ~~railroad~~ crossing opened prior to July 1, 1972, shall be  
68 maintained by the railroad company at its own expense, unless  
69 the maintenance has been provided for in another manner by  
70 contractual agreement entered into prior to October 1, 1982. If  
71 the railroad company fails to maintain the crossing, the unit of  
72 government with jurisdiction over the public road that is  
73 crossed, after notifying the railroad company of the needed  
74 repairs and after giving the company 30 days after the date of  
75 receipt of the notice to make the repairs, shall proceed to make  
76 the repairs. The cost of repairs shall thereupon become a lien  
77 upon the railroad and its rolling stock, which lien shall be  
78 enforceable by an ordinary suit at law. Any judgment rendered  
79 under this paragraph shall include a reasonable attorney's fee.  
80 The responsibility of a railroad company to comply with federal  
81 requirements of maintenance and inspection of public railroad-  
82 highway grade signal crossings and the public policy of the  
83 state that such responsibility be carried out by the railroad

84 company at its own expense shall not be abrogated, transferred,  
 85 or nullified by contract or administrative rule.

86 (d) Prior to commencing the construction, rehabilitation,  
 87 or maintenance of the railroad grade or highway approaches at a  
 88 public railroad-highway grade crossing, the railroad company or  
 89 governmental entity initiating the work shall notify the other  
 90 party in order to promote the coordination of activities and to  
 91 ensure a safe crossing with smooth pavement transitions from the  
 92 grade of the railroad to the highway approaches.

93 (e) The department shall amend rule 14-57.011(3)(a),  
 94 Florida Administrative Code, to delete the provision for  
 95 department participation in the cost of maintaining grade  
 96 crossing traffic control devices located on the State Highway  
 97 System.

98 Section 2. Section 351.31, Florida Statutes, is created to  
 99 read:

100 351.31 Access to railroad property by government  
 101 officials; conditions of access prohibited.--

102 (1) Subject to the procedure provided in subsection (5),  
 103 access to railroad real property that is adjacent to, abutting,  
 104 or intersecting public lands, roadways, or highways is  
 105 authorized for governmental entities and their agents for all  
 106 purposes necessary to plan, facilitate, and complete road or  
 107 highway construction, improvement, or repair projects. The  
 108 access authorized under this section shall apply during the  
 109 period of time that the road or highway construction,  
 110 improvement or repair project undertaken by or on behalf of the  
 111 jurisdictional governmental entity is in progress. Access

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112 authorized under this section does not give authority to any  
113 governmental entity or its agent to destroy, injure, damage, or  
114 remove any private property belonging to the railroad or to make  
115 any physical improvements to or conduct any excavation of any  
116 real property belonging to the railroad without first obtaining  
117 written permission of the railroad company.

118 (2) No railroad company or railroad company representative  
119 shall refuse access to railroad real property authorized under  
120 subsection (1). Entry onto railroad property authorized by this  
121 section does not constitute trespass and neither governmental  
122 entities nor their agents shall be liable to arrest or to a  
123 civil action for trespass by reason of such entry.

124 (3) A governmental entity or its agent authorized to enter  
125 railroad property under this section shall do so in compliance  
126 with all federal, state, and local laws, as well as agency rules  
127 pertaining to premises security and other health and safety  
128 requirements applicable to such property.

129 (4) A railroad company is not liable to any third party  
130 for civil or criminal acts or damages that result from the  
131 negligent or intentional conduct of any agent of a governmental  
132 entity who is on railroad property under the authority granted  
133 under this section.

134 (5) (a) Prior to entry onto railroad property by a  
135 governmental entity or its agent pursuant to this section, the  
136 governmental entity must deliver to the railroad company written  
137 notice of its intended entry not less than 5 days before the  
138 date of entry. The notice must include:

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139       1. The full name of each individual who is authorized to  
140 enter railroad property on its behalf as well as the name of his  
141 or her employer and immediate supervisor.

142       2. The name of the governmental entity on whose behalf the  
143 entering agents are acting.

144       3. The location, size, and area of the property to which  
145 access will be required.

146       4. The name of the work project for which access is  
147 required.

148       5. The estimated time required for access.

149       6. A description of the work or other activity to be  
150 performed which makes access to railroad property necessary.

151       (b) Within 72 hours after delivery of the written notice,  
152 a railroad company may file an action stating its objection in  
153 the circuit court of the jurisdiction in which the railroad  
154 property to be accessed is located. If no objection is filed by  
155 the railroad company within 72 hours after delivery of the  
156 written notice, access as specified in the written notice is  
157 authorized. Upon receipt of an objection, the circuit court  
158 shall set a hearing to determine the basis for the objection. A  
159 timely filed objection shall suspend authority to access  
160 railroad property granted under this section for 10 days unless,  
161 before the end of the 10-day period, a hearing has been  
162 scheduled and a stay has been issued in which event authority to  
163 access the railroad property shall remain suspended pending  
164 resolution by order of the circuit court.

165       (c) At the hearing, the circuit court shall have for  
166 review the following issues:

167 1. Whether or not the access to railroad property is  
 168 necessary in scope, duration, and purpose for the planning,  
 169 facilitation, and completion of a road or highway construction,  
 170 improvement, or repair project;

171 2. Whether or not the location of the property or the  
 172 purpose for which entry is sought is of such a nature that  
 173 denial of access is necessary to avoid a substantial risk of  
 174 physical harm to persons or railroad property;

175 3. Whether or not, based on the description of the work or  
 176 activity to be done on the property, access to the property for  
 177 the work or activity described would be in violation of federal,  
 178 state, or local laws or agency rules pertaining to premises  
 179 security or other health and safety requirements applicable to  
 180 such property;

181 4. Whether or not, based on the description of the work or  
 182 activity to be done on the property, there is a reasonable  
 183 probability that railroad property would be damaged, destroyed,  
 184 injured, or removed or real property excavated without  
 185 permission of the railroad company.

186 5. Whether or not, based on the description of the work or  
 187 activity to be done on the property, the activity to be done  
 188 would cause a substantial impairment of railroad operations. For  
 189 purposes of this section "substantial impairment of railroad  
 190 operations" means that it has been established by clear and  
 191 convincing evidence that the granting of access for the purpose  
 192 or activity intended would significantly delay or prevent the  
 193 scheduled operation of any train, as defined in s. 341.301.

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194 6. Whether or not granting the access requested would  
195 constitute a taking of property under the Fifth Amendment to the  
196 United States Constitution or s. 6, Art. X of the State  
197 Constitution.

198 a. In determining whether or not granting access to the  
199 property constitutes a taking, the court shall consider to what  
200 extent, if any, granting the requested access would:

201 (I) Prevent the railroad from using the property for the  
202 purpose or in the manner in which it is ordinarily used; or

203 (II) Deprive the railroad of its beneficial use of the  
204 property at issue for the period of time access is granted.

205 b. If the court finds that granting access would result in  
206 a taking, the amount of compensation shall be limited to cover  
207 only the period of time for which access is authorized.

208 (d) At the hearing, the court may order such conditions on  
209 granting access to railroad property as it determines necessary  
210 to mitigate the risk of harm to persons or property, except that  
211 this section shall not be construed to authorize the court to  
212 require the governmental entity or its agent to procure the  
213 services of railroad employees as a condition of authorizing  
214 entry onto such property. In issuing its order, the court may  
215 limit the number of persons granted access and the duration of  
216 such access authorized under this section. In addition, the  
217 court may limit the activities which may be conducted on the  
218 railroad property as well as the time, place, and manner in  
219 which those activities are conducted.

220 (6) A railroad company may not compel or require the use  
221 of flagging or other services provided by railroad company

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222 employees by contract, agreement, or otherwise as a condition of  
223 allowing access to their property as authorized in subsection  
224 (1).

225 (7) This section does not authorize access to railroad  
226 property in violation of the requirements of federal law or to  
227 an employee of a railroad or a contractor to a railroad who is  
228 performing work within the definition of roadway worker as  
229 defined in 49 C.F.R. s. 214.7.

230 (8) For purposes of this section "jurisdictional  
231 governmental entity" means any public body vested with the power  
232 to exercise eminent domain over the property for which access is  
233 sought.

234 Section 3. This act shall take effect July 1, 2008.